

**State Vs. Jitender**

**State Vs. Jitender**

**SooperKanoon Citation :** [sooperkanoon.com/957125](http://sooperkanoon.com/957125)

**Court :** Delhi

**Decided On :** Feb-21-2013

**Judge :** S.Ravindra Bhat

**Appellant :** State

**Respondent :** Jitender

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

24. 11.2011 Decided on:

21. 02.2013 + DEATH SENTENCE REF. 1/2011 .Petitioner STATE Versus .Respondent JITENDER + CRL. A. 912/2011 .Appellant JITENDER Versus .Respondents STATE Through: Sh. Trideep Pais and Sh. Shivam Sharma, Advocates, on behalf of Jitender. Sh. Rajesh Mahajan, ASC (Crl), for the State. HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MS. JUSTICE PRATIBHA RANI MR. JUSTICE S. RAVINDRA BHAT % 1. The present judgment will dispose of Death Reference No. 1/2011 under Section 366 of the Code of Criminal Procedure, and the accuseds appeal, being Crl.A. 912/2011 impugning his conviction, and the imposition of death penalty, by the judgment and order of the learned Addl. Sessions Judge-01 (Central), Delhi, dated 24.12.2010 and 10.01.2011 respectively, in S.C. No. 69/2009.

2. The appellant (Jitender, referred to variously by his name, or as Death Sent. 1/11 & CrI.A.912/11 Page 1 the Appellant), was convicted for the offence under Section 302, Indian Penal Code (IPC) for the murder of his father. It was alleged that on the morning of 13.03.2008, he strangled his father, aged about 70 years (the deceased) to death, in the first floor of his own house at No. 6270, Gali Ravi Dass, Nabi Karim, Delhi, within the jurisdiction of the Nabi Karim Police Station. Thereafter, it was alleged that he severed the head from the body, removed the entrails and some organs from the body.

3. The facts of the case are that two temples (the Baalmiki Mandir, and the Kaali Mata Mandir) are situated opposite each other, in the vicinity of the appellants house. At about 2.00 PM, on 13.03.2008, the appellant was seen coming out of his house, his face and clothes smeared with dust, carrying with him something wrapped in black cloth, and running in the direction of the temples. It is alleged that he found that the temples were closed when he reached them. He found the priest of the Baalmiki Mandir, Madan Lal PW-2 (who was resting nearby) and demanded the keys of the Kaali Mata Mandir. When Madan Lal told him that he did not have the keys, the Appellant began to shout and break articles in the temple, and tried to force open the Almirah. PW-2 went outside to seek help and the Appellant was taken away by the Police, for breaching the peace, to the Police Station at 2.25 PM. He was arrested under Sections 107/151 Cr.PC. He was released by the Executive Magistrate in the forenoon of 14.03.2008.

4. The Appellant lived in 6270, Gali Ravi Das, Nabi Karim (the premises) with his father (the deceased) and his mother Kamla, PW3. His brother, Rakesh PW-16 resided separately in a jhuggi in Roop Death Sent. 1/11 & CrI.A.912/11 Page 2 Nagar, and his married sister, Guddo PW-4, lived with her husband in Shastri Nagar, Delhi. Suresh Kumar PW-5, Jitenders cousin, lived in the abutting portion of the appellants house. The appellant had been married, but his wife had deserted him, and he was unemployed. On 12.03.2008, the appellants mother PW-3 had gone to her other son Rakeshs house for two days. On the day of the murder, the deceased and the appellant were the only people residing in his house.

5. The prosecution case is that Guddo PW-4, who would visit her parents every day in the morning after finishing her work, which was that of cleaning Marwadi Basti, Nabi Karim, on 14.03.2008 also, as usual, came to the appellants house, at about 7.15/7.30 AM, to meet her parents. When she went inside, she found the headless and naked body of her father on the floor. She raised an alarm, which alerted Ajay @ Bunty PW-22, who went inside the house, saw the body and informed the police. Another neighbour, Sri Chand, informed the deceaseds other son Mahesh PW-16, who was at work, at around 8.30 AM. The Police recorded the information in a PCR Form (Ex. PW14/A), the PCR van recorded the information as DD No. 8-A (Ex. PW18/A ) at 7.25 AM.

6. The Police reached the crime scene. SI Rajni Kant PW-24 and Constable Dharamveer saw that the headless body was lying in a pool of blood in front of a small wooden temple of the Goddess Durga (Sherawali). Earlier, the same day, at about 6.00 AM, Nanhe Ram PW-1 a priest of the Baalmiki Mandir, on opening the almirah inside the temple, found a parcel wrapped in black cloth, in which upon unwrapping the cloth, he found a human head. Death Sent. 1/11 & CrI.A.912/11 He immediately Page 3 informed Suresh Chand PW-9, of the managing committee of the temple, who on seeing the head, along with some other local residents, including Rajender PW-15, informed the police. Rakesh PW-16 (the son of the deceased) was also informed. Both PW-15 and 16 identified the severed head to be that of Kartar Singh. This information was immediately conveyed to SI Rajni Kant PW-24 who was present at the house of the appellant (the headless body had been discovered by such time). Madan Lal PW-2 then told him about the appellants strange conduct the previous day at the mandir. On the basis of the identification of the body and the severed head and all the above mentioned facts, a rukka was prepared (Ex. PW-24/A) on the basis of which an FIR (Ex. PW 17/A) for the offences under Section 302/201 IPC, was registered at 8.40 AM. The Crime Team investigated the scene of offence, photographs were taken and necessary physical evidence was recovered from the spot. The Appellant was arrested at around 5.30 PM in the same evening. He allegedly made a disclosure statement to the effect that he had killed his father, and pursuant to his disclosures, his blood stained shirt and the knife/ churri used in the crime were recovered.

7. After conclusion of the investigation, the Police filed a final report, indicting the Appellant for the commission of offences under Section 302 IPC. The Appellant pleaded not guilty and claimed trial. The Prosecution examined 25 witnesses. On conclusion of the Prosecution evidence, the Appellants statement was recorded under Section 313 Cr. P.C. wherein he claimed his innocence, and denied all recoveries allegedly made at his behest. After considering the Death Sent. 1/11 & CrI.A.912/11 Page 4 evidence on record, and hearing submissions, the Trial Court found the Appellant guilty of the charge under Section 302 IPC. On the point of sentence, for the reasons given in its order (Paras 21-

25) the Trial Court found that the murder of the septuagenarian father, by the son, as human sacrifice, constituted the rarest of rare case and sentenced him to death. Trial Courts findings:

8. On appreciation of the evidence, the Trial Court was of the opinion that the prosecution had established, on the basis of testimonies of Jitenders mother, PW-3; his sister, PW-4 and his brother, PW-16- Rakesh that the allegations regarding his living with his parents and his unemployment, were proved. The Trial Court also relied on the testimony of PW-3 and the statement of the appellant under Section 313 Cr.PC, to hold that he was engaged in Devi Pooja and had previously spoken of his desire to offer sacrifice pursuant to such worship. The Court was satisfied that at the time of the commission of the offence, there was no one except the appellant in the premises. In reaching this conclusion, the Court relied on the testimony of PW-3, his mother and PW-16, his brother. On the crucial aspect that the appellant had beheaded his father, the Court relied on the testimony of PW-15 Rajender who said that he had seen the appellant on 13.03.2008 running out of his house, carrying something wrapped in a black cloth to the Baalmiki Temple. The witness had also identified the cloth.

9. The Trial Court relied on the testimony of PW-2, who stated that on 13.03.2008, the appellant had gone to the Baalmiki Temple, Death Sent. 1/11 & CrI.A.912/11 Page 5 created a commotion, tried to open the almirah; and broke glasses kept in front of the idol. The testimony of PW-23, the policeman on duty, who arrested the appellant on 13.03.2008, on being informed that a person was causing destruction

of temple property, was relied upon. The Trial Court accepted all the other evidence pertaining to the discovery of the body and severed head, its identification etc. The post mortem which was conducted on 15.03.2008 at 01.00 PM led to the report (Ex.PW-21/A), which fixed the probable time of occurrence of death at 07.00 AM, on 13.03.2008. This and the other material and circumstantial evidence were held to be sufficient to prove beyond reasonable doubt that it was the appellant alone and no one else who committed the murder and that every hypothesis of his innocence was ruled out. Analysis of evidence:

10. PW-1 Nanhe Ram deposed to working as pujari at the Baalmiki Mandir and that Madan Lal was also a pujari there. According to him, there was a Kaali Temple in front of Baalmiki Mandir. On 14.03.2008, at 06.00 AM, when he went to the temple (Baalmiki Temple), and opened the cupboard to take-out a cassette deck, to play the Arti (devotional songs), one old black coloured potli (cloth wrapped package) fell on the ground. On unwrapping, he found that it contained a human head. He immediately alerted the President of the Temple Trust Suresh Rukhal, who reached there and checked the head. Both went to the Police Station and reported the matter. The police visited the temple and conducted proceedings. He became aware that a headless body was found in House No. 6270. He stated Death Sent. 1/11 & CrI.A.912/11 Page 6 that it was also informed that the previous day, Jitender created a scene in the temple and tried to open the almirah and was arrested by the police. In cross-examination, he said that he went to Suresh Rukhals house at 06.05 AM and within 5 minutes, reached the temple with him. He went to the police station with Chaudhary Keher Singh, Kishan Lal and Suresh Chand Mukharji and many others and remained there for 5-10 minutes, and then they returned to the temple with the policemen. He stated that information that a headless body was lying in House No. 6270 was circulated in the area. He clarified that on 13.03.2008, he had reached the temple and found Jitender had created a scene there.

11. PW-2, Madan Lal, the other pujari in the Baalmiki Temple deposed that on 13.03.2008, the Kali Temple was closed and he was lying near the Baalmiki Temple. At around 02.00 PM, Jitender went there and started making noise; he had a black colored cloth package (potli) and demanded keys of Kaali Temple

from him. The witness stated that he did not have the keys of Kaali Temple, upon which the accused created a commotion and started breaking articles at the temple. He informed some people sitting outside the temple. Jitender tried to open the almirah in the temple; he had also broken the glasses kept in the front of the idol. He went outside the temple and created a scene. The police reached there and took him into custody. He further deposed that on 14.03.2008, when Nanhe Ram and other pujari opened the almirah, a human head severed from the body, kept in a black colored cloth fell down. The police and others reached there. In the cross-examination, he could not state what colored clothes were Death Sent. 1/11 & CrI.A.912/11 Page 7 worn by Jitender on 13.03.2008. He also stated that Jitender did not make any noise in his presence and that 4-5 people had gone inside the temple. They were at a distance of 15-20 steps from the temple. He could not say when Jitender was arrested and that he admitted that Nanhe Ram told him that a severed head of some man was recovered from the temple. He said that he reached the temple at 04.00 AM and remained there till 06.00 AM; left it at 06.00 AM. He returned there after 15 minutes and he remained in the temple the entire day.

12. PW-3 Kamla, deposed that Jitender was her younger son and that her elder son Rakesh resided at Roop Nagar. Jitenders father, the deceased Kartar Singh, and the witness, used to live in the premises; Jitender was unemployed and idle. His wife had deserted him and was living with her parents. She stated that on 12.03.2008, she had gone to stay with the elder son, Rakesh and that 2-3 days later, at around 09.00 AM, there was police all around her house and a crowd gathered there. She was not allowed to enter the house and she remained outside. She later identified the body of the husband on the basis of severed head shown to her. That severed head was brought from the temple. She deposed that Jitender used to say that he was doing devi pooja for which he would indulge in sacrifice. She stated that the police had interrogated her when the body was brought down from the second floor and that Jitender used to frequently tell her that he used to do pooja of deities.

13. PW-4 Guddo - Jitenders sister deposed that she used to do cleaning work in Marwadi Basti, Nabi Karim and that the appellant and father used to reside in the

premises. Her elder brother used to Death Sent. 1/11 & CrI.A.912/11 Page 8 live in Roop Nagar. She deposed to visiting the said premises daily after finishing her work. One day when she visited the premises of her father, she found his headless body without any clothes. Thereafter, she raised an alarm which attracted neighbors who reached there. She went down and informed the neighbors. In the meantime, the police reached the spot. She stated in the cross-examination that she went to her fathers house at 07.30 AM and that after seeing the condition of the body, she went down. She had not informed the Police Control Room (PCR) and she could not say who had informed the police. She also stated that the accused did not tell her that he was indulging in Devi worship.

14. PW-5, Suresh deposed that he was Jitenders cousin. He stated that Jitender was unemployed and used to remain idle at home. He used to keep his room shut. He stated that accused had not told him about any pooja or that he would give sacrifice and that on 13.03.2008, he received a telephonic call about dead body in the accuseds house. He went to the spot and found the headless body of Kartar Singh. He could not say from where the severed head was recovered. The witness was declared hostile and permitted to be crossexamined. In the cross-examination, he was confronted with his previous statement where he had stated that Jitender used to practice devi pooja and that he claimed he would be blessed with divine powers. Upon being confronted with his Section 161 statement, (Ex.PW-5/DA), he admitted to identifying the head of the deceased. In the cross-examination, he mentioned that the incident took place on 12.03.2008 and further deposed that he received call on 13.03.2008. Death Sent. 1/11 & CrI.A.912/11 Page 9 PW-6, Sri Chand who used to reside at 6236, Gali Gurudwarewali, Nabi Karim deposed that on 14.03.2008 at 08.00 AM, he was in his house when he was informed that a headless body was found in the premises of the deceased. He went to Kaali Temple and gave the information and brought Rakesh, the accuseds brother to his house.

15. PW-7, Dinesh Kumar, a Constable, stated that on 14.03.2008, at the request of SI Rajni Kant, he accompanied the Crime Team to the premises and found a Chhuri lying on the slab in the house. He took the photographs (exhibited as Ex.PW-7/7 Ex.PW-7/5). He also produced the negatives. He deposed to reaching

the house at 08.45 AM, and remaining there till 09.20 AM. PW-8, Constable Dharmveer deposed to having, with SI Rajni Kant, reached the premises and seeing the headless body of the deceased. He stated that the head was wrapped in black coloured cloth and was in the Baalmiki Temple. He took the information to the Police Station where the FIR (Ex.PW17/A) was recorded. A copy was handed-over to SI Rajni Kant, at whose instructions he took the body to JPN Hospital for postmortem. The body was thereafter handed-over to the family members of the deceased. In cross-examination he stated that he reached the House No. 6270 at about 07.25 AM and that his movement was recorded in D.D. No. 8A. He went to the police station with the rukka at 08.00 AM and reached the police station at 08.15 AM. He remained at the spot for 20-25 minutes.

16. PW-9 stated that he headed the Committee which managed the Baalmiki Temple and that at 06.15 AM, Nanhe Ram went to his house and asked him to accompany him to the temple, where on the floor, Death Sent. 1/11 & CrI.A.912/11 Page 10 lay a severed human head wrapped in black coloured cloth. He collected people from the locality and went to the Police Station. He also deposed that someone from the family of the accused telephoned the police that the deceased's headless body was lying in the house. He deposed in the cross-examination that he reached the temple within five minutes of being informed, at 06.15 AM and that he reached Police Station Pahar Ganj and that the police accompanied them within 15 minutes. They remained there for 15 minutes and afterwards went to the house of the deceased.

17. PW-10 was the photographer who deposed to having taken 11 photographs in the house of the deceased. The photographs of the body, from different angles and that of the head, at the Baalmiki Temple, were taken. They were produced in Court. He deposed to having left for the spot at 08.30 AM and remained at the spot for an hour. No public witnesses were present. PW-11 was posted in the Mobile Crime Team and stated that on receipt of information, at around 08.30 AM, he and his team went to House No. 6270, Gali Ravi Dass, and found the headless male body lying in a room. He lifted the chance prints. In cross-examination, he stated that 3-4 policemen and 5-7 members of the public were there and that several photographs were collected by the photographer. PW-12 was in-charge of

the Crime Team and he deposed to having reached the spot at 08.45 AM with members of his team. He deposed that he was there was a bloodstained knife lying on a slab in a room.

18. PW-14 deposed that at about 07.18 AM, on the day of the incident, he received information that a dead body was lying in 6239, Death Sent. 1/11 & CrI.A.912/11 Page 11 Gali Guru Ravi Dass, near Baalmiki Temple, which was reduced to writing and further passed on to the PCR. The PCR Form was exhibit PW-14/A.

19. PW-15 Rajender deposed that he was an employee of the Delhi Jal Board and that Jitender was his neighbor. He stated that on 13.03.2008, at about 02.00 PM, while reporting for duty, he saw Jitender leaving his house and holding something wrapped in black cloth in his hand. He was running towards the Baalmiki Temple fast and his clothes were dust-smearred. Upon being asked, Jitender did not respond and continued to run towards the temple. He returned from duty at 09.30 PM. The next day, i.e. on 14.03.2008, at 06.30-07.30 AM, while leaving home, he came to know that a human head without the body was lying in the Baalmiki Temple, where he went. A large number of policemen were present there. He discovered that the head without the body was that of Kartar Singh @ Jhhunna. It was also stated that the black cloth potli carried by the accused and which he had seen the previous day was lying near the head. He stated that the accused used to stay back at home after consuming liquor. He identified the black colored cloth, Ex.P-1 upon its production in Court. In cross-examination, he stated that he used to work and his duty hours were between 02.00 PM and 10.00 PM and that he proceeded from his house on 13.03.2008 at about 02.00 PM. He had seen the accused when he was running towards his house and that at that time, the witness was reporting for duty. There was no specific mark on the black cloth which was used to wrap something. He could not remember the color of the dress which the accused wore. He Death Sent. 1/11 & CrI.A.912/11 Page 12 stated that: On 13.03.2008, I came back from duty at 10.00 PM. There was a hue and cry by the members of the temple that one head was lying in the temple but I did not go to the temple and on the return at my house. My statement was recorded by the police.

20. PW-16 deposed that he was living in Roop Nagar in a Jhuggi and that his parents and Jitender lived in 6270 Gali Ravi Dass. He left the parental home due to the accuseds behavior. 2-3 days prior to 14.03.2008, his mother had gone to his house at Roop Nagar. The deceased and Jitender continued to live in 6270, Gali Ravi Dass, Nabi Karim. He stated that on 14.03.2008, Billu and Raju went to him at his workplace near Kaali Temple, between 08.30 AM and 09.00 AM, and asked him to reach his parental house. He found a crowd along with police officials there. He saw a headless body in a room in front of a wooden mandir shrine. Different parts of the body had been cut. He was told that a human head was lying in the Baalmiki Temple. He went there and saw that it was his fathers head in a black cloth on the temple floor. He identified the head as that of his father. The police brought that head to the house where he identified the body of that of his father. His fathers name was engraved (tattooed) on his hand. The identification memo, PW-16/A bears his signatures. He deposed that around 100 people were at the spot when he reached home and that 20-30 policemen were also present. He deposed that the distance between his workplace and his house was about 30 minutes. His neighbors had told him about the head lying in the Baalmiki Temple where he reached between 10.30 AM and 11.00 AM. He Death Sent. 1/11 & Crl.A.912/11 Page 13 remained in the temple for about 30 minutes. He could not recollect the number of documents he signed and stated that he reached the spot where he remained from 01.30 to 02.30 PM. He stated that he had not given any statement to the police.

21. PW-22 Ajay @ Buntly lived in 6239, Gali Gurudwarewali, Nabi Karim. He was a Network Engineer employed in the Customs Department on contract basis. He deposed that on 14.03.2008, in the early morning, around 07.15-07.30 AM, he heard cries of Guddo, PW-4, saying that she had discovered a headless body in her house. He informed the police on telephone No.

100. He went inside the house to the room on the first floor near the wooden shrine. After some time, the police reached the spot and lifted blood, soil and earth control and put them in a separate glass. The police also took into custody blood-stained clothes and sealed these articles. The scene of occurrence was photographed. He says that he joined the investigation again at 06.00 PM when

the accused was arrested by Memo Ex. PW22/H and his personal search was made. His disclosure statement, Ex.PW-22/K was recorded and he led the police to the place of occurrence and pointed to the left of the room where he had thrown a knife, the weapon of offence after the crime. The crime team, it is stated, took the photographs of the knife. The IO prepared a sketch of the knife, Ex.PW-22/L and sealed the knife. At the time of arrest, the accused was wearing blood-stained clothes which he changed at the spot of occurrence. The blood stained clothes were seized by the police. He also stated in the cross-examination, with permission of the Court, that the accused led the police party to the Baalmiki Temple Death Sent. 1/11 & CrI.A.912/11 Page 14 and pointed-out the place where he kept the severed head of his father.

22. In the cross-examination, he mentioned that his working hours were between 08.00 AM and 04.00 PM and that he normally left home at 07.30 AM. The accuseds house was located near the back of his house; one could reach there from the rooftop of his house, in addition to circling the gali. It took less than two minutes to reach the accuseds house. He made the PCR call at 07.00-07.15 AM. He stated that the Crime Team reached at 08.00-08.30 AM and that he had signed 4-5 papers. He also stated that he took leave from office on that day. He deposed that his statement was recorded at 08.15 AM but he did not remember when the second statement was recorded though it was recorded in the morning. He could not remember if the accused was arrested on 13.03.2008 but he was aware of that. He stated that the accused probably wore a single-lining shirt and grey-colored pants but was not sure. He also deposed that his statement was recorded by police after 13.03.2008 and that 6-7 parcels were prepared in his presence. PW-23 was the Sub-Inspector who received the report, DD13A on 13.03.2008. That report was exhibited as Ex.23/A. He stated that he went to the temple where he found a big crowd and also saw the accused. He was threatening others present there and demanding offerings given by the devotees to the temple. At that time, his face was soiled with ashes and he had smeared a red-colored tika on forehead. The witness saw broken glass of the idol and also saw blood-stained clothes of the accused. He thought that the blood-stains could have been result of the breaking of glasses. The accused, upon enquiry, told him mujhe devi ki shakti aati hai - that he derived Death Sent. 1/11 & CrI.A.912/11 Page 15 strength from

Goddess Shakti, attributing his conduct to divine power. Jitender kept threatening those persons; as a result the witness arrested him under Sections 107/Section 151 Cr.PC, got him medically examined and took him to the lock-up at Police Station Pahar Ganj. He made an arrival entry, Ex.PW-23/B and filed intimation in the Court of Special Magistrate, Central District, where the accused was produced on 14.03.2008 and later released from custody. The witness stated that he came to know that Jitender murdered his father as a sacrifice. In cross-examination, he admitted that he did not record details, such as smearing of ash and blood-stained tika on the forehead of the accused or that his clothes were stained with blood. He stated that he deposed to having arrested Jitender at 03.30 PM on 13.03.2008 but did not obtain signatures of any public person on the arrest memo. He said that he informed the accused's mother of his arrest on telephone but did not record any statement to the IO about such information given to the accused's mother. He also admitted having caught the appellant with the help of Constable Krishan Pal who was present there, and that he did not record in his statement that he had the services of Krishan Pal. The witness stated that the accused was produced before the Special Executive Magistrate on 14.03.2008 at about 12.00-12.30 o'clock in the day time.

23. PW-24, SI Rajni Kant corroborated the statement of other police officials with regard to the reporting of the incident through DD-8A (Ex.PW-17/A), his reaching the premises, discovering the headless body and being told by Madan Mohan Chauhan from Baalmiki Temple that a head wrapped in black-colored cloth was lying there. He went to that spot and saw the head. This was later identified by Rakesh, Jitender's elder brother, to be that of the deceased. He stated that Madan Lal, the priest voiced his suspicion about Jitender and informed him about the incident of 13.03.2008. He also deposed about the Crime Teams proceedings, seizure of clothes after taking them into custody in a parcel from the premises, seizure of blood and blood-stained earth etc. He mentioned having joined the investigation at 06.00 PM on 14.03.2008 when the IO arrested the accused through Memo PW-22/H. The interrogation and disclosure statement by the accused, his leading the police party to the house and the recovery of a knife (which was 31 cms. long with a blade of 21 cms). and its being taken into possession by Memo, Ex.22/M, were also

deposed to. The knife was produced as Ex.P-5. In the cross-examination, the witness admitted that when he reached the temple premises, i.e. 6239, he was informed that PCR call was with regard to House no. 6270 and that this fact was not recorded in his statement under Section 161. He went immediately after receiving DD-8A at around 07.30 AM from Police Station Nabi Karim to 6239 where he reached around 07.40 AM. He stayed there for 1-2 minutes. He went to House No. 6270 at about 07.45 AM and left immediately thereafter and went to Baalmiki Temple. He was accompanied by the priest from the Baalmiki Temple; he stayed in the temple for about 10 minutes. Rakesh reached the Baalmiki Temple and identified his father's head. He deposed that when he reached the house, the investigating Inspector also reached the spot half-an-hour later after Rakesh was sent for. The Crime Team was called to the spot which remained for Death Sent. 1/11 & CrI.A.912/11 Page 17 about 30 minutes at the place of incident. He confirmed that the accused was arrested under Section 107/151 Cr.PC on 13.03.2008. He stated that arrest was made by PW-23. He also mentioned about recovery and seizure of bamboo stick, Ex.6 which was measured. He stated that the accused was arrested near Neem Wala Chowk, Nabi Karim by the IO at about 06.00 PM. His disclosure statement was also recorded near Neem Wala Chowk after sitting there, by the IO.

24. PW-25, IO corroborated the particulars of deposition of PW-24 and stated that he went to the spot after receiving information from the DO, PS Nabi Karim. He received information about the headless body in the premises. He was about to leave the Police Station when some people reached that place and told him about a male human body lying in the Baalmiki Temple. He first went to the house, noticed the headless body of a male which was mutilated and dismembered. He informed the Crime Team which reached the spot and conducted the proceedings. From the house, he went to Baalmiki Temple; rukka (Ex.PW-24/A) was prepared in his presence and the case was registered. He made various seizures, including that of a wooden stick, danda and recorded statements of various witnesses. He stated that on the same day, i.e. on 14.03.2008, he arrested the accused at 05.30 PM by Memo, Ex.22/H and conducted his personal search. He also recorded his disclosure statement in which he mentioned having kept a knife, with which he had murdered his father, concealed on a slab. He stated that at the time of arrest, the

accused was wearing blood-stained white-lined shirt, which was seized, chhuri (knife), which too was seized, and its sketch, Ex.PW-22/L was prepared. He Death Sent. 1/11 & CrI.A.912/11 Page 18 also mentioned having prepared a scaled site plan, Ex.PW20/A and a rough site plan Ex.25/C. He confirmed that Jitender had been arrested by PW-23 on 13.03.2008 in another case. Arguments on behalf of the Appellant/accused 25. It is argued by Jitenders counsel that the prosecution was unable to prove its case beyond reasonable doubt. Learned counsel highlighted the fact that the prosecution case entirely hinged on circumstantial evidence. In such matters unless the prosecution was able to prove conclusively each link in the chain and also prove the link conclusively and further establish beyond any doubt that it was the accused and no one else who committed the crime, a finding of guilt would be unwarranted. It is argued that the postmortem report, Ex.PW-21/A states that the time of death is about 54 hours from the time of commencement (of the postmortem), i.e. 01.00 PM, on 15.03.2008. This meant that the time of death was approximately 07.00 AM on 13.03.2008. The testimonies of none of the witnesses, i.e. PWs-3, 4, 5 or 16 was categorical that apart from the accused Jitender, there was no one with the deceased at or around that time. On the other hand, the testimony of PW-3 that she used to visit her parental home each day after completing work in the Marwadi Basti coupled with the fact that she in fact visited her fathers home around 07.30-07.45 AM the next day when she discovered his headless body showed that she was a daily visitor. Strangely, in her evidence, she did not depose to visiting her fathers premises on 13.03.2008 and if she did, if her father was alive. Thus, the possibility of PW-4 or even PW5, who lived in the same premises, being present at the time of the Death Sent. 1/11 & CrI.A.912/11 Page 19 death along with the appellant Jitender could not be conclusively ruled-out. In these circumstances, the Trial Court could not have held that it was the appellant and none else who committed the crime. Learned counsel underlined the fact that the seizure of clothes, such as salwar, dupatta and ladys shirt with blood stains on them certainly established the presence of a woman in the victims house. It was also argued that the Forensic Science Laboratory (FSL) report showed that blood grouping of the stains found on the accuseds clothes or on the knife or danda or in the black cloth in which the victims head was wrapped, was inconclusive whereas the blood found on the

womans clothes matches with that of the victim. These clearly establish that the articles did not connect the accused with the crime.

26. Counsel submitted that the evidence about the previous days incident and reliance on the deposition of PW-15 was not justified. The prosecution case that PW-15 saw the accused coming out of his house with a black colored potli and the accused was running towards the Baalmiki Mandir. The testimony of PW-15 suffers from contradictions and could not be believed as it appeared from his evidence that he is a witness sponsored by the police to complete their missing link in their story. Contradictions in the evidence of PW-15 were highlighted. It was submitted that the witness contradicted himself in cross-examination by stating that the accused was going towards his house and that he knew that the head was found at the temple at 06.30 07.00 AM itself, when in his examination-in-chief itself he had stated that the accused was going towards Baalmiki Temple. PW-15 stated in his examination-in-chief that he had gone Death Sent. 1/11 & CrI.A.912/11 Page 20 to the Temple when in his cross he stated that he did not go to the temple. It was submitted that PW-15s statement that accused was going towards Baalmiki Temple itself was fallacious in the absence of the direction from the house to the temple being established through a Map or through independent evidence of a witness.

27. It was argued that the fact that there was a hue and cry by the priest is not spoken of or corroborated by either of the two priests. That apart, there is an improvement in the examination-in-chief of PW-1. Counsel submitted that in the sequence of the events, according to the prosecution case the accused went to the Baalmiki Mandir where he met PW-2 and asked for keys to Kaali Mata Mandir from him. That the accused was carrying a black colored potli stated by PW-15 is no doubt corroborated by PW-2 but the latters evidence is contradictory and sequence of events as disclosed by him does not match the prosecution story. It is stated that PW-2 did not say that he told the police about his suspecting Jitender whereas both Rajni Kant and the rukka claim so. PW-2 further deposed that he did not hear the accused making noise in cross-examination. In examination-in-chief he stated that accused was making noise. Though he spoke of the black coloured potli yet the cloth piece is not identified by him. Counsel also argued that the

witness did not say that he went to the accuseds house the morning of the 14th of March 2008, whereas the IO Rajni Kant, PW-23 claimed that he learnt of the head lying in the temple from Madan Lal Chauhan by name; similarly, he did not say that the head was kept in the almirah by the accused. PW-2 did not corroborate that the face and clothes of the accused was smeared with Death Sent. 1/11 & CrI.A.912/11 Page 21 dust. These inconsistencies and contradiction, said counsel for accused, discredit the witness.

28. Counsel submitted that further according to the story of the prosecution the accused was arrested by PW-23 under Section 107/151 Cr.PC. The entire evidence-in-chief of PW-23 was ignored by the impugned judgment. The facts stated by PW-2, PW-15 and PW-23 are not consistent making the chain of events improbable.

29. Arguing further counsel stated that it was claimed by the prosecution that the information of a head lying in Baalmiki Temple was disclosed by PW-9. It is submitted in this respect that PW-9 reached Paharganj Police Station when Nabi Karim Police Station was next door and was en route at around 06.45 AM on 14.03.2008, on being informed of the head being found by PW-1. He insisted that information was not given to the police by telephone. There is no DD entry of Paharganj that such a complaint was made. He did not disclose which officers he came with, to the spot. Even the testimonies of PW-24 and PW-25 do not speak of this. So the identities of police officers who went to the temple at 07.20 or so with Rukhal is not known. It was submitted that PW-9 deposed that neither he nor anyone called the police on the telephone and that they went on foot to the Police Station Pahar Ganj which took them half an hour and came back with police which process could have brought them back to the police station only by about 07.20 AM on the 14 th of March, 2008. He claims to have come to the Baalmiki Mandir with the police. Rajni Kant, PW-24, Joginder, PW-25 and Dharamveer, PW-8, all clearly say that they went to the house of the deceased. Only PW- Death Sent. 1/11 & CrI.A.912/11 Pag

24. Rajni Kant went to the Baalmiki Mandir on being informed of the head being found in the Mandir by Madan Lal Chauhan and went back to the house from

where he sent the rukka to the police station with Dharamveer. PW-9 clearly contradicted three police witnesses. Counsel also questioned how PW-9 came to know that someone from the house of the deceased had called the police already when he has not even identified the deceased. This showed that he is a motivated/sponsored witness.

30. It was next submitted that PW-24 Rajni Kant in his statement and rukka claimed that Madan Lal suspected Jitender but the latter did not say so. This showed that they had decided to implicate Jitender right from the start. According to the statement, Rajni Kant reached the house at 07.45 and Joginder reached half an hour later. Joginder himself claimed that he left immediately after D.D. Entry 8-A and reached the house at 07.40 AM. Joginder also spoke about 4-5 persons who came to the police station but did not name or identify them. He insisted that he went only to the house and not to the temple. PW-24 deposed to reaching the Baalmiki Mandir from the deceaseds house around 08.00 AM on Madan Lals information and meeting PW-16 who identified his fathers severed head. There is no explanation why Madan Lal went to the deceaseds house instead of the police station. On the contrary he stated in the examination that he stayed put in the temple through the day. Even if he meant the 13 th, he did not say that he went to the house of the deceased on the 14th March 2008.

31. It was next urged that Rakesh, PW-16 deposed that he was informed by others at 08.30 AM to go to his house. After seeing the Death Sent. 1/11 & CrI.A.912/11 Page 23 headless body he then went to the temple to identify the head at 10.30 to 11.00 AM. At best he would have been at the temple at 09.00 AM. His working hours are from 06.30 AM to 02.30 PM and distance from his work place to his house is 30 minutes. What is important here is that by then the identification by Rakesh was complete and the FIR registered. Thus Rakesh does not corroborate the story of the police with regard to the identification of the head of the deceased but the police had in any event registered the case and named Jitender as the accused. It was submitted that the witness claimed that the death was a sacrifice to god and was conjecture even before knowing that the head was at Baalmiki Mandir. Elaborating, it was submitted that if PW-24 knew that the perpetrator was Jitender who, was to his knowledge in custody of his own police station, there is

no explanation why he was arrested only at 06.00 PM after being released in the afternoon. This, submitted counsel, established the police had decided to arraign Jitender as the accused right in the beginning. The rukka was sent at 08.25 and the FIR registered at 08.40 AM. The rukka and FIR and the PCR call details mentioned Jitenders name. All events took place by about 08.40 AM yet statements of witnesses were drawn up to suit the story of the prosecution. Counsel emphasized that there was no question of releasing Jitender from police custody from the Special Executive Magistrates Court and he could have been arrested right away, that the police clearly had first decided to arraign him as accused and thereafter created paper work to suit that story. The call records to the PCR supported this view. Counsel further urged that it is probable that Death Sent. 1/11 & CrI.A.912/11 Page 24 Jitender was not released at all from the previous custody and his arrest at 06.00 PM was shown in this case without him being released. The lack of any physical evidence and the recovery of the knife at the instance of the accused are two factors which show that he did not commit the crime and was falsely implicated. Counsel stated that Ex. PW-14/A (PCR Information) shows that all information was with police at 07.33 AM including the fact that Jitender was in custody.

32. Counsel argued that the forensic evidence in the form of depositions of PW-11 and PW-12 and the FSL reports do not support the prosecution story. It was submitted that the witnesses depositions clearly state that there were no finger prints in either of the crime scenes or on the knife. Similarly, the FSL report stated that the blood group on the clothes of the accused or on the knife or danda did not match with that of deceased.

33. On the question of sentence, learned counsel submitted that the death sentence imposed was not warranted in the circumstances of the case. It was submitted that even according to the prosecution case the appellant was abnormal and acted in a strange and weird manner. His strange ways, alleged the prosecution, drove away his brother from the parental home and apparently alienated him from the rest of the family and society. In view of this abnormality, which was allegedly delusional, the Court owed a greater duty to examine whether the appellant was normal within the meaning of that expression. His actions

alienated his wife, who left the matrimonial home; it drove away the brother and even the mother appears to have forsaken him. The Trial Court should have explored whether the appellant was Death Sent. 1/11 & CrI.A.912/11 Page 25 mentally capable of facing trial, and entering a plea in the defense.

34. It was next submitted that even if the court were to uphold the conviction, the Trial Court ought not to have imposed the death sentence. It was submitted that mere brutality of the murder was not an overwhelming criteria; for this purpose, reliance was placed on the decision in *Panchhi v State of U. P.* (1998) 7 SCC 17. and *Vashram Narshibhai Rajpara v. State of Gujarat* (2002) 9 SCC 168. In *Panchhi* it was held that: Brutality of the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the rarest of rare cases as indicated in *Bachan Singh* case. In a way, every murder is brutal, and the difference between one from the other may be on account of mitigating or aggravating features surrounding the murder. Learned counsel relied on the decisions reported as *State of Maharashtra v. Prakash Sakha Vasave and others*, [2009 (1) SCALE 713 and *Bishnu Prasad Sinha and Anr. v. State of Assam* [2007 (2) SCALE 4 and argued that in the totality of circumstances having regard to the fact that the appellant did not have a criminal record and he was not known to indulge in violence, the imposition of capital punishment was not justified, since the case did not fall in the rarest of rare category. Submissions on behalf of the State 35. Mr. Rajesh Mahajan, learned Additional Standing counsel for the State highlighted that the events of 13.03.2008 can be divided into two parts, i.e. the accused being seen rushing towards the temple and second, the commotion created by him, and his arrest. It was Death Sent. 1/11 & CrI.A.912/11 Page 26 submitted that for the first part, PW-15 Rajender saw the appellant carrying something wrapped in black cloth. The witness saw him coming out from his house and running towards Baalmiki Temple. The witness further stated that the appellant had a dust smeared face and dusty clothes. When PW-15 asked about his condition the accused did not answer and rushed towards the temple. Counsel highlighted that no question was put to the witness in the cross-examination pertaining to his state and conduct as deposed in the examination-in-chief. PW-15 identified the black cloth which he had seen the accused carrying the previous day as Ex P-1. It was also submitted that the

socalled contradictions pointed out in his evidence are not such that they would strike the root of the matter; they are only minor in nature. If the witness gave contradictory versions with regard to going towards house or towards temple or going or not to the temple, that may be in a stray sentence in an unguarded moment but cannot be said to demolish his entire testimony. Under such circumstances, after weighing the material value of the contradiction, the Court ought to look at other evidence to see which of the two versions is corroborated through other evidence. The evidence is to be viewed in its entirety and not in piece meal. On an overall assessment of the testimony, it cannot be said that PW-15 is not a witness of credibility, more so when he had no animus to depose falsely against the appellant.

36. Dealing with the second part of the incident of 13.03.2008, Counsel stated that PW-2 Madan Lal deposed that at about 02.00 PM on 13.08.2008, while he was lying near the Dhuna of Baalmiki Mandir, the accused came there and started making noise. The witness Death Sent. 1/11 & CrI.A.912/11 Page 27 further deposed that the accused had a black colored cloth potli and that he demanded keys to the Kaali Mata Mandir from him. When the witness told the accused that he did not have the keys, he started making more noises and started breaking objects of the temple. The witness informed people outside the mandir and also stated that the accused tried to pull open the almirah in the mandir and was also breaking the glasses kept in front of the idol. Minor variations in his statement, would not shake the underlying veracity of the said witnesses testimony.

37. It was submitted that the police was informed, upon which SI Surya Prakash, PW-23 reached there pursuant to DD No. 13 A (Ex.PW-23/A). The Kalandra proceeding under Section 107/151 Cr.PC followed, which record the manner in which the accused was behaving, and have been exhibited as Ex.PW-13/B. PW-23 SI Surya Prakash, while deposing in Court, apart from proving the kalandra proceedings also deposed that the face of the accused was laced with ash and that he had put red colored tika on his forehead. He admitted in his cross-examination that these facts were not mentioned in the kalandra Ex. 23/B. The explanation for this omission is that when the proceedings on 13.08.2008 were recorded, he did not know that it was a case of human sacrifice where ash

smearred face and red tika would have significance. Moreover, he was concentrating on preventing breach of peace for which he was called. On hind sight, after he came to know that the accused had indulged in human sacrifice that he could co-relate the condition/state of the accused with the post facto knowledge of sacrifice. This is explainable on normal human behavior Death Sent. 1/11 & CrI.A.912/11 Page 28 where the mind starts recollecting details subsequently on being told of an alarming incident, which details may have been ignored earlier as innocuous trivialities. This improvement thus has a valid explanation and has wrongly been discarded by the Trial Court. Counsel further stated that PW-23 explained that though he had noticed blood stains on the clothes of the accused, yet he thought that he might have received the stains while breaking the glasses in the temple, which explanation could not be termed unreasonable. In this context, reliance was placed on the MLC dated 13.03.2008 which also shows incise wound on right little finger of the accused. PW-23 further stated that on enquiry, accused told him that Mujhe devi ki shakti aati hai and thus explained his conduct as attributable to divine powers. No cross-examination was directed against this part of the deposition.

38. Dealing next with the incidents of the next day, it was submitted that in the morning of 14.03.2008, Guddo, PW-4 noticed the headless dead body of her father lying on the floor of the house and raised an alarm attracting the neighbours. PW-22 Ajay @ Bunty, heard PW-4 crying out that a headless body was lying in her house, informed the police on number 100. His house address (No. 6239) is mentioned in the PCR form, Ex.PW-14/A. PW-22 is also a witness of seizures made at the spot and subsequently to the arrest, disclosure and recovery of the knife by the accused. It was stated that the PCR form was proved by PW-14 Constable Kishan Singh and the information was conveyed to the concerned police station, where it was recorded as DD no. 8A, Police Station Nabi Karim. The DD was Death Sent. 1/11 & CrI.A.912/11 Page 29 entrusted to PW-24, who went to the spot with Dharamvir (PW-8). PW-24 deposed to finding the dead body in the house and contemporaneously was informed of the recovery of head from Baalmiki Mandir by Madan Lal (PW-2). Leaving behind PW-8 at the house, PW-24 reached the temple. Thereafter Rakesh, PW-16, another son of the deceased joined the proceedings, identified the head and the body, whereafter rukka was

sent at 08.25 AM on 14.03.2008 by SI Rajni Kant. PW-25, the IO Inspector Joginder Singh was informed by the duty officer at PS Nabi Karim about the recovery of dead body lying in house no. 6270. When he was about to leave PS Nabi Karim, 4-5 persons went to the police station and informed him about the male human head lying in the Baalmiki Temple. PW-9 Suresh Chand corroborated this version of the IO when he stated that there were 4 persons who went to the police station and informed the police about the episode. PW-1 Nanhe Ram also corroborated PW-25 and PW-9 on this aspect. Thus all these witnesses are consistent with one another on the reporting of the matter to the police. In this light, even if PW-2 Madan Lal did not state in his testimony about going to the house and informing police regarding recovery of the head, the omission would be insignificant as the fact remains that the police came to know through other witnesses (PW-9 and PW-1) about recovery of the head almost simultaneously with the recovery of the body.

39. Dealing with the argument about PW-9s statement in cross- examination that he went to Police Station Paharganj, it was submitted (on behalf of the State) that at the relevant time, Police Station Nabi Karim was functioning and operating from PS Paharganj as its Death Sent. 1/11 & CrI.A.912/11 Page 30 building was under construction. Therefore, not much significance can be attached to this aspect. It was submitted that the IO, PW-25 deposed that further steps were taken in the investigation of the case. Counsel submitted further that the contradictions cited between statements of PW-24 and PW-25 were minor and not at all significant so as to effect the sub-stratum of the case.

40. In reply to the argument that since the involvement of the accused in question was already in the knowledge of the police in the morning of 14.03.2008, he could not have been allowed to be released from custody on 14.03.2008 from the Court of SEM on bail, the prosecution stated that to elicit this explanation, appropriate questions should have been put to the witness or the IO. But no such question was asked. Under such circumstances, the Court has to look into the case diary of the relevant date to find the answer. That document revealed that the IO was aware that the suspect was in the lock-up on allegations of breach of peace, and he informed SI Surya Prakash that the accused be brought to the spot after

release on bail from SEM Court. The case diary further shows that the suspect was brought to the scene of crime by SI Surya Prakash at about 5:30 PM in compliance of the directions. In the cross-examination, PW-24 stated that the accused was produced before the SEM on 14.03.2008 at about 12:00 noon-12:30 PM. The records of the proceedings under Section 107/151 Cr PC show that Rakesh, Jitenders brother, stood surety for (the accused) in that case. Thus, the accused was released from custody in the case for Section 107/151 Cr PC but remained with SI Surya Prakash who brought him to the IO at about 5:30 PM, after Death Sent. 1/11 & CrI.A.912/11 Page 31 which he was arrested in the present case. When read with the contents of the case diary, the words released from the custody in the testimony of PW 2.meant custody in the case under Section 107/151 Cr PC or his notional release and not that the accused was set at liberty. It is reiterated that the accused did not put any relevant questions in the cross examination to PW-24 in this regard. It was argued that without prejudice, even if it were assumed that there was delay in making arrest in the present case, it would be a lapse in the investigation which cannot falsify the entire prosecution case, more so when there exists sufficient credible evidence on record.

41. It was emphasized that several witnesses i.e. PW-1, PW-2, PW- 9, PW-16, PW-22 apart from police witnesses PW-8 Ct Dharamveer, PW-24 SI Rajni Kant and IO PW-25 Insp Joginder Singh joined the proceedings on 14.3.2008, some discrepancies are bound to appear in the narration of different witnesses when they speak on details; but the test to be applied is as to whether the said discrepancies go to the root of the matter or are of material dimension, which it is humbly submitted is not the case in the facts of the present case. Reliance in this regard is placed on *Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat* (1983) SCC 21.*State of Himachal Pradesh vs. Lekh Raj* (1983) 3 SCC 14.and *Sukhdev Yadav vs. State of Bihar* (2001) 8 SCC 86.It is submitted that some variation in the timings deposed by the witnesses are bound to happen as (a) they were not timing each step, (b) the watches of all the witnesses are not synchronized so that each would give the same and exact timing of each movement or action and (c) witnesses are deposing in court after a lapse of some time since the Death Sent. 1/11 & CrI.A.912/11 Page 32 incident for which too some allowance needs to be given. The timings given by the witnesses do broadly match and there is not much

discrepancy to that effect.

42. The prosecution highlighted the fact that the near relatives of the accused, i.e. mother, brother and sister fully supported the prosecution. Being immediate family members, they were unlikely to falsely implicate the accused. It is also argued that apart from the circumstances enumerated by the Trial Court, there is another very vital circumstance proved on record though not taken into consideration by the Trial Court. This is the discovery of a fact pursuant to a disclosure, which is admissible under Section 27 Evidence Act. It was the Appellant who disclosed on 14.3.2008 that (a) the time of killing/death of his father was around 8 am on 13.3.2008 and (b) that the death had taken place by pressing the throat of his father and decapitation and chopping of the organs was done after the death. Both these facts were subsequently confirmed through the post mortem, which was conducted on 15.3.2008. This information would thus be admissible as it has led to discovery of facts, within the meaning of Section 27 of the Evidence Act, which were not in the knowledge of the police till disclosed by the Appellant and till subsequently confirmed by the post mortem report. Reliance in this regard is placed on Pulukuri Kottaya vs. Emperor, AIR 194.PC 6. and Dost Mohammed. v. State CrI.A.385/2008 decided on 01.02.10 (by a Division Bench, of this Court). The prosecution also relied on the answer given the Appellant to the first two questions asked under Section 313, Cr PC. The appellant admitted that there Death Sent. 1/11 & CrI.A.912/11 Page 33 were three persons residing in the house in question; and further, that that he was unemployed, habitually remained idle at home, his wife had deserted him, he used to engage in Devi Pooja and for that he would have to give sacrifice. The mother and sisters depositions were lethal; the Appellant also admitted these aspects, conclusively proving all links in the chain of circumstances beyond reasonable doubt.

43. Learned counsel argued that in the facts of the case, Section 106 Evidence Act applies since it has emerged from the evidence that the Appellant and the deceased were the only persons in the house at the relevant time, and one of them was found dead. In the absence of any other evidence to the contrary, the onus shifted on the Appellant to explain under what circumstances his father died. His silence cannot be considered as discharge of the said onus. To argue that the

Appellant and the deceased were not the only two persons in the house, would be reading against the evidence led on record particularly of the mother and siblings of the accused. Counsel also relied on the scientific evidence in the form of FSL reports which duly corroborated that the appellants clothes had human blood, the knife recovered pursuant to his disclosure too had human blood, though the grouping on the same could not be ascertained. These were highly incriminating. The danda (stick) seized from the spot also contained human blood. The Post mortem report shows fracture in the skull. It was thus, urged that the chain of circumstances is complete in the facts of the present case which unerringly points only towards the guilt of the accused. The tests for basing conviction on circumstantial Death Sent. 1/11 & CrI.A.912/11 Page 34 evidence have been duly fulfilled in the present case. The circumstances were correctly enumerated in the impugned judgment.

44. On the question of sentence, it was argued that applying the rule enunciated in *Bachan Singh v. State of Punjab* [(1980) 2 SCC 684], the Supreme Court had, in *Machhi Singh v State of Punjab* AIR 198.SC 957.held that Courts should, whenever the question of imposition of capital punishment arises, draw a balance sheet, ...of aggravating and mitigating circumstances .and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. Here, argued the prosecution, the offender was in a dominating position vis--vis the victim. The deceased was an old man aged 70 years and was sleeping; a) The act is anti-social and the crime of socially abhorrent nature. b) Some degree of pre-meditation has gone into the act. c) It is a case of no provocation and an act of deliberate killing. d) The brutal, grotesque, diabolical and dastardly manner of crime arouses intense and extreme indignation. The manner in which organs have been cut out is revolting. e) There was complete lack of remorse after the killing. For half a day, the Appellant played havoc with the body of his victim/father. f) It is a crime against the society and the society itself in endangered. This is also because the mother, real brother and Death Sent. 1/11 & CrI.A.912/11 Page 35 real sister have in a rare situation in unison deposed against their own blood relation. If the immediate family feels insecure by his act, his being at large in the society is not at all called for. If he can

do such an act to his father, there is no assurance that on his release he would not commit the same act with another victim. His previous behaviour with wife and brother, would also be of relevance, as their acts of moving away from the; Appellant appear to be justified.

45. Reliance was placed on the decision reported as Sushil Murmu vs. State of Jharkhand 2004 (2) SCC 33. and Ajitsingh Harnam Singh vs. State of Maharashtra 2011 (4) JCC 2482. The prosecution urges that there is absolutely no mitigating circumstances which can aid the appellant and the overall conspectus of facts reveals that death sentence is the only punishment that would be adequate and just. Analysis of Evidence 46. The Trial Court relied on the deposition of Kamla (PW-3), the accuseds mother to hold that the accused used to reside with his parents (the deceased Kartar Singh and PW-3) at 6270 Nabi Karim, Gali Ravidass, Nabi Karim, Delhi. This witness also testified that the accuseds wife had deserted him and that he was unemployed and habitually remained idle at home. This was corroborated by Guddo, PW-4, the accuseds sister; she stated that the accused used to live with his parents at their residence in Nabi Karim. PW-16, the accuseds brother too deposed similarly. When queried under Section 313, Cr. PC, the accused admitted to this fact. Therefore, the Trial Court, in the opinion of the Court, correctly found that the accused Death Sent. 1/11 & CrI.A.912/11 Page 36 used to live with his parents, was unemployed and remained idle. He had been abandoned by his wife.

47. The prosecution had alleged that the accused was engaged in Devi Pooja and had previously spoken of his desire to offer a sacrifice in pursuance of the practice. Smt. Kamla PW-3, in her examination in chief, stated that the accused had told her several times that he was engaged in the worship of deities, and that for that purpose he was required to perform a sacrifice. She reiterated this fact in her cross examination by the Learned Amicus Curiae appointed on behalf of the accused-appellant in the Trial Court. Suresh Kumar, PW-5, the cousin of the accused, had also stated in his statement under Section 161, that the accused was engaged in Devi Pooja and that he wanted to perform a sacrifice in furtherance of the same. However, in his examination in chief, he resiled from this statement. In the cross-examination by the Learned Addl. PP, when confronted

with his statement under Section 161 (Ex. PW-5/DA) he denied that he had stated any such thing to the Police. The Trial Court, in its query under Section 313, put a compound question to the accused to seek his answer on the evidence on record. The question was, which elicited from the accused, his answer on the evidence on record (according to the Court) that you were unemployed and habitually remained ideal (sic idle) at home while your wife had deserted you and was residing at her parental home and you would tell your family that you were engaged in Devi Puja and for that you would have to give sacrifice. Such a query, in the opinion of this Court, was impermissible. PW-3s deposition that the accused remained at home, idle, and indulged in Devi worship and Death Sent. 1/11 & CrI.A.912/11 Page 37 that he had expressed the desire to give sacrifice was partially contradicted by the testimony of PW-4 and PW-5. The Trial Court overlooked PW-4s evidence that Accused had not talked to me that he was practicing some Pooja of Devi Devta. This evidence by a family member contradicted the deposition of the mother, PW-3. PW5s deposition too undermined the mothers evidence. Besides, the Trial Courts approach in putting what are known as compound questions (or double barreled questions which touches upon more than one issue, yet allows only for one answer and is unfair to an accused) was incorrect. Dealing with the manner in which the Section 313 statement should be recorded, in Ajay Singh vs. State of Maharashtra [AIR 200.SC 2188], the Supreme Court directed as under: It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which perturbed or confused, can readily appreciate and understand. In view of the above discussion, it is held that the prosecution was able to prove that the accused used to tell his mother that he indulged Death Sent. 1/11 & CrI.A.912/11 Page 38 in Devi pooja; however, it cannot be said to have proved that he had expressed any desire to give a sacrifice.

48. The next circumstance is the prosecution allegation that on 13 th March, 2008, Jitender was alone with his father. Here, reliance is placed on the testimonies of PW-3, PW16 and to an extent, on that of PW-4. In her examination in chief, the appellants mother (PW-3) stated that on 12.3.2008, she had gone to her younger son Rakeshs house and was there for 2-3 days. Rakesh, PW-16, also stated that 2-3 days prior to 14.03.2008, his mother had come to his house at Roop Nagar and that on these days the appellant and his father were residing in Nabi Karim. The versions of these two witnesses have to be seen in the context of the other evidence. PW-4 Guddo, is the deceaseds daughter and the accuseds sister. She deposed that every day, she used to visit her parental home after finishing her work (she worked as a safai karamchari at Marwadi basti, Nabi Karim). She is the one who saw the headless torso of her father on 14-3-2008. She did not mention if her father had been left alone with the accused for the two previous days, as deposed by her mother. She did not depose anything about having visited the deceaseds premises on 13 th March, 2008, when the killing actually took place. This is possibly an innocuous omission, or might also mean that she visited the premises on that day, but found nothing remiss. According to the medical evidence, i.e. the Post mortem report (Ex. PW-21/A) indicates that the post-mortem was conducted on 15.3.2008 at 1.00 PM. It gives the probable time since death as 54 hours. This puts the probable time of occurrence of death Death Sent. 1/11 & Crl.A.912/11 Page 39 at 7.00 AM, on 13.3.2008. Even if there is a margin of a couple of hours, the time of death would in all probability be around 8-9 AM. If indeed she did visit her father, at around 7-30 AM or even around 8 AM, she did not find anything remiss, enough for her to not mention in her deposition in court. The overall testimony of these witnesses, i.e. PW-3, PW-4 and PW-16 (the brother, Rakesh, who received news about his fathers death at around 8:30 AM on 14-03-2008, and identified the body thereafter) reveal that a couple of days before the body was discovered, the deceaseds wife had gone to live with PW16. The accused was alone with the deceased from that time onwards. The prosecution therefore established that the accused was the only person in the premises with the deceased, at and around the likely time of death.

49. The next circumstance alleged against the accused is that he killed and beheaded his father. There is concededly no direct evidence. A series of

circumstances are relied on to say that it is only the accused, and no one else who could have committed that act. The first in this series of facts is that the accused was allegedly seen on 13.03.2008 carrying something wrapped in a black cloth and running towards Baalmiki Mandir. PW-15, Rajender, is the relevant witness with regard to this circumstance. In the examination in chief, he stated that on 13.03.2008, at about 2 PM when he was going to work, he saw the appellant running out of his house, carrying something wrapped in a black cloth, towards the Baalmiki Mandir. He states that his face and clothes were smeared with dust. He claimed that he had enquired about his condition but received no reply as the appellant was rushing towards the temple. He stated that on 14.03.2008, i.e., the next day, at about 6.30-7.00AM, when he was on his way to buy breakfast; he found out (was told) that a human head had been found in the Baalmiki Mandir. On hearing this, he went to the temple. On seeing the head, he identified it as that of his uncle, Kartar Singh. He states that he also saw the black cloth that the appellant had been carrying the previous day, lying near the head. He identified the black cloth in Court on 10.12.2009, nearly one year after his examination in chief which was on 5.12.2008. In his cross examination by the Counsel for the accused, he made several statements that were inconsistent with his examination in chief. He stated that, at 2 PM, on 13.03.2008, when he was going to work, he saw the accused Jitender running towards his house (and not the temple as he had earlier stated); he stated that the black cloth had no identifying mark (this throws into doubt his identification of the cloth in Court, a year later); he also stated that he could not recall the clothes that the accused was wearing; he stated that when he returned at around 10 PM, on that same day, there was a hue and cry about a head lying in the temple, but that he did not go there and instead, returned to his house (whereas in his examination in chief he states that the head was found the next day in the temple, that he went there, and identified the head). The Trial Court dealt with these inconsistencies in Paras 91 to 93 of the impugned judgment and further held that the attention of witnesses was not drawn to those; the court also observed that PW-15 had been cross examined over 16 months after the incident, and his confusion about the commotion regarding the date of discovery of the deceased's severed head, could

Death Sent. 1/11 & CrI.A.912/11 Page 41 be

reasonably put down to the time interval and lapse in memory. This court does not discern any infirmity with the reasoning of the Trial Court on this aspect.

50. The next in the series of circumstances alleged to establish the accused's role as the perpetrator of the crime is that on 13-3-2008, he created a ruckus (commotion) at Baalmiki Mandir that day, on being refused entry, following which, he was arrested. Shri Madan Lal, PW2 was the pujari at Baalmiki Mandir. In his examination in chief, he stated that on 13.03.2008, he was lying down, near the Dhuna. At about 2 PM, the accused, carrying a package wrapped in black cloth, went near the temple and started making some noise. He demanded the keys of Kaali Mata Mandir from PW-2 and on being told that he did not have it, he started breaking articles inside the temple, tried to open the almirah inside the temple and broke the glasses kept in front of the idol. He stated that he informed a person sitting outside the temple of the accused's behaviour. He states that the accused then went outside and created a scene there. The Police officials, who had been informed, came to the temple, arrested the accused and took him away. In the cross examination, PW-2 stated that he could not remember the clothes worn by the accused at that time, as he had been sleeping. He contradicted his earlier statement in his examination in chief, as he stated that the accused made no noise in his presence. The appellant argues that this witness did not make any mention of the fact that the appellants clothes were blood stained, needs to be considered; as also his contradictions with respect to the version of events. Death Sent. 1/11 & Crl.A.912/11 Pag

51. Nanhe Ram, PW-1, the other priest of the Mandir, in his cross examination by the counsel for the accused sought to corroborate PW1's statement. He deposed that on 13.03.2008, when he reached the Mandir, he found a crowd gathered there, as the accused had created a scene at the spot. He had made a statement to the Police to the effect that the accused had broken the windows (khirkees) of the almirah; he clarified that he had meant the doors of the almirah. SI Surya Prakash, PW-23, was the police man on duty, who arrested the appellant at Baalmiki Mandir on 14.03.2008, on being informed that a person was causing the destruction of temple property. (DD. No. 13A recorded at 2.25 PM. Ex. PW- 23/A). He stated that pursuant to the recording of the DD, he went to the temple, and

found a crowd gathered there. He saw the appellant threatening the people there and demanding a share of the money offered by the devotees, to the temple. He says that the appellants face was smeared with ash and he had smeared red tika on his forehead. He noticed shards of glass, and blood stains on the shirt of the accused which he attributed to his having received injuries while breaking the glass in the temple. He stated that when he questioned the appellant about his conduct, he said Mujhe Devi ki Shakti aati hai, thus attributing his conduct to divine power. The accused apparently continued to threaten those present, and this witness arrested him under Section 107/151 Cr PC. This witness then lodged the accused in lock up in PS Pahar Ganj. He made an arrival report, DD No. 20A dated 13.03.2008 (Ex. PW-23/B) in which it was stated that the appellant had been demanding money from the persons gathered around the temple, that he was in a fit of rage and despite the Death Sent. 1/11 & CrI.A.912/11 Page 43 inspector trying to reason with him, he did not mend his ways. Apprehending a possible breach of peace in the area, the Inspector arrested him, and informed his mother Smt Kamla, PW-3 of his arrest.

52. In his cross examination the witness admitted that he did not mention the fact of the red blood tika on the forehead, or the fact that the appellants face was smeared with ash, or that his clothes were blood stained. He stated that the IO had recorded his statement on 23.3.2008, and in this statement he did not mention that he had informed the mother of the appellant about his arrest. He deposed that when he apprehended the appellant Const. Krishan Pal was already present there. This court had, to satisfy itself about the true state of affairs, called for the proceedings under Section 107 Cr. PC. The relevant records reveal that PW-23 actually arrested the accused at 04:55 PM on 13-3-2008. The arrest memo clearly mentioned PW-3 as the relative who had to be informed (about the accuseds arrest).

53. The Trial Court held that the fact of the accuseds clothes being blood stained, and his having smeared tika on his forehead cannot be taken into consideration since this witness did not record these facts in the DD. However, it did take into consideration the fact of his face being smeared with ash, since it found corroboration in the testimony of PW-15. The argument on behalf of the Appellant,

that PW-15s testimony is suspect and the entire narrative about the previous incident of 13-3-2008 not inspiring confidence as to amount to proof beyond reasonable doubt, may now be analyzed. It is a fact that none of the witnesses deposed that the accused in fact opened the almirah and kept the black coloured potli. The Trial Court has reasoned that Death Sent. 1/11 & CrI.A.912/11 Page 44 this detail is irrelevant, because no one deposed that the almirah was locked; it may well have been latched. The other fact which emerges from the testimonies of PW-1 and PW-2, who saw the accused at different times, but in the same incident, when he reached the temple and started making demands, was that he wanted a share of the offerings (made to the deity). PW-2 clearly deposed that he saw the accused with the black coloured cloth potli and that he created a commotion. This fact, i.e. previous days commotion, and that he was arrested is corroborated by PW-23. PW-1 is not really a witness to what happened on 13-3-2008; he was told about it. PW-23 and PW-2 are witnesses who establish that the accused was arrested, after he created commotion in the temple. PW-2 mentioned that the accused had broken some glass items (or idols) in the temple. Although not part of the trial, there is some kind of corroboration about this, because after arrest, on 13-3-2008, the accused was medically examined around 08:00 PM. The doctor noticed a cut injury on his finger. If for arguments sake, the deposition of PW-15 were to be excluded, the depositions of PW-2 and PW-23 as well as DD 13-A dated 13-03-2008 clearly establish, beyond any doubt that the accused was seen going to the temple, with a black coloured packet/ potli. He created a ruckus, or commotion, which led to arrest for breaching the peace under Section 107 Cr. PC, by PW-23 and his being taken into custody. Taken together, the Court does not find any infirmity in the approach and findings of the Trial Court regarding the previous days incident.

54. The next circumstance is the discovery of the headless torso of Death Sent. 1/11 & CrI.A.912/11 Page 45 the accuseds father, on the morning of the 14 th March, 2008. PW-4 Guddo, the accuseds sister (and daughter of the deceased), was the first to discover the body of her father. She used to visit her parents daily after finishing her work of cleaning Nabi Karim. She did not remember the day or date on which the incident took place, but that morning when she went inside the house, she found the naked headless torso of her father, lying on the floor. She

raised an alarm and cried loudly which drew the attention of her neighbours. She went downstairs, and informed the neighbours of what she had seen. She stated that the accused had not told her that he was engaged in Devi Pooja. In her cross examination by the Counsel for the defendant, she states that she had gone to her parents house at 7.30 AM in the morning. The discovery of the body by PW-4 and her raising an alarm were corroborated by PW-22. Ajay@ Bunty, the deceaseds neighbour. He deposed at about 7.15/7.30 AM, on 14.03.2008, he was at home, when he heard the cries of Guddo, that a headless body was lying in her house. He informed the Police of this fact on the number 100. He went inside the house to a room on the first floor near a wooden alter where the body was lying. Sri Chand, PW-6, is the witness who informed the deceaseds other son Rakesh about the death of his father and the discovery of the beheaded body and brought him back to his house. Rakesh, PW-16 is the son of the deceased. He states that on 12.03.2008, while he was at work near the Kaali Mandir, between 8.30 AM and 9.30 AM, two persons, namely Billu and Raju told him that he should go to his house. There, he saw a headless body lying in the room of his parents house, in front of the Death Sent. 1/11 & CrI.A.912/11 Page 46 Mandir and that different parts of the body were cut down. He identified the mutilated torso of his father, and stated that his name had been tattooed on his fathers arm. In his cross examination, he has stated that it took him thirty minutes to get to his house from his work place on foot. The combined testimonies of PW-4, PW-22, PW6 and PW-16 in the opinion of the Court, proved the prosecutions case about the circumstances under which the headless torso was discovered.

55. The discovery of the severed head is the next circumstance which has to be considered. PW-1 Nanhe Ram, worked as a priest in the Baalmiki Mandir. On 14.03.2008, at about 6.00 AM, he opened the almirah to take out the sound system to play some music, when a tied up a black cloth bundle (potli) fell out of the almirah onto the floor. He found that the bundle contained a severed human head. He rushed to inform the President of the Mandir Trust. Shri Suresh Rukhal, PW-9, came back to the temple with him and checked it. Thereafter, they went to the Police Station and reported the matter. He stated that the Police then visited the temple and took the head. He apparently also came to know then of the fact that a headless body had been discovered in H. No. 6270, Gali Ravidass.

56. In his cross examination by the counsel for the accused, the witness stated that he went to Suresh Rukhal PW-9 at about 6.05 AM, and returned within five minutes with him, From there, he along with Chaudhary Kehar Singh, Kishan Lal, Suresh Chand Mukherji and many other people went to the Police Station, where they remained for about 5-10 minutes and returned to the Mandir with 4-5 police Death Sent. 1/11 & CrI.A.912/11 Page 47 persons. He could not recall the time at which they returned to the Mandir. But he states that by such time, rumours of a headless body having been discovered in House No 6270 had been circulating in the neighbourhood. Madan Lal, PW-2, the other priest of the Mandir reiterates this version of events, but it is unclear if he was witness to all of it, or whether he was narrating something that he had been told. In his cross examination, he has stated that Nanhe PW-1 had told him on 14.03.2008 of the discovery of the head. He says that though he had left the temple at 6.00AM, he had returned within fifteen minutes and had then stayed at the temple the whole day. Suresh Chand, PW9, corroborated PW-1s version. He stated that he was Head of the Managing Committee of the temple and that on that day, at about 6.15 AM, Nanhe Ram, the priest of the temple asked him to accompany him to Baalmiki Mandir. On reaching there, he went inside and found a severed human head, wrapped in a black cloth, lying on the floor. He gathered people from the locality. Four of them went to the Police Station and informed them about the incident. Somebody had called the police and told them that a headless body was lying in their house. In the cross examination, he stated that they reached the temple in five minutes, and that they gave the information to the police in person and not on the phone, and that the concerned Police Station was P.S Paharganj, which they reached within half an hour. The police accompanied them within fifteen minutes, and they remained at the Mandir for about fifteen minutes and then went to the house where the body was and remained there for about one and a half hours.

57. Ct. Kishan Singh PW-14 first received the information about Death Sent. 1/11 & CrI.A.912/11 Page 48 this incident in the PCR. According to him, when he was on duty on the morning of 14.3.2008, at about 7.18 AM in the morning, he received information from the mobile no. 9250585591 that a dead body was lying in House No. 6239, Nabi Karim. The PCR Form, Exhibit PW-14/A confirms his statement. In the cross-examination, he reiterated that the informant had said that the incident

had taken place in House No. 6239 and the informants name had not been taken down as it was not required. This information was conveyed to PS. Nabi Karim by DD. No. 8A (Ex. PW-18/A) which was verified by PW-18, who stated that this DD was recorded by HC Jagbir Singh. SI Rajni Kant, PW-24 stated that on receipt of DD. No. 8A, he and Ct. Dharambir, went to the spot, i.e., H. No 6270, Nabi Karim, where in a room on the first floor of the house, he saw a headless body lying in a pool of blood. The finger, toes, penis, heart and kidney had been removed from the body and the body was lying in front of a photo of Goddess Durga. He observed that this seemed to have been some kind of sacrifice. In the meantime, the priest of Baalmiki Mandir, Madan Mohan, PW-2, went and informed him about the head that had been found in the temple. He left the spot in the care of the Constable and went to the temple, where he saw the head in a black cloth. He says that Rakesh, the son of the deceased had reached the temple, by then and identified the head as belonging to his father. Then, he and Rakesh went back to the latters house, where Rakesh identified his fathers body. He stated that Madan Mohan, the priest, raised suspicions that this murder could have been committed by Jitender, and told him that on 13.3.2008, the accused had gone to the Baalmiki Death Sent. 1/11 & Crl.A.912/11 Page 49 Mandir and broken glasses and other things in the temple. This witness states that he prepared the rukka and sent it to PS Nabi Karim for the registration of the case. In his cross examination by the counsel for the accused on this aspect, he stated that he received the DD 8/A at 7.30 AM and left immediately. When he reached House No. 6239 at about 7.40 AM, he was informed that the incident had taken place at House No. 6270. He did not record the name of the person who told him where the incident had taken place (These facts are not mentioned in his Section 161 statement) He stated that they reached House 6270 at about 7.45 AM. The priest from the Mandir had gone to the house almost immediately after his arrival and he left the house immediately, with the priest and went to Baalmiki Mandir, where he stayed for about 10 minutes. Rakesh also immediately reached the Mandir and when he identified the head of his father, he sent the Rukka from House No 6270, at about 8.25 AM. Constable Dharamveer, PW-8, in his examination in chief has supported the version of PW-24. In his cross examination by the Counsel for the accused, he stated first that he went to the Police Station with the Rukka at about 10 AM, and

the second time that he had taken the Rukka to the Police Station at 8.00 AM and reached the Police Station at 8.15 A.M.

58. PW-25, Inspector Joginder Singh, the IO, stated that just as he was about to leave for House No. 6270 in Nabi Karim, on being informed of the discovery of the headless body, 4-5 persons came to the Police Station and told him that a male human head was lying in Baalmiki Mandir. He went to the house, and saw the beheaded and Death Sent. 1/11 & Crl.A.912/11 Page 50 mutilated torso lying in front of a photo of Goddess Durga, the fingers, toes, penis and heart had been cut out and removed from the body. He informed the crime team. In his cross-examination by the counsel for the accused, he stated that the information about the incident was received at the station at about 7.30 AM. He clarified that the information recorded did state House No. 6239 as being the place of incident, but it was later found out that it had taken place in House No. 6270 and 6239 was the house number of the Complainant. He was informed of the presence of the head, by four or five persons near the police station gates. He stated that he reached the House at about 7.40 AM. He called the crime team about half an hour later, they reached the spot at 8.45 AM and left at about 9.45 AM. The IO stated that he lifted one sweater, one lady's blue shirt/jumper, one light blue chunni, all blood stained (memo Ex. PW-22/D); he also seized one blood stained pant, panty, muffler, towel, an orange colour cloth and one lady's trouser/shalwar (Ex PW-22/E); blood stained samples (memo Ex. PW-22/A); blood stained floor (memo Ex. PW22/B,); earth control/ floor (memo Ex. 22/C,); one blood stained bamboo danda (memo Ex. PW-22/G); wooden temple with photograph of Goddess Durga (memo Ex. PW- 22/F) The IO identified these case properties in Court. All these recoveries were corroborated by PW-24, who too identified them in court. The head was brought back to the house, the inquest proceedings were done (Ex. PW-25/A) and the body was sent for Post-mortem. This was corroborated by Ct. Dharamveer and Rajni Kant (PW-24).

59. The Appellants attempt to argue that there is a disconnect Death Sent. 1/11 & Crl.A.912/11 Page 51 between the testimonies of various witnesses, by highlighting discrepancies in time and also contending that the entire prosecution effort was to frame the accused, does not persuade this Court. This argument is

based upon a de-construction of the sequence of events which occurred on 14-3-2008, as it were, and at the same highlighting individual events. Such a contention in the opinion of this court, is fallacious. The Court has to consider that two events took place in a narrow time band separating each other. The first, chronologically, was the discovery of the head in the temple; it was early, around 6:00:15 AM. This was followed by PW-1 rushing to PW-9, his reaching the temple, and collecting a few people, and then proceeding on foot to the police station. Even before the reporting was done- or perhaps during the process, PW-4 apparently went to her parents house, and discovered her fathers mutilated and headless torso; she raised an alarm. PW-22 reported the matter to the police. This is also testified by PW-6. The testimony of PW-25 clarifies that the first intimation received was about the headless torso and even as he was about to leave some people reached the police station, and reported the discovery of the head. At the stage of recording the first information report, these two events were known to the police. They also were apparently aware that Jitender had been taken into custody the previous day. Therefore, his name finds mention in the FIR. This Court does not find anything startling or out of the common in these events, which have also been corroborated by documentary evidence, in the form of the rukka, the PCR form and the FIR. Besides, PW-10 and PW-11 as well as PW-16s versions corroborate these events, Death Sent. 1/11 & CrI.A.912/11 Page 52 especially the sequence, propounded by the police. Along the process, the prosecution has also, in the opinion of the Court, proved conclusively that the head as well as the torso were identified. These were testified separately by PW-15 and PW-16. Though the deposition of PW-15 about his return home on 13-3-2008 and being told that the murder was discovered that day, injects an element of confusion, as observed earlier, even if the testimony of this witness is ignored, the basic version about discovery of the torso by PW-4 and the head by PW-1 is independently corroborated by other witnesses. The discovery of the head is spoken to by PW-9; the discovery of the torso was deposed to by PW-22.

60. The prosecution case, accepted by the Trial Court, is that at about 5.30 PM, the accused Jitender was arrested (arrest memo Ex. PW- 22/H personal search memo Ex. PW- 22/J), and thereafter made a disclosure statement (Ex. PW- 22/K,) in which he had disclosed that the knife/churri used by him to behead his father

had been kept under a slab in the room on the first floor of the house. At the time of arrest, he was still wearing his blood stained clothes, which were taken into possession by the Police. (Ex. PW-22/N). The knife was recovered, and a rough sketch was made of it. (Ex. PW-22/LT). Ajay @ Bunty, PW-22, who was the public witness to these seizures, recoveries and the arrest of the accused has supported PW-25s version in full, as well as identified all the recovered items in court. The scaled site plan of the house and a rough site plan of the temple were prepared (Ex. PW- 20/A Ex. PW-25/D). The inspector also collected other relevant evidence such as the black cloth (Ex. PW-25/E), the FSL reports( Ex. Death Sent. 1/11 & CrI.A.912/11 Page 53 PX, PY) and the finger prints report (Ex. PW-25/G).

61. Now, this part of the prosecution version, in this Courts opinion, is the strangest and least credible. PW-23 deposed that he informed about Jitenders arrest on 13-03-2008 to his mother, PW-3. The latter however, does not depose about it. Nor does PW-16 depose prior knowledge about Jitenders arrest. By the time the police came to know about the discovery of the head, and the mutilated torso, they too were aware that Jitender was in police custody from the previous afternoon; in fact PW-23 is from the same police station. Yet, the proceedings of Section 107 reveal that the accused was released, and PW-16 his brother, stood surety for a bond in the sum of Rs. 5000/-. Neither PW-16 (who posted the bond before the Executive Magistrate) nor does any witness, save PW-23 mention this. This release of Jitender is inexplicable, to say the least. Knowing fully well that there was a strong suspicion of his involvement in the beheading of his father, the police acted rather strangely, in not arresting him immediately. Instead, it is their case that he was arrested later in the evening. Jitender himself denied this version (accepted by the Trial Court) and stated, in his Section 313 Cr. PC statement, that he was never released.

62. The omissions and silence of PW-3 and PW-16 on the one hand, and the palpably unacceptable version of the prosecution regarding the arrest of the accused, were highlighted by his counsel. This court is of the opinion that to put it mildly, these point to glaring lapses of the prosecution. Yet, they are not of a kind which would fatally undermine the police version altogether. The essential and Death Sent. 1/11 & CrI.A.912/11 Page 54 crucial factual circumstances- the

accused being the only individual present with his father in the premises at around the time of the latter's death; his going to the temple and creating a commotion on 13-3-2008, some time after the beheading of his father; his arrest, and the discovery of the head in the temple, as well as the torso, have, in the opinion of the court been proved by the prosecution beyond reasonable doubt. Although the prosecution could not establish that he had expressed the desire to sacrifice something, yet two witnesses have stated that he used to indulge in Devi worship, and was apparently socially isolated, as his wife had left him and was also unemployed. His behavior also led his brother to leave the parental home. All these facts have been established by the prosecution, beyond reasonable doubt. That the police chose to show that the arrest was actually made at 5:30 in the evening even though he was in their custody (as it appears to have happened according to the accused) immediately after his release by the Executive Magistrate, points to a lapse. But that would not upset the prosecution altogether.

63. The Post Mortem was conducted on 15.3.2008 at 1.00 PM (according to the report Ex. PW-21/A). It gives the probable time since death as 54 Hours. This puts the probable time of occurrence of death at 7.00 AM, on 13.3.2008. The report lists various injuries on the body of the deceased. It shows that the accused received two ante mortem injuries on his neck, in the form of crescentic abrasions at the right and left side of his neck. It records a lacerated wound on the forehead; a chop wound separating the neck from the body at the C-6 vertebra; and several other injuries as post mortem in nature. The Death Sent. 1/11 & CrI.A.912/11 Page 55 cause of death is asphyxia consequent to compression of neck by manual strangulation, and that all other injuries on the body were received post mortem. This is an important fact, because the disclosure statement of the accused was recorded on 14-3-2008; it states that the accused mentioned that he killed his father by strangulation. Now, under Section 161 Cr. PC, the statement cannot be read; however, that part of the statement which results in discovery of an article or a fact, is admissible, by virtue of Section 27 of the Evidence Act. (Ref. Pulukuri Kottayya v. Emperor AIR 194.PC 67). The prosecution is right in contending that this is a strong circumstance, pointing to the accused's culpability for the crime. As far as the churri, said to have been recovered pursuant to the accused's statement is concerned, the Crime team report, prepared in the morning (Ex PW-12/A) notes

that a blood stained knife was on a slab. In these circumstances, the recovery memo (Ex. PW-22/M) pursuant to the disclosure statement, or that part of the disclosure statement, loses its significance. The police cannot be said to have discovered the knife, pursuant to the accuseds statement, when they had knowledge of it.

64. In *Hanumant v. State of Madhya Pradesh*, AIR 195.SC 343.the Supreme Court indicated the correct approach of the Courts, in the following words: It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis Death Sent. 1/11 & Cri.A.912/11 Page 56 of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. This approach has been consistently followed and applied in several other judgments, notable among them being *Tufail v. State of Uttar Pradesh*, (1969) 3 SCC 198.*Ramgopal v. State of Maharashtra*, AIR 197.SC 65.and in *Sharad Birdhichand Sarda v. State of Maharastra*, 1984 (4) SCC 116.*Sarda* an authority on this and other important aspects of criminal justice/law, put the matter in a lucid terms:

152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved as was held by this Court in *Shivaji Sahebrao Bobade v. State of Maharashtra* 1973 Cri LJ 178.where the following observations were made: certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between

'may be' and 'must be' is long and divides vague conjectures from sure conclusions. Death Sent. 1/11 & CrI.A.912/11 Page 57 (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. (3) the circumstances should be of a conclusive nature and tendency. (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

65. Having taken into consideration the totality of the evidence and circumstances alleged and proved, this court has no doubt that the prosecution was able to bring home the guilt of the accused, with respect to the beheading of the deceased, and the disembowling as well as consequent mutilation of the victims body. The most incriminating circumstances, alleged against Jitender were conclusively proved; each link in the chain alleged too, was proved conclusively. The prosecution also eliminated the possibility of anyone else being guilty and at the same time, established that the circumstances proved are such that every hypothesis consistent with the appellants innocence has been ruled out. As a consequence, this court affirms the findings and conviction of the Trial Court, in the impugned judgment. Death Sent. 1/11 & CrI.A.912/11 Page 58 Sentence 66. The Court now has to consider the rival contentions of the parties on the question of the appropriate sentence to be awarded. The guiding principle which courts in India have to look at, for deciding whether to impose capital punishment in the facts of a given case is if the circumstances are in the opinion of the court, such that they fall in the rarest of rare category warranting the award of that punishment, after the decision in Bachan Singh Vs. State of Punjab 1980 (2) SCC 684. Over the last 32 years, the Courts, notably the Supreme Court have dealt with several cases where the factors which weigh with courts have been discussed. Machhi Singh v State of Punjab 1983 (3) SCC 47. is a three judge Bench decision of the Supreme Court

which mentioned the need for courts to draw a balance sheet of aggravating and mitigating circumstances.. and grant full weight to mitigating circumstances, to strike a just balance before the option to award the death penalty is exercised. Anshad v. State of Karnataka (1994 (4) SCC 38.addressed the issue of subjective sentencing in matters involving death penalty. The manner in which the crime was committed, the weapons used and the brutality or the lack of it are some of the considerations which must be present in the mind of the court. It was further stated that the Court while taking into account the aggravating circumstances should not overlook or ignore the mitigating circumstances. In Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka, 2008 (13) SCC 76.the Court noticed that there was lack of evenness in the sentencing process. The Death Sent. 1/11 & CrI.A.912/11 Page 59 later decision in Sangeet v State of Haryana 2012 (11) SCALE 14 doubted the aggravating-mitigating balance sheet approach commended in Macchi Singh (supra). Sangeet noted, pertinently, that in Bachhan Singh, the Constitution Bench refrained from enumerating circumstances relating to the crime or the criminal and merely noticed submissions made with regard to weighing the factors in each case. Sangeet held that:

32. It does appear that in view of the inherent multitude of possibilities, the aggravating and mitigating circumstances approach has not been effectively implemented.

33. Therefore, in our respectful opinion, not only does the aggravating and mitigating circumstances approach need a fresh look but the necessity of adopting this approach also needs a fresh look in light of the conclusions in Bachan Singh. It appears to us that even though Bachan Singh intended principled sentencing, sentencing has now really become judge-centric as highlighted in Swamy Shraddananda and Bariyar. This aspect of the sentencing policy in Phase II as introduced by the Constitution Bench in Bachan Singh seems to have been lost in transition.

67. Courts have to recognize that the rarest of rare principle is an attempt to streamline sentencing, and instruct a certain uniformity in judicial approach towards a task which is extremely sensitive and difficult. When a judge exercises a

choice either way, she or he assumes a serious responsibility which has to be lived with for the rest of one's life. In *Panchhi v. State of Uttar Pradesh* 1998 (7) SCC 177, the Supreme Court held that brutality is not the sole criterion of determining whether a case falls under the rarest of rare categories, *Death Sent. 1/11 & Crl.A.912/11* Page 60 thereby justifying the commutation of a death sentence to life imprisonment. The Court observed: No doubt brutality looms large in the murders in this case particularly of the old and also the tender age child. It may be that the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the rarest of rare cases as indicated in *Bachan Singh's* case. The Court's task of making the right choice in sentence cannot be blinded by noticing the brutality of the crime, because focusing solely on that aspect obscures all other features, some of which might be mitigative in character. This Court recollects, in this context, the following poignant statement from *Rajendra Prasad Singh v State of UP* AIR 197.SC 91. (that was a case leading to the reference to *Bachan Singh*) where the Supreme Court held that if we go only by the nature of the crime we get derailed by subjective paroxysm.

68. It has been held that imposition of the death sentence is an exception, and the courts bear an onerous responsibility in administering the rarest of rare test. The decision making process of the Court in arriving at the conclusion of the appropriateness of the death sentence should not be perfunctory and has to fulfill the rigors of procedural justice (*Mohd. Farooq Abdul Ghafur v State of Maharashtra* 2010 (14) SCC 641). Furthermore, it has been held that death penalty would be warranted where the court concludes that the convict would be a menace and threat to the harmonious and peaceful existence of society; the possibility of reformation and rehabilitation *Death Sent. 1/11 & Crl.A.912/11* Page 61 of the convict should be absent (*Mohandas Rajput v State of Maharashtra* 2011 (12) SCC 56. *Mohinder Singh v State of Punjab* Crl. Appeal Nos. 1278-79/2010, decided by the Supreme Court on 28-01-2013).

69. There are several decisions, which, depending on the way the judge chooses to look, would be determinative of the fate of the accused. In *Rajpara v. State of Gujarat*, (2002) 9 SCC 18. *Sheikh Ayub v. State of Maharashtra*, 1998 SCC (Cri)

1055 and Ram Anup Singh v. State of Bihar AIR 200.SC 300.death sentence imposed for brutal murders of family members were commuted by the Supreme Court. In Rajpara (supra) the accused was convicted for murder of wife and four daughters by pouring petrol on them and setting them on fire when they were asleep. But the Court commuted the death penalty to life imprisonment. In Sheikh Ayub (supra) the accused murdered his wife and five children, but again the death penalty was not awarded. Ram Anup Singh (supra) was a case of murder of four persons including the accuseds brother and family members; yet death penalty was not awarded. To seek uniformity in precedents, in an area such as this, can be difficult. It would here be apt to recollect Benjamin Cardozos observation that judicial objectivity is an illusion: "I have spoken of the forces of which judges avowedly avail to shape the form and content of their judgments. Even these forces are seldom fully in consciousness. They lie so near the surface, however, that their existence and influence are not likely to be disclaimed. . .Deep below consciousness are other forces, the likes and the dislikes, Death Sent. 1/11 & Crl.A.912/11 Page 62 the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge."

70. It would now be appropriate to discuss the decisions cited by the counsel for parties. The prosecution had relied on Sushil Murmu v State of Jharkhand 2004 (2) SCC338, a case where the accused had decapitated a child for the purpose of sacrifice. The Court upheld the death penalty, observing that: The appellant was not possessed of the basic humanness and he completely lacks the psyche or mind set which can be amenable for any reformation. He had, at the time of occurrence, a child of same age as the victim and yet he diabolically designed in a most dastardly and revolting manner to sacrifice a very hapless and helpless child of another for personal gain and to promote his fortunes by pretending to appease the deity. The brutality of the act is amplified by the grotesque and revolting manner in which the helpless child's head was severed . Even if the helpless and imploring face and voice of the innocent child did not arouse any trace of kindness in the heart of the accused, the nonchalant way in which he carried the severed head in a gunny bag and threw it in the pond unerringly shows that the act was diabolic of most superlative degree in conception and cruel in execution. The

tendency in the accused and for that matter in any one who entertains such revolting ideas cannot be placed on par with even an intention to kill some but really borders on a crime against humanity indicative of greatest depravity shocking the conscience of not only any right thinking person but of the Courts of law, as well. Death Sent. 1/11 & CrI.A.912/11 Page 63 The socially abhorrent nature of the crime committed also ought not to be ignored in this case. If this act is not revolting or dastardly, it is beyond comprehension as to what other act can be so described is the question. Superstition is a belief or notion, not based on reason or knowledge, in or of the ominous significance of a particular thing or circumstance, occurrence or the like but mainly triggered by thoughts of self aggrandizement and barbaric at times as in the present case. Superstition cannot and does not provide justification for any killing, much less a planned and deliberate one. No amount of superstitious colour can wash away the sin and offence of an unprovoked killing, more so in the case of an innocent and defenceless child. In an earlier decision, i.e. State of Maharashtra v. Damu S/o Gopinath Shinde and Ors. 2000 (6) SCC 26. four children between the ages of 4 to 8 were kidnapped. Three were killed as sacrifice, by first mutilating their genitalia and then throttling them. One child escaped on the basis of whose testimony, and the judicial confession of one of the accused, the accused persons were convicted. It came to light that the conspiracy had been hatched to sacrifice 5 infants to enable the recovery of a treasure from one of the accused's land. The Supreme Court, even while convicting the accused, did not award capital punishment, holding that: The question is whether this case can be regarded as rarest of rare cases in which the lesser alternative is unquestionably foreclosed. Looking at the horrendous acts committed by the accused, it can doubtlessly be said that this is an extremely rare case. Nonetheless, a factor which looms large in this case is that the accused genuinely believed that a hidden treasure trove could be Death Sent. 1/11 & CrI.A.912/11 Page 64 winched to the surface by infantile sacrifice ceremoniously performed. It is germane to note that none of the children were abducted or killed for ransom or for vengeance or for committing robbery. It was due to utter ignorance that these accused became so gullible to such superstitious thinking. Of course, such thinking was also motivated by greed for gold. Even so, we persuade ourselves to choose the normal punishment

prescribed for murder as for these accused. Accordingly, while restoring the sentence passed by the trial court in respect of other counts of offences, we order that the accused shall undergo imprisonment for life for the offence under Section 302 read with Section 34 of the I.P.C. (emphasis supplied) *Kalpana Mazumdar v. State of Orissa* (2002) 6 SCC 53. was a case where the accused had kidnapped and murdered a 4 year old child to offer as human sacrifice to appease the deities. The nails, the hair, and tongue of the child had been cut and offered as sacrifice. The prosecution case was that one Simanchal Padhi, a tantrik had told the other accused persons that if they sacrificed a child they would get a pot of gold and one of the appellants would get a son. The tantric died during the trial. The Supreme Court upheld the conviction of one of the accused, but held that the case did not fall within the rarest of rare category to justify imposition of death sentence.

71. It would therefore, be apparent that the question of imposition of death sentence, even in cases where homicidal death, or murder, is motivated by the desire to propitiate the gods or a deity, there is no symmetrical approach; *Sushil Murmu* (supra), emphasizing the brutality of the crime, resulted in capital punishment to the accused, whereas in *Damu S/o Gopinath Shinde* (supra) and *Kalpana Death Sent.* 1/11 & CrI.A.912/11 Page 65 *Mazumdar* (supra) a contrarian approach was adopted. In any event, the Court, in *Sushil Murmu* did not take into consideration any mitigating factor, such as the possibility of reformation of the accused. On the other hand, it appears to have taken into consideration allegations in some other case, for which the accused had not been convicted.

72. This court is mindful of the decision in *Sandesh @ Sainath Kailash Abhang v State of Maharashtra* (Cr. A. No. 1973/2011 decided by Supreme Court on 13-12-2012) that the state of mind of the accused at the relevant time, his capacity to realize the consequences of his crime he was committing is a very relevant factor, in exercising sentencing choice. It is in this context that the Court in the light of the evidence brought on the record, would hereafter deal with the question whether death sentence is warranted.

73. Several previous decisions of the Courts, notably rendered during the pre-Independence era, dealt with in some detail the question of the correct judicial

approach to cases where accused were alleged to have indulged in human sacrifice. In *Ashiruddin Ahmed vs The King* (1949 Cri LJ

255) the accused was convicted under Section 302, Penal Code, for the murder of his five-year old son. He dreamt at night that he had been in heaven and he heard a voice saying Your sacrifice (korbani) was of no use; you will have to sacrifice your own son; following that direction the accused sacrificed his son as korbani in the mosque and having done so went straight and informed his uncle Mafizuddin. The police were duly informed and the accused was taken into custody, and confessed. During the trial he retracted Death Sent. 1/11 & Crl.A.912/11 Page 66 from the confession. The Court addressed the question whether the accused was entitled to the protection of the provisions of Section 84, Penal Code. It held that, the whole point of accuseds confession and the facts show that he thought that what he was doing was right, that he was commanded by someone in paradise and because his previous korbani had been "no good". The Court was of opinion that the accused was clearly of unsound mind and that acting under the delusion of his dream he made this sacrifice believing it to be right. Similarly, in *Karma Urang v. Emperor*, AIR 192.Cal 238 the accused/Appellant had a dream in which goddess Kali appeared and told him that either he would have to kill his father or his father would kill him. The dream, it appeared, contained other elements; in particular, that his father was a descendant of the goddess Kali and also that his father's tongue was black and that he was to take the head to the Court at Silchar. The next morning, the appellant woke up and with a dao (sword), cut his fathers head. He thereupon picked up the head wrapped it in something and was proceeding along the road to Silchar Court.

74. It is of some interest that the Court sought medical opinion during the trial; the Civil Surgeons opinion was that the appellant had definite delusion (which though passed off after two months), that he could not tell right from wrong, and that he was insane and said that he wanted to dedicate his father's head to the goddess Kali. The Civil Surgeon said that from the story told to him he got the impression that the accused thought that he was ordered by Kali to kill his father. The Courts reasoning, holding that the defence under Section 84 applied, Death Sent. 1/11 & Crl.A.912/11 Page 67 is as follows:

7. A very common way of applying that test is to ask, in the circumstances, whether the man would have committed the act if a policeman had been at his elbow. Examining this case from that point of view I think it is very noticeable that this man having committed the deed, immediately picked up the head of his father and was proceeding to Silchar Court. The witness Saiyad Ali, who saw him first, said that he was not running. He did not proceed to run, but when the constables overtook him he came quietly back to the thana. He explained that Ibe was going to Silchar Court and why he was going to Silchar Court, namely because of a dream which he had on the previous night. That seems to me to be the best evidence in this case upon the question whether he knew that what he was doing was "wrong or contrary to law"; and in view of that evidence, which is supported by other evidence in the case, particularly by the very strong evidence of the Civil Surgeon who is not only more competent to give but had far more opportunity than anyone else of forming a correct opinion, in my judgment this appeal should be allowed, the conviction and sentence should be set aside 75. In Elkari Shankari vs. State of Andhra Pradesh, 1990 Cri LJ 9.the accused took his son into the paddy fields and killed him by stabbing him with a knife on the chest. During the trial, the court called for a medical report regarding the mental condition of the accused. The report dated stated that the accused was suffering from major mental illness for which he needed treatment and care for 4-6 weeks. In Paras Ram and Ors. Vs. State of Punjab, (1981) 2 SCC 508.the Supreme Court held that the beheading of a four-year by his father and relative is sufficient proof of defence under Section 84 of Death Sent. 1/11 & Cri.A.912/11 Page 68 IPC. Therefore, the court dismissed the appeal. In Shriram v The State of Maharashtra, 1991 Cri LJ 163.the appellant was convicted of murder by the Additional Sessions Judge, Buldana, for committing the murder of his two grand-daughters and one grand-niece. On 18th October 1985, the appellant seeing that no adult was in the house closed the door from inside and killed one child on the spot while other two succumbed to the injuries in hospital. The door of the house was then opened and the appellant ran out of the house while dropping the handle in the house itself. It was contended, on behalf of the accused, that there is sufficient material on record to come to the conclusion that the appellant killed the three kids in the fit of lunacy and, therefore, he was entitled to the benefit of Section 84, IPC.

76. The leading decision of the Supreme Court on the aspect of the defence of insanity is *Dihyabhal v. State of Gujarat* A.I.R 196.S.C. 1563. The Court observed as follows: The accused has to satisfy the standard of a 'prudent man'. If the material placed before the Court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of 'prudent man' the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under S.105 of the Evident Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the Judge whether the accused had the requisite intention laid down in S.299 of the I.P.C. If the Judge has such reasonable doubt, he has to acquit the accused, for in that event the Judge has such reasonable doubt, he has to acquit the accused, for in that event the Death Sent. 1/11 & Crl.A.912/11 Page 69 prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity. Later, the Court ruled thus: The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2.) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the I.P.C.; the accused may rebut it by placing before the court all the relevant evidence--oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was notable to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged." The Court further stated that Whether the accused was in such a state of mind as to be

entitled to the benefit of Section 84 of the I.P.C., can only be established from the circumstances which preceded, attended and followed the crime.

77. The Court is aware that in this case accused, Jitender did not Death Sent. 1/11 & CrI.A.912/11 Page 70 enter the plea of insanity anytime during the trial. Yet, it cannot help noticing that all circumstances point to his alienation from his surroundings, his family, near relatives and others. The first thing that strikes one about the incident is not only the gory nature of the sacrifice, (which incidentally appears to have horrified and perhaps even overwhelmed the Trial Court evident from the first sentence of the impugned judgment, which refers to patricide) but also that the accused had to depend on legal aid. The Trial Court proceedings are testimony to the fact that he was virtually abandoned by members of his family- perhaps because of the crime. The prosecution insisted right through that he was practicing Devi pooja, and had committed the crime to propitiate the Goddess. However, the Trial Court did not deem it appropriate to have the appellant evaluated psychiatrically to determine whether he was in control of his senses, and could determine right from wrong. The authorities cited previously point to the Court, in such cases, undertaking such a responsibility. This court underscores this fact because penury, destitution, poverty and illiteracy are barriers which accused often have to face, when confronted with serious and often capital charges. When the crime is a ghastly one, the motive for which is based on superstitious belief in occult or black magic or the like, and the accused is disempowered for any such reason, the Court has to discharge a greater responsibility. Article 39A of the Constitution of India, and the accused's right to life under Article 21 in a sense impose an obligation upon the concerned judge, when such allegations are leveled, to prima facie satisfy herself (or himself) that the accused was in a sound state of mind, or is in a Death Sent. 1/11 & CrI.A.912/11 Page 71 position to distinguish between right and wrong. This is not to say that the Court should embark upon an elaborate inquiry into the mental state of the accused; what is being stated is that if there are such unusual or peculiar features in the allegations leveled which excite the suspicions of the judge at a preliminary stage that there is a possibility of the accused labouring under some mental disorder, the court should record so, and send the accused for psychiatric or mental evaluation. Disempowerment on account of multiple and sometime

intersecting conditions such as poverty, illiteracy, illnesses be they mental or other disabilities and other such factors would act as double barriers for such a class of accused, who would be unaware of the right to take the pleas available to them, under the law.

78. Not much literature has been shown to the court with regard to psychology or the mental profile of perpetrators of ritual crimes, such as sacrifices. It appears, however that in other countries, such as the United States, there is a wealth of information and the accused is not just viewed as a psychosociopath. This aspect relates to behaviour science and not just mental illness. As early as in 1974, the Federal Bureau of Investigation (FBI) set up its Behavioral Sciences Unit. In the illuminating article titled *The Forensics of Sacrifice: A Symbolic Analysis of Ritualistic Crime* (2003), Dawn Perlmutter (<http://www.anthropoetics.ucla.edu/ap0902/sacrifice.htm> accessed at 15:18 hours on 17-2-2013) states that: In the law enforcement community, illegal ritual activities are typically referred to as "occult crimes." However, "occult crime" is an inaccurate and pejorative designation; Death Sent. 1/11 & CrI.A.912/11 Page 72 the term "occult" is applicable to many religions and practices that are fundamentally nonviolent. Furthermore, not all violent ritual acts are committed in the worship of a religion. A more objective and accurate expression is "ritualistic crime," because it encompasses crimes that may entail ritualistic behavior completely unrelated to the occult or any religious tradition. Similar to the term occult, there is no agreed upon definition of ritualistic crimes. Building upon a 1989 California Law Enforcement study of occult crime, ritualistic crime is most precisely defined as any act of violence characterized by a series of repeated physical, sexual, and/or psychological actions/assaults combined with a systematic use of symbols, ceremonies, and/or machinations. The need to repeat such acts can be cultural, sexual, economic, psychological, and/or spiritual. -----The interpretation of the aforementioned ritualistic crimes obviously depends on ones theoretical and theological perspectives. From a psychological viewpoint, violent rituals are all forms of psychopathology regardless of their religious intent because the discipline of psychology is based on Western secular scientific traditions. From an extreme fundamentalist perspective, a dualistic worldview that separates the world into good versus evil, all occult practices inclusive of nonviolent beliefs are

indicative of Satanism regardless of individual traditions. From a sociological perspective, ritualistic crimes are a form of social deviance shaped by environmental factors. Ironically, the only people who seem to recognize ritualistic crime as a religious rite in the belief of specific traditions are the practitioners themselves, and their opinions are invalidated because they have been designated as psychopaths. The fundamental problem when researching, investigating, or analyzing ritualistic crime is that the crimes evoke such strong emotions that tap into our deepest beliefs about human nature and spirituality.

79. A rational individuals sensibilities are revolted when Death Sent. 1/11 & CrI.A.912/11 Page 73 confronted with sacrifices and horrific practices- such as mutilation of body parts, etc. which may go with it. Yet, these are to be seen from the behavioral analysts point of view, to discern the rationale for such ritual crimes and ritual homicides. James Gilligan, MD, in his Violence, Our Deadly Epidemic and Its Causes (New York: G.P. Putnams Sons Publishers, 1996) pp. 59, 60 again quoted in Dawn Perlmutter's article, says that: The rituals surrounding violence, then, like all rituals, are profoundly symbolic and hence profoundly meaningful (that is, they express many highly specific and closely related meanings, which cannot be translated into a consistent set of propositions). In fact they are more symbolic, and hence more meaningful, the more "senseless" they appear to the rational mind, because they follow laws of magical thinking rather than rational thinking. ----- the mutilation served as a magical means of accomplishing something that even killing ones victim cannot do, namely, that of destroying the feeling of shame itself . . . So an intensification of the whole project through the introduction of magic, by means of ritual, is necessary, if it is to be powerful enough to enable the murderer to stave off the tidal wave of shame that threatens to engulf him and bring about the death of the self.

80. This Court would not speculate about the motivations of those who practice ritual sacrifices in India. In most cases this are animal sacrifices. What cannot be lost sight of is that apart from superstitions, there are belief systems which recommend for personal gain, health or well-being of the individual or his family, sacrifices and rituals at Death Sent. 1/11 & CrI.A.912/11 Page 74 certain places, and at certain times. Black magic (tona, kala jadu or Vashikaran) as it is known in

some part of the country, or other forms of occult practices elsewhere in the country, and their adherents claim to provide holistic remedies or solutions for problems ranging from health to career advancement, education, longevity, or family wellbeing and increase in material wealth. In a country where illiteracy is above 300 million, the prevalence of these beliefs (based often on mere superstition and without any theological basis) can delude some into believing, irrationally that ritual sacrifices are essential. A large number of people certainly believe in appeasement rituals, wearing of amulets, charms etc. The ubiquity and wide spread acceptance of such beliefs is testified by the fact that in the search engine Google, keying in black magic india brought forth as many as 20,100,000 results a large number of which provided links to various healers, occult specialists, tantriks, etc. To rational minds, rooted in value systems which underscore the need to maintain order, familial and social bonds, such practices would not appeal and would be abhorrent. They are however, real, and offer the promise of benefits to those who believe in them. To rational minds and human beings, ritual sacrifices cannot be justified. In any event, killing a human being can never be an accepted practice under any value system.

81. In the present case, the proven facts show that the accused used to be engaged perhaps obsessed with Devi worship. Whether he saw visions of the Goddess is unclear; the prosecution story is that he claimed that he would gain power if he indulged in human sacrifice. The evidence on record clearly suggests that his practices led to his Death Sent. 1/11 & CrI.A.912/11 Page 75 wife deserting him, his brother leaving the family home; even the mother apparently left the home at least at the time when the crime took place. PW-5, besides other family members, corroborates this in his deposition. The deposition of witnesses also suggests that the deceased himself was a sewadar in the temple. These facts establish that the accused was a strong believer in Goddess Devi, - a fact admitted to by him, in his statement under Section 313, Cr. PC. Apart from facts, the evidence on record also points to gory details, such as mutilation of the body, after the beheading of the deceased, and the accused placing the severed head in the temple. According to some versions, he was clad in black clothes and had smeared himself with dust. These surrounding circumstances, in the opinion of the Court conclusively prove that the accused had indulged in ritual, human sacrifice

of his father.

82. This Court is of the opinion that even though in the present case, it cannot second guess that the accused (did or did not) labour from a mental condition or disorder at the time of commission of the crime, the unusual nature of facts would be relevant to making an appropriate sentencing choice. This is perhaps the kind of crime which the Supreme Court referred to as having been committed by one morally-mentally retarded or disordered (Cf. *Rajendra Prasad v State of UP* AIR 197.SC 916). An application of the Machhi Singh ordained aggravation-mitigation test would reveal that the ghastly nature of the crime, focusing on the fact that he killed an aged and defenseless individual his father, no less- coupled with the mutilation of the body, and its beheading, has to be balanced with Death Sent. 1/11 & CrI.A.912/11 Page 76 factors such as his social alienation, no known record of violent behavior, relative young age (he was around 25 at the time of his trial). Taking these into consideration he cannot be termed as an irredeemable murderer who is beyond the pale of reformation. Consequently, the Court does not confirm the sentence of death imposed upon him; it however substitutes it with life imprisonment. The conviction is however, affirmed.

83. Before parting, this Court hereby directs that in all such cases of serious crimes, especially homicides, where the accused are alleged to have indulged in unusual behavior, indicative of mental disorder or disturbance, (and especially in cases involving ritual killing or human sacrifice allegations) which emerge from a reading of the FIR or statement of material witnesses, the Magistrate taking cognizance of the offence alleged shall refer the accused for suitable medical checkup to evaluate the possibility of his (or her) being, or having been of a mental condition which might entitle her or him to avail the defence of insanity. This procedure is an integral component of legal aid, which every such (potentially) capitally charged accused is entitled to avail of. Such assistance and evaluation would also further the right to a fair trial under Article 21, of that class of accused who have no access to quality legal assistance or have no information of their entitlement to various defences available in law.

84. Death Reference No.1/2011 is answered in the above terms; the accuseds appeal (Crl. A. 912/2011 is partly allowed; the sentence is converted to rigorous imprisonment for life. The Registry shall forward copies of the judgment to all the District Judges within the Death Sent. 1/11 & Crl.A.912/11 Page 77 territorial limits of this Court; a copy shall also be made available to the Registrar General to be placed before the Chief Justice of the Court. S. RAVINDRA BHAT (JUDGE) PRATIBHA RANI (JUDGE) FEBRUARY 21 2013 Death Sent. 1/11 & Crl.A.912/11 Page 78

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**