

*

IN THE HIGH COURT OF DELHI

%

Judgment reserved on : 29.04.2009

Judgment delivered on: 08.05.2009

DEATH SENTENCE REF. NO.1/2008

STATE ...Appellant
Through : Mr.Pawan Sharma, Advocate.

versus

RAJ KUMAR KHANDELWAL ...Respondent
Through : Mr.Rajesh Mahajan, Advocate.

CRL. APPEAL NO.294/2008

RAJ KUMAR KHANDELWAL ...Appellant
Through : Mr.Rajesh Mahajan, Advocate.

versus

STATE ...Respondent
Through : Mr.Pawan Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: PRADEEP NANDRAJOG, J.

1. Vide judgment and order dated 14.2.2008, Raj Kumar Khandelwal, hereinafter referred to as the accused, has been convicted for the offence of murdering his wife Anita and his three minor daughters; Kumari Alisha aged about ten years, Kumari Chamma aged about eight years and Kumari Jyoti aged about four years. Vide order of sentence dated 16.2.2008, the learned Trial Judge has imposed the sentence of death upon the accused and has accordingly made a reference to this Court for confirmation of the sentence.

2. Section 366 of the Code of Criminal Procedure 1973 requires confirmation by the High Court before execution of a sentence of death passed by the Court of Session. In the reference proceeding under Section 367, the High Court, if it thinks fit, is empowered to make further inquiry and receive additional evidence upon any point bearing upon the guilt or innocence of the convicted person. Under Section 368, the High Court may confirm the sentence, annul it or pass any other sentence, or convict the accused of any offence of which the Court of Session might have convicted him or may order a new trial on the same or an amended charge. The scope of these three Sections has been interpreted by the Supreme Court as casting a duty on the High Court to satisfy itself, by a reappraisal of the judgment of the Court of Session, about the guilt or innocence of the accused person. Reference be made

to the decision reported as AIR 1957 SC 469 Jumman & Ors. vs. State of Punjab wherein it was observed :-

“12. In fact the proceedings before the High Court are a reappraisal and the reassessment of the entire facts and law in order that the High Court should be satisfied on the materials about the guilt or innocence of the accused persons. Such being the case, it is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials apart from the view expressed by the Sessions Judge. In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the provisions of the law above-mentioned it is for the High Court to come to an independent conclusion of its own.”

3. Accordingly, with the able assistance of learned counsel for the State and the accused, we perused the entire evidence against the accused while hearing the reference and the connected appeal, needless to state, in which appeal, the accused has challenged the impugned decision convicting him.

4. Certain admitted facts may be noted at the outset so that the evidence relatable thereto is noted very briefly and the burden of a lengthy decision is avoided.

5. It is not in dispute that the wife and the minor daughters of the accused were found dead in room No.6, Gautam Hotel, Church Mission Road, Fatehpuri and that the viscera of the wife of the accused as also his daughters Kumari Alisha and Kumari Chamma, tested positive for the presence of aluminium phosphide and the viscera of the two

daughters additionally tested positive for the presence of dihydroergotamine. The viscera of Kumari Jyoti tested positive for the presence of dihydroergotamine. The same is evidenced from the FSL report Ex.PW-38/M.

6. It is also not in dispute that a white coloured top with light red coloured stripes as also a navy blue coloured flowered designed skirt worn by Kumari Jyoti, which were removed from her dead body at the mortuary, also tested positive for the presence of aluminium, a fact recorded in the FSL report Ex.PW-38/M. Similarly, the gown and the bra recovered from the dead body of the wife of the accused tested positive for the presence of aluminium phosphide. It is also not in dispute that vide same report, aluminium phosphide was detected on two bed-sheets recovered from the beds inside the room where the four dead bodies were found. Similarly, a gamcha and a handkerchief found inside a polythene bag which was recovered from the ledge of the window of room No.6, Gautam Hotel on 18.7.2005 also tested positive for the presence of aluminium phosphide.

7. It is also not in dispute that the cause of the death of the wife of the accused and the three daughters, as per post-mortem reports Ex.PW-6/A, Ex.PW-4/A, Ex.PW-4/B and Ex.PW-4/C pertaining to Anita, Jyoti, Alisha and Chamma respectively, opined as under:-

- A. Anita : Death due to asphyxia and cardiac anoxia as a result of phosphide poisoning.
- B. Jyoti : Cause of death is asphyxia as a result of manual strangulation.
- C. Alisha : Cause of death is asphyxia as a result of manual strangulation.
- D. Chamma : Cause of death is asphyxia as a result of manual strangulation.

It is also an admitted fact that contusion and crescentric abrasions were noted on the neck of the three daughters, at the middle of the neck, and the said injuries establish that the three daughters were throttled by sufficient force resulting in their death occasioned by asphyxia i.e. to put in simple words, the three daughters were manually strangled.

8. It may also be noted at the outset, that at the trial, the accused simply projected a defence of innocence, save and except a suggestion to PW-5 during cross-examination, that it was a case of suicide by the wife, who had poisoned her children. The said line of defence can be found with reference to the answers given by PW-5 at the tail end of his cross-examination, where the witness has deposed as under:-

“It is correct that deceased Anita was suffering from some disease like diarrhea. Voltd. She was suffering

with this disease after one day of their arrival in my hotel. She was looking depressed because of her illness. It is incorrect to suggest that the lady and the kids have committed suicide in the room. I cannot say, whether deceased Anita was looking depressed because of her financial loss. I had not seen the accused administering the pills or any other substance to his wife or children when they were in the room. It is incorrect to suggest that I am deposing falsely at the behest of police officials and that the accused have been falsely implicated in this case.”

9. Since emphasis was laid during arguments in appeal that the evidence on record does not rule out the possibility of Anita murdering her children and committing suicide herself, we shall be specifically focusing on the conduct of the accused, for the reason, whenever a housewife is found dead as a result of poison and the husband was in the house and there is no suicide note found, the conduct and the mental condition of the wife as also the conduct and the mental condition of the husband are relevant; probably the only source wherefrom an inference can be drawn by the Court, whether it is a case of suicide or of murder.

10. The accused admitted being married to Anita and being the father of Alisha, Chamma and Jyoti. In response to question No.1, when examined under Section 313 Cr.P.C. he also admitted that he was residing as a tenant in Mohalla Lakhibagh Mannpur, Pulpaar, Gaya, Bihar and was running a small scale manufacturing unit under the name and style

M/s.Jyoti Industries. In response to question No.6, the accused admitted that he and his family, comprising his wife and three daughters, had checked in at 7:45 PM on 25.6.2005 at Gautam Hotel and were staying in room No.6 till 5.7.2005.

11. Pertaining to the events which took place at Gautam Hotel on 5.7.2005, the hotel staff noted that the accused left the hotel at around 9:30 AM on 5.7.2005 and till early evening there was no movement of his wife and the children. Amrit Lal PW-9, an employee of the hotel was filling water in the tank of the water coolers installed in the various rooms of the hotel and proceeded to fill the tank of the water-cooler in room No.6 and received no response when he knocked at the door. He applied a gentle pressure on the door, which not being locked from within, opened. To his horror, Amrit Lal saw four dead bodies on the bed. His instinct, naturally so, was to rush to the owner of the hotel. Deepak Mehta PW-5 son of Prithvi Raj Mehta PW-7 was present at the reception of the hotel, which belonged to his father Prithvi Raj Mehta. He i.e. Deepak Mehta immediately ran to the police post nearby i.e. Police Post Church Mission Road under jurisdiction of PS Lahori Gate, where Const. Sanjay was on duty, who recorded DD No.31, Ex.PW-26/A, noting therein the statement of Deepak Mehta to the effect that the accused, his wife and three daughters had checked in Hotel Gautam at 7:45

PM on 25.6.2005 and that at 9:30 AM the accused had left the hotel informing him i.e. Deepak Mehta, that he was going to collect money from an acquaintance to clear the hotel bill and that at 6:15 PM, Amrit Lal, a waiter in the hotel, had gone to room No.6, where the accused and his family were staying, and saw the wife and the three daughters of the accused lying dead on the bed.

12. SI Brij Mohan PW-27 was in charge of the police post at Church Mission Road. A copy of DD No.31 was transmitted to him through Const. Sant Raj PW-26, and accordingly SI Brij Mohan and Const. Sant Raj accompanied by Deepak Mehta reached the hotel.

13. Inspector Raja Ram Yadav PW-37, then posted as SHO PS Lahori Gate, received telephonic information at 6:35 PM of four dead bodies being found in a room in Gautam Hotel. He immediately reached the hotel and joined SI Brij Mohan and Const. Sant Raj.

14. An FIR had to be got registered to proceed with the investigation. SI Brij Mohan penned a statement of facts (rukka) Ex.PW-27/B, recording therein the recovery of four dead bodies; that of a lady named Anita and her three daughters. It was noted that froth and blood had oozed out from the mouth and nose of the deceased. Two glass and a steel tumbler were seen on the table as also a small plastic

cup; which facts were noted in the statement. It was recorded that the conduct of the accused was suspect and that an FIR be registered under Section 302 IPC. Const. Sant Raj took the rukka to the police station, where the FIR Ex.PW-31/B was registered at around 8:00 PM.

15. At the spot, Inspector Raja Ram Yadav PW-37, prepared the rough site plan Ex.PW-37/A, indicating therein the spots within the room where the four dead bodies were found lying. A photographer, Const. Sunder Lal PW-12, was summoned, who took ten photographs of the spots viz. Ex.PW-12/1 to Ex.PW12/10; negatives whereof are Ex.PW-12/11 (collectively). The mobile crime team was summoned. SI Ajay Kumar PW-13, the head of the mobile team lifted chance prints from various objects and articles in the room; from which chance prints, Const. Rajbir successfully developed six chance prints from the two glass tumblers, the steel tumbler and the inner cup of the Mayur water jug in the room. Later on, after the accused was arrested and his specimen finger prints were obtained and sent to the FSL laboratory, vide report Ex.PW-20/A, it was opined that the chance finger prints Q-2 lifted from the steel tumbler and the change finger prints Q-4 and Q-5 lifted from the inner cup of the Mayur water jug matched those of the accused.

16. Two bed-sheets having vomit stains thereon were seized from the room by the police personnel present, vide seizure memo Ex.PW-5/C drawn up by Inspector Raja Ram Yadav. The glass tumblers, the steel tumbler and the inner cap of the Mayur jug were also seized vide seizure memo Ex.PW-5/D drawn up by Inspector Raja Ram Yadav. Various other articles were seized vide various other seizure memos, all of which need not be noted save and except the fact that vide seizure memo Ex.PW-5/A various personal belongings of the family were seized, which included a black coloured rexine bag of make 'REEBOK S.A.H.Q.' in which clothes were kept and as noted at serial No.3 of the recovery memo, a dupatta was amongst the clothes. Additionally, it may be noted that as recorded in another seizure memo Ex.PW-5/E prepared by Inspector Raja Ram Yadav an exercise book Ex.P-14 bearing the name of Alisha Kumari was also seized from the room.

17. The bodies of the three young girls were sent to Subzi Mandi mortuary where Dr.Aakash Jhanji PW-4 conducted the post-mortem and submitted his reports Ex.PW-4/A, Ex.PW-4/B and Ex.PW-4/C pertaining to Jyoti, Alisha and Chamma as noted in para 7 above. The body of Anita was sent to the mortuary of Aruna Asaf Ali Hospital where Dr.K.Goyal PW-6 conducted the post-mortem and submitted his report Ex.PW-6/A as noted in para 7 above.

18. Messages were flashed all over Delhi to keep a look out for the accused. At 10:40 PM on 7.7.2005, the accused was spotted by HC Davinder Kumar PW-23 and Const. Karamvir PW-24 at platform No.7, Railway Station Hazrat Nizamuddin, New Delhi. As recorded in the kalandra under Section 41 Cr.P.C., on being questioned about his identity by HC Davinder Kumar, the accused kept on disclosing different names and different addresses pertaining to himself. He ultimately broke down and confessed that his name was Raj Kumar Khandelwal. The accused was kept in the police lock-up overnight and produced in the court of the area Metropolitan Magistrate viz. Shri Harish Dudani, M.M., Delhi having jurisdiction over PS Hazrat Nizamuddin. Simultaneously, the kalandra Ex.PW-23/A under Section 41 Cr.P.C. was filed in the Court of Shri Harish Dudani on 8.7.2005. It stands recorded in the kalandra that the accused was produced in the Court with his face muffled. Since it was disclosed in the kalandra that the accused had admitted to have murdered his wife and children, and even otherwise since the accused was a suspect, he was remanded to judicial custody. The accused was formally arrested on 16.7.2005 when the application Ex.PW-38/A moved in the Court of the learned Metropolitan Magistrate having jurisdiction over PS Lahori Gate, demanding police custody was allowed, and the

accused was handed over in police custody for a period of two days.

19. The investigating officer had changed by said date. Inspector Rai Singh Khatri PW-38, posted as the Addl. SHO of PS Lahori Gate took over custody of the accused and interrogated him. He recorded the statement Ex.PW-28/A made by the accused, which we note is by and large a confessional statement; confessional parts being inadmissible in evidence, we eschew reference to the same. Relevant and material for adjudicating the fate of the accused, it may be noted, that the accused disclosed to Inspector Rai Singh Khatri that he purchased sulphas tablets from Rajesh Mehta PW-14 who has a shop at the by-pass road, Gugri Taand, Gaya City, Bihar. The accused also disclosed that his youngest daughter Jyoti vomited the sulphas tablet which he had administered to her and that he had cleaned the vomit with a handkerchief Ex.P-19 and a gamcha Ex.P-18 which he had put inside a yellow coloured polythene bag and had thrown the same outside the room from the window towards Church Mission Road. He stated that he suspected that his youngest daughter would not die as she had thrown up the sulphas tablet and therefore he used a dupatta Ex.P-22 belonging to his wife to strangulate Jyoti. The accused also disclosed that he had sold

a gold finger ring of his wife to a jeweler at Dariba Kalan, Chandni Chowk, Delhi on 26.6.2005.

20. At the police station, from the black coloured rexine bag of make 'REEBOK S.A.H.Q.' which was seized by the police on 5.7.2005 from the room where the dead bodies were recovered, (as recorded in the seizure memo Ex.PW-5/A), the accused pointed out the dupatta Ex.P-22 in the bag, which was seized separately, vide seizure memo Ex.PW-27/C. On 18.7.2005, the accused led Inspector Inder Singh Khatri PW-38 to the place of occurrence and pointed out the ledge of room No.6 of Hotel Gautam from where a polythene bag containing a gamcha Ex.P-18 and a handkerchief Ex.P-19 were recovered which were seized vide memo Ex.PW-7/A. Thereafter, he led Inspector Inder Singh Khatri to Dariba Kalan Chandni Chowk and pointed out a shop (No.1654) which happened to be the shop of Rajesh Babbar PW-6 as recorded in the pointing out memo Ex.PW-11/A. This was the shop, where as per the disclosure statement made by the accused, he had sold the gold ring of his wife on 26.6.2005 to Rajesh Babbar. The ring could not be recovered but Inspector Raj Singh Khatri recorded the statement of Rajesh Babbar that indeed, on 26.6.2005, the accused along with one Shiv Kumar, who was known to him i.e. Rajesh Babbar, had come to his shop and sold a ladies gold ring weighing two grams and had received Rs.900/- as sale

price thereof. The accused was taken to Gaya on 19.7.2005 and pointed out the shop of Rajesh Kumar Mehta PW-14 at Bypass Road, Dogri Taand, Gaya City, Bihar from which shop, he informed having purchased sulphas tablets. Inspector Rai Singh Khatri recorded the statement of Rajesh Kumar Mehta affirming that in May 2005 the accused had purchased seven tablets of sulphas from him. Inspector Rai Singh Khatri purchased ten tablets of sulphas from Rajesh Kumar Mehta vide receipt Ex.PW-14/C. The tablets were sealed by him as recorded in the possession memo Ex.PW-14/B. Photocopy of the licence Ex.PW-14/A authorizing Rajesh Kumar Mehta to sell sulphas was also taken by him. The accused thereafter led Inspector Rai Singh Khatri to his factory-cum-residence from where a ledger book Ex.P-22 was seized vide seizure memo Ex.PW-15/A. The accused and Inspector Rai Singh Khatri proceeded to Canara Bank, G.B.Road, Gaya and the Manager of the Branch Shri Vidhu Bhushan Thakur handed over a statement of account Ex.PW-18/A in the name of Jyoti Industries. He i.e. Shri Vidhu Bhushan Thakur also handed over two letters on the letter head of the firm of the accused, addressed to the bank manager, in the handwriting and under the signatures of the accused viz. the letters Ex.PW-18/D and Ex.PW-18/E, both of which were seized vide seizure memo Ex.PW-18/C. The investigation officer seized two registers

Ex.P-16 and Ex.P-21, the former being the statutory register maintained by Gautam Hotel and the second maintained by Vaishno Hotel containing entries of the guests who had checked in the hotel. Needless to state the said registers contained entries stated to be in the handwriting of the accused when he filled up the relevant columns of the registers, as and when he and his family checked into said hotels. It may be noted that the entries in the register Ex.P-16 being Q-7, Q-8 and Q-9 as also the entries Q-10 and Q-11 in the register Ex.P-21 were alleged to be in the handwriting of the accused.

21. A charge-sheet was filed against the accused alleging that due to business losses he could not maintain his family and hence decided to murder his wife and his children and in furtherance thereof purchased sulphas tablets and brought the entire family to Delhi and checked in Hotel Gautam where room No.6 was allotted to the family and that in the intervening night of 4th and 5th July 2005 he administered sulphas tablets to his wife and his daughters. Before poison could take effect on the daughters he strangled them to death. His wife died due to poisoning and the accused fled from the hotel till he was apprehended by the police at Railway Station Hazrat Nizamuddin. The charge-sheet heavily relied upon the disclosure statement of the accused pursuant

whereto the dupatta used by him to strangle his youngest daughter Jyoti was recovered at the instance of the accused as also the recovery of the polythene bag containing a gumcha and a handkerchief from the ledge beneath the window of the room towards Church Mission Road, which gumcha and handkerchief were found with traces of aluminium phosphide. The conduct of the accused i.e. the pointing out memos pertaining to the shop from where he purchased the sulphas tablets and the shop of Rajesh Babbar where he sold the gold finger ring of his wife were also relied upon as evidence against the accused. The report Ex.PW-20/A of the finger print expert which opined that chance finger prints Q-2, Q-4 and Q-5 lifted from the steel tumbler and the inner cup of the Mayur jug seized from the room where the dead bodies were found as also the report Ex.PW-38/L of the handwriting expert which opined that the writing Q-1, Q-2, Q-2/1, Q-3, Q-3/1, Q-4 and Q-4/1 in the exercise book Ex.P-14 of Kumari Alisha; the writings Q-7 to Q-11 in the two registers Ex.P-16 and Ex.P-21; the writings Ex.PW-18/D and Ex.PW-18/E, the entries in the ledger Ex.P-22 and the specimen handwriting of the accused taken by the investigating officer when the accused was in police custody were in the hand of the accused were relied upon.

22. At the trial, Rajesh Babbar PW-1 deposed that the accused accompanied by Shiv Kumar had visited his shop on

26.6.2005 and had sold a lady's gold ring to him for which he had paid Rs.900/- to the accused. Shiv Kumar PW-11 deposed that he had accompanied the accused to the shop of PW-1 on 26.6.2005 and that in his presence the accused had sold the ring of his wife and had received Rs.900/-. It may be noted that in response to Question No.8 where said circumstance i.e. the accused's financial crisis and his selling the gold ring of his wife for which he received Rs.900/- was put to him, he admitted the same to be correct.

23. PW-10 Dilip Kumar Sharma deposed that he was the owner of Vaishno Hotel at 23, Fatehpuri and that on 2.6.2005 the accused along with his wife and children had stayed at his hotel and while checking in had disclosed his name to be Rajiv Kumar son of Madan Babu and had given his residential address of Gadolia Chowk, Varanasi, U.P. and had left the hotel along with his family on 3.6.2005. The relevance of said evidence is that the accused attempted to conceal his identity as also his residential address. The said fact is an admitted fact inasmuch as this evidence was put to the accused as question No.5, which evidence has been affirmed as correct by the accused.

24. Deepak Mehta PW-5 deposed that his father P.R.Mehta owned Gautam Hotel at 185, Church Mission Road, Fatehpuri, Delhi and that he used to help his father in

managing the day-to-day business of the hotel. That on 3.6.2005, disclosing his name as Rajiv Kumar and his being a resident of Varanasi, U.P., the accused checked in his hotel with his wife and family and left the next day on 4.6.2005. That the accused checked in the hotel once again on 25.6.2005 at 7:45 PM and that his wife and three daughters were still with him. On 5.7.2005 he was present at the reception of the hotel at 9:30 AM and the accused came to him and told him that he was going to collect money from a person who had come from Bihar and that he would clear the pending bills by evening. That intending to fill the tank of the water cooler at 6:15 PM, Amrit Lal, a waiter, knocked at the door of room No.6 on the second floor which was allotted to the accused and on pushing the door saw the dead body of a lady and three daughters on the bed and immediately informed him at which he reported the matter at the police post Church Mission Road. SI Brij Mohan and Const. Sant Raj came with him and after some time Inspector Raja Ram, the SHO also came to the spot. A photographer was summoned who took photographs. Crime team lifted finger prints. The investigating officer seized various items from the room and he signed the recovery memos. That Anita Devi, wife of the accused, was unwell as she was suffering from loose motions and was vomiting. That the accused had sold the gold ring of

his wife on 26.6.2005. That on 4.7.2005 the accused was in his room at about 10:00 PM and remained in the room all night. That when he had gone to the police post to inform of the incident, his statement was recorded.

25. We note that the witness identified the various articles which were seized from the room and as recorded in the various seizure memos. We eschew a lengthy reproduction of said testimony of the witness as the said recoveries are not in doubt and no issue was raised pertaining thereto save and except to note the fact that the witness deposed that an exercise book Ex.P-14 bearing the name of Alisha Kumari was seized from the room as recorded in the seizure memo Ex.PW-5/E but did not depose that the said register was sealed in his presence.

26. Prithvi Raj Mehta, father of PW-5 deposed that he was the owner of Gautam Hotel and that on 17.7.2005 the accused was brought to his hotel by Inspector Khatri and a constable. He went with the said police officers and the accused to room No.6 on the second floor which was earlier occupied by the accused. The accused opened a window and pointed out a bag on the ledge which was picked up by Raghunath, a servant in the hotel from within which a gamcha and a handkerchief Ex.P-18 was recovered which were seized vide seizure memo Ex.PW-7/A bearing his signatures at point

'A'. (We may note that the gamcha recovered was not got identified from the witness. Obviously, the learned Public Prosecutor was not vigilant.)

27. PW-7 was cross-examined but nothing has been brought out to discredit his testimony pertaining to the recovery effected from the ledge beneath the window of room No.6.

28. Raghunath PW-8 corroborated whatever was deposed to by PW-7 and affirmed having picked up the polythene bag lying on the ledge of the window at room No.6 after the same was pointed out by the accused from within which bag the handkerchief Ex.P-18 and the gamcha Ex.P-19 were recovered. The witness was cross-examined but nothing has been brought out to discredit his testimony.

29. Amrit Lal PW-9, the waiter who had first found the dead bodies of the wife and the daughters of the accused deposed that he had seen the accused leave the hotel at around 9:30 AM on 5.7.2005 and that in the evening when he went to fill the water in the tank of the cooler in room No.6 and getting no response when he knocked at the door, he pushed the same and found the wife and the daughters of the accused dead. He immediately came down and informed Deepak Mehta who in turn informed the police. That on 17.7.2005, in his presence the accused came to the hotel and pointed out a

bag on the ledge beneath the window of the room from within which the handkerchief Ex.P-18 and the gamcha Ex.P-19 were recovered. The witness was cross-examined, but nothing of substance has been brought out during cross-examination.

30. Raj Kumar Mehta PW-14 deposed that he was selling fertilizers and insecticides from a shop at Maran Pur, Bypass Road, Doogri Tad, Distrcit Gaya, Bihar under the name and style 'Mehta Krishi Kendra' and that the licence Ex.PW-14/A was issued to him for selling fertilizers and insecticides. That he knew the accused who had been visiting his shop and that in May 2005 had bought seven tablets of sulphas for which no receipt was issued. That on 19.7.2005 the accused came to his shop along with police officers and he sold ten tablets of sulphas to the police.

31. Arun Kumar Khandelwal PW-15, the brother of the accused deposed that in his presence the police from Delhi searched the residence of the accused and seized the ledger book Ex.P-22 as recorded in the seizure memo Ex.PW-15/A and that the entries in the ledge were in the handwriting of his brother.

32. Vidhu Bhushan Thakur PW-18 deposed that on 19.7.2005 he was posted as Senior Manager, Canara Bank, G.B.Road, Gaya and that an inspector from Delhi Police enquired about the account of M/s.Jyoti Industries whose

proprietor was Raj Kumar Khandelwal i.e. the accused. He handed over the bank statement Ex.PW-18/B and handed over two letters addressed to the bank by the accused on 17.11.2004 and 9.2.2005 i.e. Ex.PW-18/D and Ex.PW-18/E.

33. HC Devinder Kumar PW-23 and Const. Karamvir PW-24 deposed that the accused was apprehended at platform No.6, Hazrat Nizamuddin Railway Station. HC Devinder Kumar deposed that he had prepared the kalandra Ex.PW-23/A under Section 41 Cr.P.C.

34. Since the accused has not denied that he was living in the room No.6 of Gautam Hotel with his wife and children and that he was present in the room in the night of 4.7.2005 and had left at around 9:30 AM on 5.7.2005, we ignore the deposition of the various witnesses pertaining to lifting of chance finger prints; taking specimen finger prints of the accused and the report of the finger print expert for the reason said evidence would be neutral evidence inasmuch as it is not a case of forced entry into a room by a stranger. That on the glasses and the inner cup of the Mayur jug finger prints of the accused were lifted can easily be explained away by the accused by simply stating that it was natural for his finger prints to be found thereon.

35. PW-37 Inspector Raja Ram Yadav and PW-38 Inspector Rai Singh Khatri deposed the facts pertaining to the

investigation conducted by them; the various statements recorded by them; the various recoveries effected by them and the various recovery memos drawn by them. Inspector Rai Singh Khatri PW-38 deposed that he recorded the disclosure statement Ex.PW-38/A of the accused. He deposed facts in harmony with the deposition of PW-7 and PW-8 pertaining to the recovery of the handkerchief and gamcha from the ledge of the window of room No.6. He also deposed that he took sample writings of the accused when he was in police custody and that he obtained the report Ex.PW-38/L of the handwriting expert on the questioned writing in the notebook Ex.P-14 with reference to the letters Ex.PW-18/D, Ex.PW-18/E and the ledger Ex.P-22 as also the registers Ex.P-16 and Ex.P-21 maintained by Gautam Hotel and Vaishno Hotel as also the specimen writings obtained from the accused while he was in police custody. He also deposed that the FSL reports pertaining to the viscera of the deceased were obtained by him.

36. It would be evident to a reader of the foregoing narration of the facts and the evidence that the conviction of the accused has been sustained with reference to:-

- (a) The accused had a motive to kill his wife and daughters due to financial hardship.

- (b) The accused was in the room with his wife and children throughout the intervening night of 4th and 5th July 2005 and he left the hotel at 9:30 AM on 5th July, 2005 and nobody was seen going to the room till the dead bodies of his wife and children were found in the evening at around 6:15 PM. To put it in a nutshell, the evidence pertaining to the accused and the deceased being seen together soon before the dead bodies were recovered has been held to be incriminating.
- (c) The writings Q-1, Q-2, Q-2/1, Q-3, Q-3/1, Q-4 and Q-4/1 in the exercise book Ex.P-14, as per the report Ex.PW-38/L of the handwriting expert, with reference to the admitted writings of the accused i.e. the ledger Ex.P-22, the letters Ex.PW-18/D and Ex.PW-18/E, the writings in the registers Ex.P-16 and Ex.P-21 as also the sample writings of the accused were in the hand of the accused. The suspected writing in Ex.P-14 is a continued narration of facts and events, recording that the accused is responsible for the death of his wife and children due to financial crisis.
- (d) The disclosure statement made by the accused pursuant where to the gamcha and the handkerchief were recovered from a bag at the ledge of the room on which aluminium phosphide was detected.

- (e) Aluminium phosphide being detected in the viscera of Anita the wife of the accused as also the viscera of his daughters Kumari Alisha and Kumari Chamma and the fact that the accused had purchased sulphas tablets. Aluminium phosphide was found on the top and the skirt worn by Kumari Jyoti which was stained with vomit.
- (f) The previous conduct of the accused in faking his identity and giving a wrong address.
- (g) The conduct of the accused in absconding and continuing to attempt to hide his identity when he was apprehended at the railway station Hazrat Nizamuddin.
- (h) Finger prints of the accused being lifted from the glasses and the inner cup of Mayur jug in the room in which the dead bodies were found.
- (i) The identification of the dupatta by the accused with which he strangled Jyoti.

37. At the hearing of the appeal and the reference, Sh.Rajesh Mahajan, learned counsel for the accused urged:-

A. That the accused was admittedly staying in the same room in which the dead body of his wife and daughters were found and hence finger prints of the accused lifted from the glasses in the room is not an incriminating evidence. That

the specimen finger prints of the accused were obtained without permission of the Court and hence the report of the finger print expert was inadmissible in evidence.

B. The notebook Ex.P-14 of Alisha Kumari was not sealed at the time of the recovery and thus the possibility of the suspected writing at pages 9 to 12 thereof, opined to be in the handwriting of the accused, being dictated by the police to the accused when he was in custody cannot be ruled out. The said writing which amounts to a confession of the guilt has also been questioned with reference to the opinion of the expert being Ex.PW-38/L by urging that the report gives no reasons as to what distinctive characteristics in the writing was noted by the expert and what are the parameters on which the opinion has been given that the said writing is by the same person who has written Ex.PW-18/D, Ex.PW-18/E, Ex.P-22, Ex.P-16, Ex.P-21 and the sample writings of the accused obtained when he was in police custody.

C. Questioning the conduct of the investigating officer, it was urged that the entire investigation was conducted to prove that the accused was the offender, ignoring that all possible leads had to be investigated and then opinion formed as to who could be the culprit. Justifying this argument, learned counsel drew our attention to the fact that there is no entry in the Malkhana register showing that after the accused

was apprehended and interrogated at the police station on 16.7.2005, the black coloured raxine bag of make 'REEBOK S.A.H.Q.' which was seized on 5.7.2005 as recorded in the seizure memo Ex.P-5/A, was taken out from the Malkhana. It was urged that the evidence that the appellant pointed out the dupatta Ex.P-22 which was lying in the bag, as the one used by him to strangle Jyoti, shows the desire of the investigating officer to create planted evidence.

D. Questioning the recovery effected of the polythene bag from the ledge of the room No.6 of the hotel, from which a handkerchief and a gamcha i.e. Ex.P-19 and Ex.P-18 were recovered, learned counsel pointed out the discrepancy in the testimony of PW-38 Inspector Rai Singh Khatri who deposed that the accused lifted the articles recovered from the ledge vis-à-vis the claim, as per the testimony of Prithvi Raj Mehta and Raghunath who stated that Raghunath had picked up the same from the ledge.

E. With reference to the testimony of PW-5, learned counsel urged that it evidenced that Anita was suffering from loose motions and was unwell. Counsel urged that undisputably the family was going through hard times and there was a financial crisis in the family. Counsel urged that there is every possibility of Anita having poisoned her children and having strangled them when they were semi-

conscious, followed by Anita herself consuming sulphas. Taking the point a little further, learned counsel pointed out that the FSL Report Ex.PW-38/M showed the presence of dihydroergotamine in the viscera of all the three daughters. Counsel urged that the prosecution has not explained the presence of said substance, which learned counsel urged is found in medicines called ergot alkaloids and is normally used to treat migraine headaches.

F. Learned counsel for the accused urged that the testimony of Raj Kumar Mehta PW-14, the person from whom the accused allegedly purchased sulphas, does not inspire any confidence for the reason, it was unbelievable that Raj Kumar Mehta could have remembered having sold 7 tablets of sulphas to the accused in May 2005 when questioned on the subject on 19.7.2005. Counsel pointed out that admittedly, Raj Kumar Mehta did not show any bill book evidencing sale as claimed by him. Alternatively, counsel urged that merely on the fact that the accused purchased sulphas would not mean that an inference has to be drawn that the accused administered sulphas to his wife and daughters. Citing the decision reported as AIR 1977 SC 1164 Ram Dass Vs. State of Maharashtra, learned counsel urged that the ratio of said decision squarely applies on the facts of the instant case.

G. Lastly, learned counsel urged that it was not a fit case for imposing the penalty of death.

38. Before dealing with the submissions urged by learned counsel for the accused and re-appreciating the evidence in light thereof, we note once again that it is not in dispute that the accused was under severe economic distress, so much so, that he had to even sell the gold ring of his wife. It is also not in dispute, in fact admitted by the accused, when incriminating circumstances were put to him, that on 2.6.2005 the appellant had stayed for a day at Vaishno Hotel and his family was with him and that he had incorrectly disclosed his name to be Rajiv Kumar and he declared a false address. Further, when he checked in at Gautam Hotel on 3.6.2005, he disclosed his name to be Rajiv Kumar and once again declared a false address. The accused has further admitted that he, his wife and his daughters were staying in room No.6 of Gautam Hotel where he had checked in for the second time on 25.6.2005 and that he was present in the room the entire night of 4th July, 2005 and 5th July, 2005 and had left the hotel at 9:30 AM, telling Deepak Mehta PW-5 that he would return in the evening and that he was going to collect money from a person who had come from Bihar.

39. In response to question No.25 where the incriminating evidence and circumstance of the accused being

arrested at 10:40 PM on 7.7.2005 at Railway Station Hazrat Nizammudin and the kalandra Ex.PW-23/A was drawn up against him, were put to him, the accused responded by answering: *it is a matter of record*. Thus, the accused has not denied his apprehension at 10:40 PM on 7.7.2005 at Railway Station Hazrat Nizammudin as deposed to by HC Devinder Kumar PW-23 and Const.Karamvir PW-24. We further note that the incriminating evidence pertaining to the exercise book, Ex.P-14, being recovered from room No.6 was put to the accused vide question No.20, which was responded to by a simple plea of denial. Similarly, the evidence of Sh.Vidhu Bhushan Thakur PW-18, in relation to the letters dated 17.11.2004 and 9.2.2005, Ex.PW-18/D and Ex.PW-18/E respectively, was put to the accused at question No.34 which was responded to by a plea of denial. The incriminating evidence pertaining to the report Ex.PW-38/L containing the opinion that the writing suspected to be in the hand of the accused in the exercise book Ex.P-14, was the writing of the accused, was put to the accused in question No.44, to which the response was: *I do not know*.

40. With the backdrop aforesaid, there is no use to discuss the evidence pertaining to the factum of death of the wife and daughters of the deceased and the cause thereof as

also the place where they died; as the same are admitted facts.

41. Since it is not disputed by the accused and even independent of said dispute not being raised, finding that there is no evidence that any third person accessed the room where the wife and the daughters of the accused were found dead, it is obvious that the wife and the daughters of the accused died either on account of the wife of the accused administering sulphas to her daughters and strangulating them when the poison took some effect and thereafter consumed sulphas herself or that the accused poisoned his wife and daughters and before the poison could take effect on his daughters, strangle them to death.

42. Undisputedly the wife of the accused would be expected to be aware of the financial crisis faced by her husband. Obviously, she would be distressed. Thus, there is scope for an argument that there is a possibility that the wife of the accused poisoned her daughters and strangled them to bring their misery to an end and thereafter even brought her miseries to an end by consuming sulphas. But, the possibility of said fact being a reality has to be justified not on some ipse dixit but on a sound hypothesis emerging from the evidence on record and surrounding circumstances. Similarly, the guilt of the accused, if any, has to be inferred with

reference to the evidence on record and the surrounding circumstances.

43. We ignore, as already recorded by us hereinabove, the evidence pertaining to the finger prints of the accused on the glasses in the room where the offence took place. We do so for the reason said finger prints being present on the glasses is explainable as the accused could be using the same for self or to offer water or any other liquid to his wife or daughters before the sulphas was administered. But, the conduct of the accused is certainly relevant and needs to be considered. Before we do so, we would like to refer to Ex.P-14, the notebook, in the name of Alisha Kumari, the daughter of the deceased, at page No. 9 to 12 whereof is a continuous note spanning 7 sides of 4 sheets, opined by the handwriting expert, to be in the handwriting of the accused. The same records the reasons for the death of the wife and the children of the accused. The writing is in Devnagri script and the translated version thereof commences as under:-

"My Well Wisher

With deep sorrow I am writing that at 9:30 in the night my wife Anita has died. I have also poisoned all my children. This is the will of the God....."

44. If the writing aforesaid is accepted by us as the handwriting of the accused, being an admission of guilt, we may not be required to discuss the conduct of the accused.

45. It is no doubt true that Ex.P-14 was not sealed by the Investigating Officer when the same was recovered in the room on 5.7.2005 but the said fact alone does not justify an inference as was suggested by learned counsel for the accused of the possibility of the Investigating Officer compelling the accused to pen the writing in question.

46. As noted above, all relatable evidence qua the said writing was put to the accused as noted in para 39 above vide question No.20 and 34. The answers were a denial or ignorance. The accused did not state that he was compelled by the Investigating Officer to write in his own hand the disputed writing.

47. It is no doubt true that the report Ex.PW-38/L of the handwriting expert, is bereft of any reasoning, but we note at the same time that the accused nowhere challenged the said report. In fact no application was filed even to summon the author of the report and cross examine him. Thus, ignoring the report, pertaining to the comparison of the questioned writing with reference to the specimen writings of the accused obtained by the police when the accused was in custody, the report, in so far, it is founded on the other admitted writings of

the accused i.e. the writings contained in Ex.P-16, Ex.P-21, Ex.P-22, Ex.PW-18/D and Ex.PW-18/E can be relied upon.

48. A report of an expert pertaining to a handwriting is no more than a piece of evidence and does not absolve the Court from the primary liability to satisfy its judicial conscious by independently, with its own eyes, and in the light of surrounding circumstances, form its own opinion, pertaining to the writing brought before the Court and alleged to be of a particular person.

49. The testimony of the brother of the accused, namely Arun Kumar Khandelwal PW-15 establishes that the ledger Ex.P-22 is in the handwriting of the accused. The writings on the registers Ex.P-16 and Ex.P-21 have not been denied by the accused as his. The writings on the letters Ex.PW-18/D and Ex.PW-18/E have been proved to be in the handwriting of the accused through the testimony of Sh. Vidhu Bhushan Thakur PW-18.

50. At this stage a confusion pertaining to two exhibitis being assigned Ex.P-22 may be noted by us, lest there be any confusion. The ledger referred to by us in para 49 and the preceding paragraphs, has been exhibited as Ex.P-22. A dupatta pointed out by the accused in police custody from the raxine bag has also been exhibited as Ex.P-22.

51. Thus, we have five admitted writings of the accused namely the ledger Ex.P-22, the registers Ex.P-16 and Ex.P-21, and the letters Ex.PW-18/D and Ex.PW-18/E. Ignoring the sample writing of the accused which was taken when he was in police custody, we have troubled ourselves by visually comparing the suspect handwriting and the admitted handwriting of the accused as contained in Ex.P-22, Ex.P-16, Ex.P-21, Ex.PW-18/D and Ex.PW-18/E. We are satisfied that all writings are in the hand of the same person.

52. Thus, the writing of the accused in the exercise book Ex.P-14 is conclusive proof of the guilt of the accused.

53. What is the conduct of the accused? He had been staying under assumed names and have been giving a false address. He did not come back to the hotel on 5.7.2005. He never returned even the next day or the day after. He was apprehended at Railway Station Hazrat Nizammudin. He gave a false identity to the police even at the Railway Station. It is apparent that the accused was an absconder.

54. Why was he absconding? Obviously he was aware that his wife and children had died.

55. We would like to draw a distinction between two circumstances of absconding. One may not be very incriminating conduct, but the other may be. A crime has been committed and in relation thereto the police goes to the house

of 'A' for some inquiry and when 'A' comes home learns that the police came to the house enquiring about him. 'A' absconds. It is possible to argue that he did so out of fear and if there is no other evidence against 'A', the act of his absconding is explainable being the result of fear, and hence said act of absconding would not be incriminating. But in a case, as is the present case, 'A' has checked into a hotel room and his wife and children are hale and hearty when all are in the room and 'A' leaves the room in the morning and the dead bodies of the family members are found in the evening at 6:15 PM and the police reaches the place at 6:30 PM and does not leave the hotel till even late night, on account of investigation being conducted at the spot and there is no evidence that the police went searching for 'A'. The conduct of 'A' in not coming back to the hotel room and absconding is highly relevant, for the reason, the only inference possible is that he did not come back to the hotel room on account of being aware that the police would apprehend him as they suspect that he is the offender. Except for the fact that 'A' was aware that his wife and children are dead and he is guilty, there is no other hypothesis to explain the act of absconding.

56. As recorded in the tehrir Ex.PW-27/B, the same was dispatched from the hotel at 7:45 PM. From the testimony of PW-37 and 38 it is apparent that the investigation at the spot

continued till late night. Nobody was searching for the accused. Under these circumstances, the fact that the accused never came back to the hotel room and absconded is a highly suspicious conduct and is certainly incriminating against the accused.

57. The previous conduct of the accused of taking rooms in hotels under an assumed name and giving a false address is also relevant conduct wherefrom an inference of a guilty mind can be inferred. It can be inferred that the accused wanted to hide his identity and his address because this could have possibly resulted in vital leads being not available to the police.

58. The testimony of PW-5 and PW-10 establishes that the accused gave a false name and a false address on 2.6.2005 and 3.6.2005.

59. That the investigation officer has conducted certain lapses in respect whereof contentions have been urged as noted in sub para (C) of para 37 above, is no ground to draw an inference that the same evidenced the determination of the investigation officer to somehow or the other implicate the accused in the crime. The fact that the investigating officer was told by PW-5 and PW-9 that the accused had left the hotel at 9:30 AM and was in the company of his wife and children since night and that there was no evidence of any outsider visiting the family members; rightly created a strong suspicion

in the mind of the investigating officer that the accused was a likely suspect, more so for the reason he never came back to the hotel till the investigation officer remained in the hotel room and conducted the spot investigation.

60. Raj Kumar Mehta PW-14 has sold the sulphas tablets to the accused as deposed to by him. We find nothing unnatural in said witness remembering having sold sulphas to the accused when the police went to him on 19.7.2005. As claimed by him, the sulphas was sold by him in May 2005. The exact date has not been spoken to by the witness. Assuming he did so in the beginning of May 2005, it is not unnatural for him to have remembered the accused, for the reason, he has deposed that the accused used to visit his shop since about two years prior to the incident. It is not a case of a single visit to the shop of the witness by the accused. It is not out of place to note that the letter head of the sole proprietary firm of the accused viz. 'Jyoti Industries', evidenced by Ex.PW-18/D and Ex.PW-18/E, shows that the accused was a supplier of hardware, bucket, iron, agriculture implements etc. Raj Kumar Mehta was in the business of selling fertilizer, insecticides and pesticides. The two, interacting with each other, in relation to the sale of agricultural implements by the accused and sale of fertilizers etc. by Raj Kumar Mehta is in the realm of reality.

61. The prosecution is not required to explain each and every facet of a case. A fact or a circumstance which is inconsistent with the case of the prosecution requires to be explained. The prosecution was not required to explain the presence of dihydroergotamine in the viscera of the daughters of the accused as the said chemical was not the cause of their death. As noted above, dihydroergotamine is a chemical used in the preparation of medicines to treat migraine. It relieves pain by inducing sleep.

62. The presence of dihydroergotamine in the viscera of the three daughters is explainable. To relieve the pain of death by poisoning, dihydroergotamine being administered to the young girls is an explainable fact. After all, the person who administered the poison was the father of the unfortunate girls and the motive for the act was not anger or hatred or ill-will towards the daughters. A helpless father who could not take care of the daughters was giving them deliverance from their misery and hence wanted to make their death as painless as he could.

63. Strictly speaking, there can be no precedents at a criminal trial, because each case has its own story which unfolds at the trial. Notwithstanding said accepted legal position, we venture to distinguish the decision cited by learned

counsel for the accused in Ram Das's case (supra). In said case, the wife of the accused had died due to poisoning and the motive was that the appellant suspected the fidelity of his wife. The poison administered was parathion: rat poison. PW-11 Narayan Rao had deposed that the colony in which the house of the accused was situate was troubled with rats. Thus, the accused purchasing parathion was explainable, as a need of the accused i.e. there could be a legitimate use of parathion by the accused. Further, the evidence on record was that the accused had rushed his wife to the hospital when he saw her vomiting. The reasoning of the Trial Court and the High Court that the act of rushing the wife to the hospital was '*merely to cloak his guilt*' was held to be '*a perverse view of the matter*'. It is apparent that Ram Das had an explanation of legitimate use when he purchased parathion and his conduct of rushing his wife to the hospital when he saw her vomiting were held to be exculpatory of his guilt and not inculpatory of the guilt. The sole evidence of motive was insufficient to convict the accused.

64. In the instant case, the accused has not explained any legitimate use of sulphas tablets being purchased by him. Far from rushing his wife and children to the hospital, the accused has absconded. The decision in Ram Das's case (supra) is of no use to the accused.

65. The recovery of the gamcha and the handkerchief i.e. Ex.P-19 and Ex.P-18, from the ledge beneath the window of room No.6 which were found to be contaminated with aluminium phosphide is also an incriminating evidence against the accused because the police had no knowledge that the two articles were thrown on the ledge and that both were used to clean the vomit of Kumari Jyoti, who vomited when she was administered sulphas, a fact disclosed to the police by the accused. That PW-38 has stated that the accused had picked up the two articles from the ledge but Raghunath PW-8 and Prithviraj PW-7 deposed that Raghunath picked up the polythene bag containing the two articles is not a contradiction of a kind which discredits the recovery of the said two articles pursuant to the disclosure statement made by the accused. The said evidence is also a chain in the link pointing towards the fact that the accused was aware of the fact that his daughters had been fed sulphas and that his daughter Jyoti had vomited and that the vomit was cleaned with a handkerchief and a gamcha which were thrown outside from the window of the room. It is obvious that he had witnessed said events.

66. In a case fairly similar to the facts of the instant case, not citing the same as a precedent, but re-assuring ourselves that we have appreciated the evidence on correct legal principles, we note the decision of the Supreme Court Death Ref. No.1/2008 and CrI.A. No.294/2008

reported as 2006 (12) SCC 254 State of Rajasthan vs. Kanshi Ram. The accused Kanshi Ram was having a matrimonial discord with his wife Kalawati. He was married for seven years and was blessed with two daughters Suman and Guddi. On the intervening night of 3rd February 1998 and 4th February 1998 he was in his house with his family and Mamraj PW-2 who used to supply milk to the family of Kanshi Ram noted the house being locked in the morning of 4th February 1998. The dead bodies of Kalawati and her children were discovered in the house in the evening of 6th February 1998 and nobody had seen any movement in the house on 5th February 1998. Kanshi Ram was absconding. The cause of death of the wife and daughters was asphyxia due to strangulation. Kanshi Ram offered no explanation as to when he parted company with his wife and his children. In para 29 and 30 of the report, the Supreme Court opined as under:-

“29. The following incriminating circumstances are clearly established against the respondent:

- (a) That he was not on cordial terms with his wife Kalawati.
- (b) On the evening of 3.2.1998 he was seen in his house with his wife Kalawati (the deceased).
- (c) The house of the respondent was found locked on 4.2.1998, 5.2.1998 and 6.2.1998.
- (d) On 6.2.1998 when his house was opened the dead bodies of his wife and daughters were found, and the medical evidence established that

they had been strangled to death, the cause of death being asphyxia.

(e) Since the respondent was not traceable the mother of the deceased, PW-5 Jai Kauri became anxious to know about their whereabouts and requested PWs 1 and 6 to search for them.

(f) In the course of investigation the respondent never appeared at any stage, and for the first time he appeared in the scene when he was arrested on 17.2.1998.

(g) Even after his arrest he did not offer any explanation as to when he parted company with his wife nor did he offer any exculpatory explanation to discharge the burden under Section 106 of the Evidence Act.

30. These incriminating circumstances in our view form a complete chain and are consistent with no other hypothesis except the guilt of the accused-respondent. If he was with his wife on the evening of 3.2.1998 he should have explained how and when he parted company and/or offered some plausible explanation exculpating him. The respondent has not pleaded alibi, nor has he given an explanation which may support his innocence."

67. Of all the incriminating circumstances, in para 31 of the report, the Supreme Court opined that the most incriminating circumstance was of Kanshi Ram being seen with his wife and his children on 3.2.1998 and disappearing thereafter and his failure to explain when he parted company with his wife and his children. Indeed, the said incriminating circumstances are present in the instant case.

68. To sum up, the most incriminating circumstance is the admission of guilt of the accused in his writing penned in Ex.P-14, the notebook of his daughter Kumari Alisha. In fact, the same concludes the issue against the accused leaving no scope for any doubt. By itself and on its own strength the same is sufficient wherefrom an inference of guilt can be drawn against the accused and his innocence ruled out. Independent thereof we have the following additional incriminating circumstances:-

(i) Motive. The extreme financial hardship of the accused, compelling him to give deliverance to his family whose miseries could no longer be borne by the accused.

(ii) Purchase of sulphas tablets by the accused for which no satisfactory explanation of any legitimate use has been given by the accused and the fact that the viscera of his wife and two daughters tested positive for aluminium phosphide, an ingredient of sulphas.

(iii) The knowledge of the accused that his daughter Jyoti had vomited when she was fed sulphas and the vomit was cleaned with a handkerchief and a gamcha which were thrown outside from the window, meaning thereby, that the accused was present when his daughter vomited and was a witness to the vomit being cleaned with the use of the handkerchief and

the gamcha or was the person who cleaned the vomit himself. In either case, he had knowledge of his daughters' condition and yet in spite thereof he gave no medical aid to her.

(iv) The fact that the accused was seen in the company of his family the previous evening and remained in the room with his family during the night and was seen leaving the hotel at 9:30 AM the next day and none accessing the room where the dead body of his wife and his daughters were found.

(v) The conduct of the accused absconding.

69. Having independently considered the evidence on record, we concur with the view taken by the learned Trial Judge that the evidence on record conclusively establishes the guilt of the accused and rules out his innocence.

70. The issue of sentence in the instant case and for that matter imposition of a sentence in many cases has troubled us. We find no sentencing policy in India. Much of the debate on the sentencing policy has centered around the issue as to when the extreme penalty of death has to be imposed, wherever permitted by law vis-à-vis the lesser sentence of imprisonment for life. But what about most offences punishable under the Penal Code, where the legislature has either prescribed a maximum sentence, with no lower limit prescribed, or where the legislature has provide a range

between a minimum and a maximum sentence. We find no uniformity in sentences imposed by Courts in India.

71. Nigel Walker tartly said:-

"If the criminal law as a whole is the Cinderella of jurisprudence, then the law of sentencing is Cinderella's illegitimate baby."

72. Sentencing is a crucial strategy of Criminal Law in achieving social defence and re-socialization of the offender. Sentencing is a facet of social justice. None can dispute the need to humanize sentencing as a tool of reformation. If the social pressure compels a Court to take cognizance of the society's cry for retribution where the offence is committed in a diabolic and a brutal manner of a magnitude where the conscience of the society is revolted, the same social sanction has a catalyst – to respect the worth of personhood and the right of a human being in its residual human essence.

73. Unfortunately, the votaries of the extreme penalty have started raising their voice in support of imposition of higher sentences, citing the rising graph of crime and are churning out theories that the scare of law is no deterrent to the criminal, unless sanctioned with a liberal imposition of hard sentences. The mafia taking over the system and thumbing

the nose at the judicial system, is cited by them, in support of the need to impose higher sentences.

74. But, what is happening at the ground level is that, in a para violent society and a scared community, where the mafia savages at large, the poor desperate as scapegoats. The cynics say that the capital gets no punishment.

75. If we look at the penal code, we find, it provides for four kinds of punishments: firstly – death; secondly – imprisonment for life; thirdly – imprisonment for various terms which may be either simple or rigorous and; fourthly – fine. We further find that for certain offences a minimum sentence is prescribed with a cap qua the maximum. For some offences, an upper limit of sentence is prescribed, leaving the minimum, at the discretion of the Court, which may be a single day.

76. Writings and opinions on crime and its causes and cure are legion. But, most of the writings are of not much use to Judges because of the requirement of law of a Judge being concerned with the immediate intent (*mens rea*) of the offender and rarely concerned with what is beyond the intent. This skin deep pursuit, obviously misses the real roots. Unsolved stress, sometimes sudden and sometimes soared up, results in an act which is criminal in law and unfortunately for

the offender, the immediate intent i.e. mens rea is gathered from the act. Any serious student on the subject easily realizes that many social disorders and disturbances are the product of an overheated system with tensions blowing up. Indeed, society as a whole may become criminal, as in mass violence situations. Strikes erupting into violent demonstrations are common. Indeed, at the bottom of most crimes, one would find a distraught psyche or a warped consciousness. Oscar Wilde's Poignant Poetry about prison life holds good even today:-

*"This too I know – and wise it were
If each could know the same –
That every prison that men build
I built with bricks of shame,
And bound with bars lest Christ should see
How men their brothers maim.
The vilest deeds like poison weeds
Bloom well in prison-air;
It is only what is good in Man
That wastes and withers there;
Pale Anguish keeps the heavy gate,
And the Warder is Despair."*

77. To somewhat mitigate the problem of sentencing, the principle of proportion between crime and punishment, requiring the Judge to prepare a balance sheet of mitigating and aggravating circumstances and after balancing the two, awarding an appropriate sentence have been evolved over the period of time. We note various decisions on the point, each

bringing out a circumstance or two; listing out the same to be aggravating or mitigating.

78. Since no decision has attempted to exhaustively list out what could be classified as aggravating circumstances or mitigating circumstances, we feel it our duty to list out aggravating and circumstances, so held to be, in various judicial pronouncements; but with a caveat. The same are not exhaustive, as indeed the dimensions of human behavior cannot be strait jacketed nor can the circumstances under which crimes are committed. Thus, the same are illustrative and by way of guidance.

79. The circumstances can be listed under six different heads:-

- (i) Circumstances personal to the offender.
- (ii) Pre-offence conduct of the offender and in particular the motive.
- (iii) Contemporaneous conduct of the offender while committing the offence.
- (iv) Post offence conduct of the offender.
- (v) Role of the victim in commission of the crime.
- (vi) Nature of evidence.

80. Put in a tabular form, a bird's eye view of various judicial decisions, reveal as under:-

1. CIRCUMSTANCES PERSONAL TO THE OFFENDER-

Sr. No.	MITIGATING FACTORS	AGGRAVATING FACTORS
1.	Lack of prior criminal record. <u>Re Butters'</u> [2006] EWHC 1555 (QB), [2006] All ER (D) 128 (Jul) <u>Williams v. Ozmint</u> , 494 F.3d 478, 2007 U.S. App. LEXIS 17934	Previous convictions. <u>Re Miller</u> , [2008] EWHC 719 (QB), [2008] All ER (D) 357 (Apr)
2.	Character of the offender as perceived in the society by men of social standing. <u>Reyes V. The Queen</u> , [2002] UKPC 11, [2002] 2 AC 235 <u>Bachan Singh v State of Punjab</u> (1982) 3 SCC 24	Future danger/threat of accused, menace to the society considering aspects like criminal tendencies, drug abuse, lifestyle, etc. <u>Renuka Bai @ Rinku @ Ratan and Anr. v. State of Maharashtra</u> ; AIR2006SC3056 <u>Re Miller</u> , [2008] EWHC 719 (QB), [2008] All ER (D) 357 (Apr)
3.	The age of the offender i.e. too young or old. <u>Ediga Anamma v. State of Andhra Pradesh</u> AIR1974SC799 <u>Roper v. Simmons</u> 543 U.S. 551 (2005)	Abuse of a position of trust; offender in a dominating position to the victim. <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470

4.	Mental condition of accused: Anxiety, depressive state, emotional disturbance which lower the degree of culpability. <u>Ediga Anamma v. State of Andhra Pradesh</u> AIR1974SC799 <u>R v Chambers</u>, 5 Cr App R (S) 190, [1983] Crim LR 688, <u>Atkins v. Virginia</u> 536 U.S. 304 (2002)	Anti-social or socially abhorrent nature of the crime; When offence is committed in circumstances which arouse social wrath. Offence is of such a nature so as to shake the confidence of people. <u>Bheru Singh S/o Kalyan Singh Vs. State of Rajasthan</u>; (1994) 2 SCC 467, [1994] 1 SCR 559 <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470
5.	Probability of the offender's rehabilitation, reformation and readaptation in society. <u>Re Miller</u>, [2008] EWHC 719 (QB), [2008] All ER (D) 357 (Apr)	

2. PRE-OFFENCE CONDUCT OF THE OFFENDER- IN PARTICULAR THE MOTIVE OF THE OFFENCE

Sr. No.	MITIGATING FACTORS	AGGRAVATING FACTORS
1.	A belief by the offender that the murder was an act of mercy. <u>Janki Dass v. State (Delhi Administration)</u> 1994 Supp, (3) SCC 143	When the murder is committed for a motive which evince total depravity and meanness for instance Motive of the crime being financial gain. <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470 <u>Williams v. Ozmint</u>, 494 F.3d 478, ; 2007 U.S. App. LEXIS 17934

2.	That the accused believed that he was morally justified in committing the offence. <u>Bachan Singh v State of Punjab</u> (1982) 3 SCC 24	Significant degree of planning or premeditation. <u>Holiram Bordoloi v. State of Assam</u> AIR2005SC2059 <u>In Re Rock</u> , [2008] EWHC 92 (QB), [2008] All ER (D) 290 (Feb)
3.	Offence at the spur of the moment/ lack of premeditation. <u>A. Devendran v. State of Tamil Nadu</u> AIR 1998 SC 2821 <u>Re Rahman</u> , [2008] EWHC 36 (QB), [2008] All ER (D) 50 (Jan)	
4.	The offender was provoked (for example by prolonged stress) in a way not amounting to a defence of provocation. <u>Re Rahman</u> , [2008] EWHC 36 (QB), [2008] All ER (D) 50 (Jan)	
5.	That the accused acted under the duress of domination of another person.	

3. CONTEMPORANEOUS CONDUCT OF THE OFFENDER WHILE COMMITTING THE OFFENCE

Sr. No.	MITIGATING FACTORS	AGGRAVATING FACTORS
1.	Intention to cause serious bodily harm rather than to kill.	Magnitude of the crime-number of victims. <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470 <u>Williams v. Ozmint</u> , 494 F.3d 478,

		; 2007 U.S. App. LEXIS 17934
2.	The fact that the offender acted to any extent in self-defence.	Brutal Manner of killing- in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. <u>Holiram Bordoloi v. State of Assam</u> AIR2005SC2059 <u>Bheru Singh S/o Kalyan Singh Vs. State of Rajasthan</u> ; (1994) 2 SCC 467, <u>State of Maharashtra Vs. Haresh Mohandas Rajput</u> ; (2008) 110 BOMLR 373 <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470 <u>Re Miller</u> , [2008] EWHC 719 (QB), [2008] All ER (D) 357 (Apr)
3.		Mental or physical suffering inflicted on the victim before death. <u>In Re Rock</u> , [2008] EWHC 92 (QB), [2008] All ER (D) 290 (Feb)
4.		The use of duress or threats against another person to facilitate the commission of the offence.

4. POST OFFENCE CONDUCT OF THE OFFENDER

	<u>CONDUCT OF OFFENDER</u>	<u>CONDUCT OF OFFENDER</u>
1.	Guilty Plea/ Voluntary surrender.	Concealment, destruction or dismemberment of the body.

	<u>In Re Rock</u> , [2008] EWHC 92 (QB), [2008] All ER (D) 290 (Feb)	<u>State of Maharashtra Vs. Haresh Mohandas Rajput</u> ; (2008) 110 BOMLR 373
2.	Genuinely remorseful. <u>In Re Butters'</u> [2006] EWHC 1555 (QB), [2006] All ER (D) 128 (Jul)	Lack of any actual remorse. <u>Holiram Bordoloi v. State of Assam</u> AIR2005SC2059 <u>In Re Rock</u> , [2008] EWHC 92 (QB), [2008] All ER (D) 290 (Feb)

5. ROLE OF THE VICTIM IN COMMISSION OF THE CRIME

Sr. No.	MITIGATING FACTORS	AGGRAVATING FACTORS
1.	That the victim provoked or contributed to the crime. <u>Kumudi Lal v. State of U.P.</u> , AIR1999SC1699	That the victim was particularly vulnerable because of age or disability (victim is an innocent child, helpless woman or old or infirm person). <u>Bheru Singh Vs. State of Rajasthan</u> ; (1994) 2 SCC 467, [1994] 1 SCR 559 <u>State of Maharashtra Vs. Haresh Mohandas Rajput</u> ; (2008)110BOMLR373 <u>Machhi singh vs. State of Punjab</u> [1983] 3 SCC 470
2.		Victim was a peace officer/ The fact that the victim was providing a public service or performing a public duty. <u>Roberts v Louisiana</u> (1977) 431 US 633
3.		The attacking and overpowering a sovereign democratic institution by using powerful arms and

		explosives and imperiling the safety of a multitude of peoples' representatives, constitutional functionaries and officials of Government of India and engaging into a combat with security forces is a terrorist act of gravest severity. <u>Navjot Sandhu @ Afsan Guru v. State</u> (2003) 6 SCC 641
--	--	--

6. NATURE OF THE EVIDENCE

Sr. no.	MITIGATING FACTORS	AGGRAVATING FACTORS
1.	In cases of circumstantial evidence the guilt, not being established beyond reasonable doubts, a lenient view should be taken; Conviction solely resting on circumstantial evidence, which contributes to the uncertainty in the culpability calculus, must attract negative attention while deciding maximum penalty for murder. <u>Swamy Sharaddananda @ Murali Manohar Mishra Vs. State of Karnataka</u>; AIR 2007 SC 2531 <u>Shivu & Anr. Vs. R.G. High Court of Karnataka & Anr.</u>; 2007 CriLJ 1806	In cases of direct evidence the guilt being established beyond reasonable doubt.

81. While imposing the sentence of death, the learned Trial Judge has noted that the accused has betrayed the trust and confidence of his wife and his children and has abused the position of trust. That the accused was in a dominating position to the victims has also been noted as an aggravating circumstance. The learned Trial Judge has also found that the crime committed by the appellant is socially abhorrent. The Judge has also noted the multiple numbers of deaths caused. The learned Judge has found that the motive for the crime was to get rid of the wife and the three daughters, to lessen the financial burden on the accused i.e. a motive to get rid of a burden of the family.

82. What has been missed by the learned Trial Judge is the fact that the accused did not murder his wife and daughters for any personal gain. He killed them as he thought that by doing so he was giving them deliverance from misery. The learned Judge missed out the point that the accused had purchased sulphas in May 2005 and did not commit the crime till 4th July 2005 in spite of the fact that each day gave him an opportunity to feed sulphas to his wife and his daughters. That he came to Delhi time and again and each time brought his family with him, in spite of his financial hardship, and in the past stayed under an assumed name and declaring a false

address evidences his desire in the past to do away with his wife and his children. He did not do so. May be his conscious did not permit him to do so. This is indicative of the turbulences faced by the accused and the internal turmoil within his conscious. It is indicative of the prolonged stress undergone by the accused. He did not want to inflict any pain on his children and his wife is evidenced by the fact that he fed them with dihydroergotamine, obviously to induce a slumber and lessen the pain.

83. We note that in the decision reported as 2007 Cri.L.J. 1160 Bablu vs. State of Maharashtra, for causing the death of his wife and three daughters and a son, Bablu was inflicted the extreme penalty of death; but on the aggravating circumstance that the crime was motivated with ill-will towards the family as Bablu was convinced that his children were bastards, and that the manner in which the family was brutally done to death was diabolic and the extreme cruelty in the execution of the crime showed inhumanness and no remorse. On the other hand, in the decision in Kanshi Ram's case (supra), finding no such aggravating circumstances, for the offence of murdering his wife and two minor daughters by strangulating to death all of them, the sentence imposed was of imprisonment for life.

84. Accordingly, we answer the reference and dispose of the appeal by affirming the judgment and order dated 14.2.2008 by which the accused has been convicted for the offence of murdering his wife and three daughters. We do not confirm the sentence of death imposed vide order dated 16.2.2008. For the offence committed by the accused we sentence him to undergo imprisonment for life and pay a fine in sum of Rs.20,000/-; in default of payment of fine to undergo rigorous imprisonment for one year.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

May 08, 2009
Dharmender