

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON: 08.12.2011

PRONOUNCED ON: 20.11.2012

+ **DEATH SENTENCE NO. 04/2010**

STATE

..... Appellant

Through: Mr. Rajesh Mahajan, ASC

Versus

NAVIN AHUJA

..... Respondent

Through: Mr. S.P. Mehta, Advocate

+ **CRL.A. 1435/2010**

NAVIN AHUJA

..... Appellant

Through: Mr. S.P. Mehta, Advocate

versus

NCT OF DELHI

..... Respondent

Through: Mr. Rajesh Mahajan, ASC

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE PRATIBHA RANI

MS. JUSTICE PRATIBHA RANI

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1. To comply with the mandate of Section 366, CrPC requiring confirmation of death sentence by High Court, the impugned judgment

dated 22.09.2010 and the order on sentence dated 06.10.2010 awarding death penalty to the appellant for committing triple murder, was sent to this Court for confirmation. The Trial Court also convicted the Appellant/accused for committing the offences under Sections 25 and 27 of the Arms Act, and imposed a sentence of 3 years rigorous imprisonment, each in respect of those offences, and directed them to operate concurrently. Feeling aggrieved from the impugned judgment, the convict/appellant also preferred appeal No.1435/2010 challenging his conviction and order on sentence awarding him extreme penalty.

2. While dealing with the death reference and the connected appeal, a duty is cast upon this Court to reappraise the evidence and judgment of the Court of Sessions to satisfy itself about the guilt or innocence of the accused person. In a case reported as ***Juman & Ors. v. State of Punjab AIR 1957 SC 469***, while considering the scope of Sections 366 to 368 CrPC, in para 12 of the judgment, it was observed as under :-

“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, 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. Sh. S.P. Mehta, Advocate for the appellant and Sh. Rajesh Mahajan, Addl. Standing Counsel for the State have taken us through the testimony of the prosecution witnesses and also referred to the documents prepared and exhibits recovered during the course of investigation and proved during trial. Since the entire case of the prosecution is based on circumstantial evidence which unfolded only on the basis of information given by the appellant to PS Dwarka, first of all, it is necessary to mention in nutshell the case of the prosecution as made out from the chargesheet.

Facts

4. The criminal law was set into motion by the appellant himself on 18.07.2005. DD no.10A (Ex.PW5/A) recorded at about 6.00 AM, at PS Dwarka was to the effect that the appellant, a resident of flat No.B-702, Jagran Apartment, Sector-22, Dwarka had confessed to his committing the murder of his wife and two children. The copy of the said DD entry was handed over to SI Rajnish who alongwith Ct. Mahavir left for the spot.

5. While SI Rajnish confirmed the incident, the PCR was informed as the place of incident was within the jurisdiction of PS Kapashera.

6. DD No.7A (Ex.PW6/A) was recorded at 6.15 AM on 18.07.2005 on the basis of information received through G-62 Wireless Operator, QST was produced before the Duty Officer, P.S. Kapashera containing the information given by the appellant to PS Dwarka. After receiving DD

No.7A at 6.15 AM, SI Mohinder Singh along with Ct. Tajender Prakash and Ct. Prem Prakash left for the spot. SHO Inspector Ramesh Chander was apprised of the incident/crime and he also left in his official vehicle with Driver Raghubir Singh.

7. By endorsement Ex.PW21/D on DD Ex.PW6/A, Inspector Ramesh Chander sent the *rukka* for registration of the case mentioning therein that after reaching the spot, he found the dead body of the female child Manavi Ahuja lying on the eastern side and that of the male child Manav Ahuja on the western side on ground floor, Jagran Apartment. When he visited flat No.B-702, on the seventh floor, blood was found in a room, on the corner of the bedsheet. He also came to know that Meenu Ahuja, wife of the appellant had been taken by the PCR to DDU Hospital.

8. The crime team was informed and the spot was photographed. The dead bodies were sent to the Mortuary with a request for their preservation. Finding no eye witness, Inspector Ram Chander left SI Mohinder Singh and Ct. Prem Prakash to guard the spot, and went to the DDU Hospital. He obtained MLC of Meenu Ahuja which stated that she was 'unconscious' with a gunshot wound; he came to know that she had been taken to Apollo Hospital. In the circumstances of the case, he directed the Duty Officer to register a case under Sections 302/307 IPC and 25/27 Arms Act.

9. SI Jagpal Singh was sent to Apollo Hospital who learned that Meenu Ahuja was 'unfit for statement'. She was declared brain dead on

21.07.2005. Postmortem on the bodies of Manav and Manavi was conducted on 19.07.2005 and of Meenu on 21.07.2005 at DDU Hospital.

10. During the investigation, the appellant was also interrogated and on the basis of his disclosure statement, a pistol was got recovered by him from the washing machine placed in balcony of his flat. He was also questioned about how he had procured the weapon, and thereafter Devender Kumar, from whom the pistol was purchased, too was arrested. Thereafter, the exhibits were sent to FSL. After completion of investigation, Navin Ahuja was sent up for trial for committing the offences punishable under Sec.302 IPC and 25/27 Arms Act and Devender Kumar was arraigned for committing the offence punishable under Sec. 25 Arms Act.

11. At the stage of charge-framing, Devender Kumar was discharged; however, the appellant was charged for committing the aforesaid offences. He pleaded not guilty and claimed trial.

12. Since there was no eye witness and the case is based on circumstantial evidence, the prosecution examined 27 witnesses to complete the chain of circumstances for proving that it was the appellant who committed murder of his wife and two children.

13. First of all, we would narrate the testimony of PW-9 HC Rajpal Singh who was posted as Duty Officer at PS Dwarka at the relevant time. He testified that on 18.07.2005 at about 6.00 AM the appellant came to the

police station. The information given by him about commission of murder of his wife and two children was recorded by DD No.10A (Ex.PW5/A), copy of which was handed over to SI Rajnish. SI Rajnish telephonically confirmed the information to him and thereafter sent it to the Control Room through a Wireless Operator. During cross examination, he denied the suggestion that the appellant informed that his wife had killed his two children and attempted to kill him and that he had run away from home to lodge the complaint. He also denied the suggestion that SI Rajnish informed him that the accused's wife had died and no proceedings or interrogation of the appellant was required and for that reason, he was not interrogated by any officer of PS Dwarka.

Prosecution Evidence

14. PW-5 SI Rajnish Yadav is the police officer first to visit the spot after receipt of DD No.10A (Ex.PW5/A). His statement is to the effect that when he reached the spot, he noticed two dead bodies, one of a boy and another of a girl aged between 7 to 9 years, lying on the ground floor. On entering flat No.B-702, Jagran Apartment, he saw a lady lying on the bed with blood oozing out from her head. He immediately telephoned the Duty Officer confirming the incident of murder in those premises. As the place of occurrence was in the jurisdiction of PS Kapashera, on arrival of police officer from concerned police station, he returned.

15. PW-1 Sh. Pradeep Batra and PW-2 Sh. Anil Batra are brothers of

deceased Meenu Ahuja, who identified her dead body and the bodies of Manav and Manavi Ahuja. PW-1 also identified the *salwar-kameez* Ex.P1 and P2 of his sister Meenu Ahuja which she was wearing at the time of incident. During cross examination, PW-1 denied the suggestion that Meenu Ahuja was depressed and had developed suicidal tendencies or that because of shifting to a rented accommodation, she was depressed.

16. PW-20 SI Virender Singh (Retd.) was working as Duty Officer on the night intervening 17/18-07-2005. He recorded DD No.7A (Ex.PW6/A) on the basis of a message received through a Wireless Operator. This DD was handed over to PW-6 SI Mohinder Singh, who, along with PW-19 Ct. Tajender Prakash left for the spot.

17. PW-18 HC Jagdish Prasad, another Duty Officer posted at PS Kapashera at the relevant time, recorded the FIR Ex.PW18/A on the basis of *rukka* Ex.PW18/B sent by SHO Inspector Ramesh Chander through Ct. Prem Prakash. He also sent the copies of the FIR through Special Messenger PW-11 Ct. Vijender to senior officers.

18. PW-8 Dr. Sameer Kapoor was posted at DDU Hospital when Meenu Ahuja was brought to the Casualty by ASI Surjeet Singh with alleged history of being found unconscious at home. After examining her and mentioning the injuries on her body i.e. (1) 0.25 cm wound with surrounding 1 cm, diameter with blackening which was bone deep on face 2-3 cm. (sic. gunshot?) (2) two linear abrasions around front of neck, he

prepared the MLC Ex.PW8/A. In cross examination, he admitted that since he was unsure if injury No.1 was by gunshot, he put a question mark before it.

19. PW-25 Dr. Pranav Kumar, Sr. Consultant, Neuro Surgeon, Apollo Hospital deposed that Meenu Ahuja was under his treatment after she was taken to that hospital on 18.07.2005 at 9.36AM. He proved the death summary as Ex.PW26/A (it was prepared by him) declaring Meenu Ahuja 'brain dead' on 21.07.2005 at 10.45 AM. He stated that the brief clinical summary Ex.PW26/B was prepared by Dr. Abhishek Jain whose handwriting and signature were identified by him. In reply to a Court question, he replied that Meenu Ahuja did not regain consciousness from the time she was admitted in the hospital on 18.07.2005 till her death on 21.07.2005. In reply to the question put in cross examination, he informed that as per hospital records Ex.PW26/D1, she had been admitted by her brother Shri Sushil Batra.

20. PW-3 Dr. L.K. Baruah conducted postmortem on the bodies of Manavi, Manav and Meenu Ahuja and proved the postmortem reports prepared by him as Ex.PW3/A to C respectively. The postmortem reports list the cause of death in respect of all the three as follows :

Manavi :

*'Injuries are ante-mortem.
Injury to neck was caused by soft ligature material.'*

*Death due to cumulative effect of all injuries.
Time since death about 36 hours'.*

Manav :

*'Injuries are ante-mortem.
Possible fall from height/thrown from height.
Death due to cumulative injuries.
Time since death about 36 hours.'*

Meenu Ahuja :

*'All injuries are ante-mortem.
Injury No.1 & 2 may have been caused due to scuffle.
.....
Death due to craniocerebral damage by the bullet.
Time since death about 6 hours.'*

While denying the suggestion (during cross-examination) that Meenu's injuries were due to suicide, he gave the following reasons for terming it as homicidal:-

- (i) The site of the wound is not a common site of committing suicide.
- (ii) The direction of the bullet also do not suggest suicidal in nature.
- (iii) The presence of scuffle marks mentioned in the report suggest homicidal in nature.

Thus, the postmortem report indicates that the cause of death of Manavi, Manav and Meenu Ahuja was homicidal. The postmortem reports assume lot of significance in view of the theory of suicide by Meenu Ahuja after

committing murder of Manav and Manavi as propounded by the appellant.

21. Now adverting to the investigation conducted by PW-21 SHO Inspector Ramesh Chander, PS Kapashera, witnesses associated from that police station are PW-6 SI Mohinder Singh, PW-7 Ct. Prem Prakash, PW-10 Ct. Hari Kishan, PW-12 SI Jagpal Singh (Retd.) and PW-19 Ct. Tajender Prakash. PW-6 SI Mohinder Singh was assigned DD No.7A Ex.PW6/A who alongwith PW-7 Ct. Prem Prakash and PW-19 Ct. Tajender Prakash reached the spot and met PW-5 SI Rajnish Yadav from PS Dwarka who was guarding the spot till arrival of officers of Police Station Kapashera. In the meantime, since it was a murder case and investigation was required to be carried out by an officer of Inspector level, PW-21 Inspector Ramesh Chander, SHO, PS Kapashera also reached the spot in his official vehicle. He too requisitioned the services of PW-12 SI Jagpal and PW-10 Ct. Hari Kishan to assist him.

22. PW-19 Ct. Tajender Prakash was sent to DDU Hospital with the dead bodies of Manav and Manavi with the request to preserve them.

23. PW-12 SI Jagpal Singh and PW-10 Ct. Hari Kishan were sent to PS Dwarka to keep watch on the appellant as he was not arrested in the case till then. PW-12 SI Jagpal Singh, deposed that he was telephonically informed by IO PW-21 Inspector Ramesh Chander to visit Apollo Hospital to seek opinion about the fitness of Meenu Ahuja. The application Ex.PW12/A was given to the doctor at Apollo Hospital seeking opinion about her fitness.

She was declared 'unfit' for statement. Here it is pertinent to note that a contention was made on the encircled portion on Ex.PW12/A declaring her unfit, that no doctor with the name Dr. H. Rera was serving in Apollo Hospital. In view of the statement of PW-26 Dr. Pranav Kumar that she was brought unconscious and remained unconscious till declared 'brain dead' on 21.07.2005 at 10.45 am, this is of no significance especially when Pw-26 Dr. Pranav Kumar from Apollo Hospital was not questioned about Dr. H. Rera who declared Meenu Ahuja 'unfit'.

24. PW-14 Inspector Ajeet Singh is from the crime team who reached the spot on being requisitioned by SHO, PS Kapashera. He got the spot photographed through Photographer PW-4 Ct. Sunder Lal, inspected the spot and later on prepared the detailed report Ex.PW14/A. Here it is necessary to mention that the crime team report has been discarded by the Trial Court. But photographs were not disputed by the Appellant during examination under Sec.313 CrPC.

25. PW-16 SI Madan Pal is the Draughtsman who prepared the scaled site plan Ex.PW16/A of the spot.

26. PW-13 HC Rajinder Singh and PW-24 SI Mahender (Retd.) were members of the team which apprehended co-accused Devender on 19.07.2005, who has already been discharged.

27. PW-15 HC Ravinder Kumar is the MHC(M) who proved the

photocopy of relevant entries made in register No.19 regarding deposit of case property in the malkhana as Ex.15/A and B and also copy of the RC regarding sending of exhibits through PW-17 HC Jaswant Singh to FSL Kolkata. They stated that the exhibits were not tampered with in their custody.

28. PW-22 Dr. N.P. Waghmare, Sr. Scientific Officer (Ballistics) examined the pistol and cartridges and gave his detailed report as Ex.PW22/A.

29. PW-23 Sh. Pradeep Kumar, Jr. Scientific Officer (Biology) has examined the exhibits Ex.S1 to S3 i.e. blood, soil, blood gauze; Ex.P1(a) to P1(c) i.e. full pant, baby frock, panty; Ex.P2(a) to P2(d) i.e. sleeveless *baniyan*, (vest) *sando baniyan*, (vest) *pajama*, *panty*; Ex.P3 & Ex.P4 gauze pieces; Ex.P5(a) and P5(b) i.e. *shalwar kameez* and Ex.P7 i.e. guaze piece, serologically and biologically and proved the reports as Ex.P23/A and B respectively.

30. PW-25 Ms. Shalini Singh, DCP accorded sanction under Section 39 Arms Act for prosecution of the appellant for possessing a pistol. The sanction order is as Ex.PW25/A.

31. PW-27 Sh. Sukhbir Singh, SDE (Legal), BSNL, Faridabad was examined to prove the call details record of landline telephone No.0129-2269870 installed at house No.1273, Sector-9, Faridabad in the name of Mr.

Kharaiti Lal Batra and he proved the copy of the application form submitted by the Applicant as Ex.PW27/A. The call detail records of mobile phone of the appellant (No.9891984444) to the landline connection No. 0129-2269870 on 18.07.2005 were admitted by him (i.e. the appellant) by statement made by his counsel on 04.06.2010.

32. PW-6 SI Mohinder Singh was the police officer to whom DD No.7A (Ex.PW6/A) was assigned for necessary action and PW-21 Inspector Ramesh Chander, the investigating officer also reached the spot. They are the most material witnesses regarding investigation of this case.

33. PW-6 SI Mohinder Singh not only saw the bodies lying on the ground floor, but after arrival of the SHO also visited flat No.B-702, Jagran Apartment. He testified that after reaching the spot with Ct. Prem Prakash and Ct. Tajender Prakash he saw the bodies of the two children, and came to know that their names were Manav and Manavi Ahuja. After reaching the 7th floor at Flat No.B-702, he found SI Rajnish Yadav and Ct. Mahavir already present there.

34. He deposed to noticing (after entering the scene of occurrence) that the bedsheet was blood stained and Meenu Ahuja had been taken to the hospital by PCR. SHO sent the dead bodies of Manav and Manavi to DDU Hospital Mortuary and requisitioned the crime team. No eye witness was found at the spot. Then SHO had also gone to DDU Hospital leaving him and Ct. Prem Prakash at the spot and after returning from DDU Hospital,

SHO sent the *rukka* through Ct. Prem Prakash.

35. Thereafter he lifted the samples of blood and earth control from the spot and sealed and seized the same by memos Ex.PW6/B and C respectively. The bed sheet was seized by memo Ex.PW6/D. From the spot, he, the IO and other staff reached PS Dwarka where the appellant was interrogated and arrested by memo Ex.PW6/E. His personal search was conducted by memo Ex.PW6/F. He made disclosure statement Ex.PW6/G. Later, they, along with the appellant went to his flat where he pointed out towards the washing machine lying on the western side of the balcony; he led to recovery of a pistol hidden under the clothes lying in the washing machine.

36. The SHO removed the magazine of the pistol which contained two live cartridges and one cartridge in the chamber (of the pistol). On removing the chamber in the cartridge, it was found to be used. After taking the measurements, sketch Ex.PW6/H was prepared and the same was sealed with the seal MSD and seized by memo Ex.PW6/I.

37. On getting the information on 21.07.2005 regarding the death of Meenu Ahuja, IO sent PW6 to Apollo Hospital (DD No.28-B). When he reached the hospital, he was handed over the clothes of the deceased by PW-1 Sh. Pradeep Batra (to whom the *pullanda* was given by CMO, Apollo Hospital) which was seized through memo Ex.PW1/A. He brought the dead body of Meenu Ahuja to DDU Hospital Mortuary and prepared the inquest

papers Ex.PW6/J (Colly.) and handed them over to the Autopsy Surgeon. The dead body was also identified by PW-1 Sh. Pradeep Batra and PW-2 Sh. Anil Batra, brothers of Meenu Ahuja by their statements Ex.PW1/C and Ex.PW6/K respectively. The Autopsy Surgeon handed over to him one small bottle containing the bullet taken from the body of Meenu Ahuja during postmortem along with blood sample of the deceased duly sealed with the seal of LKB seized by memo Ex.PW6/L. Thereafter, he returned to the police station and deposited the case property in the Malkhana and handed over the file to the SHO. He has identified the *shalwar-kameez* Ex.P1 and P2, pistol Ex.P3, fired cartridge Ex.P4, two exhausted cartridges Ex.P5 and P6, bullet-lead Ex.P7 and bed sheet Ex.P8 seized in this case.

38. PW-21 Inspector Ramesh Chander, the investigating officer reached the spot after receiving information contained in DD No.7A (Ex.PW6/A), copy of which had been earlier assigned to PW-6. He saw the bodies of the two children lying on the ground on eastern and western side of the flat. He summoned SI Jagpal and Ct. Hari Kishan, informed the crime team and photographer to reach the spot. On reaching the 7th floor flat No.B-702, they found SI Rajnish and Ct. Mahavir at the main door. On entering the flat, in one room, blood was found on the corner of the bedsheet of the doublebed. The crime team also arrived in the meantime, inspected the site and took photographs. He sent SI Jagpal and Ct. Hari Kishan to PS Dwarka to supervise the appellant who was detained there.

39. He sent the bodies of Manav and Manavi Ahuja through PW-19 Ct.

Tajender Prakash to DDU Hospital Mortuary with a request to preserve them. On receiving DD No.13B Ex.PW21/B regarding admission of Meenu Ahuja in DDU Hospital, leaving SI Mohinder Singh and Ct. Prem Prakash at the spot, he visited DDU Hospital where he came to know that she had been shifted to Apollo Hospital by her relatives. He was handed over two gold bangles and one gold chain by the Duty Constable which were seized by memo Ex.PW21/C. He again returned to the spot.

40. On not being able to find any eye witness, he made endorsement Ex.PW21/D on DD No.7A and sent the *rukka* through Ct. Prem Prakash for registration of the case. He prepared the site plan Ex.PW21/D and also telephonically directed SI Jagpal Singh, who was present in PS Dwarka, to reach Apollo Hospital leaving the appellant under the care of Ct. Hari Kishan. After getting the copy of FIR Ex.PW18/A, from the flat of the appellant, the bed sheet was sealed with the seal of MSD and seized by memo Ex.PW6/D. Blood and earth control samples were collected from the ground where body of Manav Ahuja was found lying.

41. After completing spot investigation, the team headed by SHO reached PS Dwarka and after recording the statement of PW-5 SI Rajnish and PW-9 HC Rajpal of PS Dwarka, he interrogated the appellant in the room of Addl. SHO, arrested him through memo Ex.PW6/E and conducted his personal search through memo Ex.PW6/F.

42. During interrogation, the disclosure statement Ex.PW6/G was made

by the appellant and he led the police party to his flat; this led to recovery of a pistol from underneath the clothes in the washing machine kept in the balcony of his flat. The Investigating Officer checked the chamber of the pistol and found an empty cartridge hinged in the chamber and took it out by applying some pressure and saw that it was a fired cartridge. On the base of both the live cartridges and the fired cartridge, 7.65 KF was found engraved and the pistol, had the inscription "*made in England 1748 BR.32*". He prepared the sketch Ex.PW6/H and sealed the *pullanda* containing the cartridge and pistol with the seal of MSD and seized the same through memo Ex.PW6/I. He handed over the seal to SI Mohinder Singh (No.D-2997) and they all returned to PS Kapashera and accused was put in the lock-up.

43. Further investigation pertaining to date 19.07.2005 leading to the arrest of co-accused Devender is not discussed as that accused was discharged.

44. On 19.07.2005 inquest proceedings Ex.PW21/H were completed and death report Ex.PW21/I was prepared and after getting dead bodies of Manav and Manavi identified, the witness got the postmortem conducted and thereafter handed over the dead bodies to their relatives through receipt Ex.PW19/A. Exhibits preserved by the doctor during autopsy were sealed with the seal LKB with two sample seals and were seized through memo Ex.Pw21/K. Thereafter appellant and the co-accused were produced in the Court and sent to Judicial Custody. The exhibits were deposited in the

malkhana in in-tact condition. Copy of the DD No.10A of PS Dwarka dated 18.07.2005 was obtained and kept on record.

45. On 21.07.2005, upon getting information of death of Meenu Ahuja, PW-6 SI Mohinder Singh was deputed to visit Apollo Hospital and get her postmortem conducted; this was done at DDU Hospital. The witness seized the exhibits given at the time of postmortem and handed over the file to him. He also collected crime team report Ex.PW14/A with photographs Ex.PW4/1 to 4/16. Postmortem reports Ex.PW3/A to C of all the three deceased were also collected and exhibits were sent to FSL for expert opinion. He also got the scaled site plan Ex.PW16/A prepared. He obtained the sanction under Sec.39 Arms Act, also obtained the FSL result and placed the same in the Court. He has identified the pistol Ex.P3 and cartridges Ex.P4 to P6, bed sheet Ex.P8, earth control and sample blood gauze Ex.P9 and P10. One gold chain and two gold bangles Ex.PW21/A to C were also identified by him.

Statement under Sec.313 CrPC

46. In the statement recorded under Sec.313 CrPC, the appellant denied the case of prosecution including the fact that he had surrendered before the Duty Officer, PS Dwarka informing him (police officer) about commission of his wife's murder and two children by him. The defence version put forward on behalf of appellant is that due to the sale of the ancestral house and shifting to a rented accommodation, his wife was upset and wanted to

go to her parental home with the children. He stated that on 18.07.2005, when he woke up at about 5.00 AM, he found his son Manav was not on his bed and went to other room where his wife Meenu Ahuja was sleeping with Manavi. On not finding them there, he went towards the balcony of Meenu's room and saw her coming out in anger. On being questioned about the children, she stated that she had killed both of them and would kill him too. She hurriedly went inside the room took out the pistol from under her pillow and pointed towards him.

47. While trying to explain *ante-mortem* injuries, referred in the postmortem report, on the neck of Meenu Ahuja, he stated that he pushed her, came out of the room and locked her inside the bedroom. Thereafter, he shook his mother, who was sleeping, asking her to be careful. He ran downstairs and saw the bodies of his children. He rushed towards the main gate, told security guard to inform his family about the children and himself reached the Police Station. The Duty Officer was informed that his wife had killed both the children and also tried to shoot him and as his mother and sister were present at home, they should go and save them. The Duty Officer, PS Dwarka sent one police officer to confirm about the incident and he was asked to sit on one side of the Police Station Dwarka.

48. He admitted that the incident was confirmed telephonically to the Duty Officer by the officer who was sent to the society. But it was that Meenu killed the children and committed suicide. He was made to sit at PS Dwarka till afternoon. From there, he was taken to PS Kapashera and put in

the lock-up. In the evening, when his brother-in-law Pradeep Batra went to PS Kapashera and talked to him, he also apprised him that Meenu had thrown the children from balcony but he blamed the appellant for the incident. His signatures were taken on 3-4 blank papers by the police at PS Kapashera and thereafter he was produced before the Court and sent to Jail.

49. Certain Court questions were put to the appellant during his examination under Sec.313 CrPC regarding height and weight of his wife, children; and his height and weight and how after seeing his children lying on ground he concluded that they were dead and why he did not try to find out the truth of the statement of his wife that she had killed the children.

50. After giving height and weight of his wife and children, he explained that as both children were not responding, he concluded that they were dead and that he had no time to question his wife as she pointed the pistol at him. On being further questioned as to, why, after locking Meenu, he did not raise alarm, he explained that his mother and sister required the security. He stated that only he and his wife were in the room of the flat at 7th floor. So he did not raise any alarm and further that he was in a state of shock so ran to the police station for help. To the Court's question as to why he did not inform the police from his house or from society or ask the security officer or other residents of the society to telephonically inform the police, the explanation given by him was that he had shifted to the said flat only one day before and no landline was installed. When questioned about his mobile phone, he answered that it was in his bedroom where his wife was

locked. He was also questioned that after locking Meenu inside the room, why he did not tell his mother that Meenu had killed both the children and also attempted to fire at him, the answer given was that his mother was sleeping and he hurriedly went out of the room to see his children as entrance door was just close to that room.

51. Initially the appellant wished to lead evidence in defence but subsequently his counsel made statement on 11.11.2009 to close the defence evidence as the same was not required.

Appellant's contentions

52. Sh. S.P. Mehta, Advocate submitted that in the present case the appellant who lost his wife and two children, was not only made an accused but also convicted and sentenced to death. The appellant had gone to Dwarka Police Station in his *baniyan* (vest) and bermudas. If he had any intention to surrender of his own after committing the offence, he would not have been so dressed and also would have carried the pistol with him to surrender the weapon of offence. There was no need for him to conceal the weapon in the washing machine. The recovery of pistol at his instance is doubtful as no independent witness was joined by SHO at the time of alleged recovery of pistol from the washing machine.

53. It has been further contended that the appellant shifted in that house on 16.07.2005 i.e. just two days before the incident and was unknown to the

neighbours. He could not, therefore, inform any of them about the occurrence. So, after seeing the dead bodies of his two children lying on the ground, he informed the security guard to inform his family, and he himself reached the police station.

54. Ld. Counsel contended that merely because appellant was the informant and the Duty Officer recorded the DD No.10/A (Ex.PW5/A) regarding his confession of committing triple murder i.e. murder of his wife and two children, in view of the law laid down in *Aghnoo Nagesia's case*, the same is inadmissible in evidence. A more plausible explanation has been given by him which is also supported by the postmortem report which revealed injuries on the neck of Meenu Ahuja. This corroborated that after committing murder of the children, she attempted to kill the appellant and in scuffle, when he tried to save himself and pushed her, she suffered those abrasions and when the appellant had gone to PS Dwarka to seek security, she committed suicide. Thus, it is a case of murder of two children by Meenu and thereafter commission of suicide by her.

55. It was further contended that the prosecution failed to prove the complete chain of circumstances and failed to lead any relevant evidence of the events dated 18.07.2005 as they would have falsified the case of prosecution and whatever evidence adduced, is contrary to the documentary materials brought on record.

56. The judgment of Trial Court is based mainly on the statement under

Sec.313, CrPC which could not have formed basis of conviction.

57. Considerable emphasis was placed on the fact as to in whose handwriting the documents were prepared as no member of the team had written those documents. It was argued that if documents Ex.PW6/B to D were prepared at the spot in the presence of team members PW-6, 7, and 21 from PS Kapashera then none of them had written those documents. These exhibits were in the handwriting of PW-24 SI Mahender Singh who was not part of the investigating team on 18.07.2005. The prosecution failed to prove the recovery of pistol at the behest of appellant as no public witness was joined at the time of seizure of the pistol from the washing machine and it was sealed with the seal MSD whereas PW-24 SI Mahender Singh to whom the seal belonged, was not member of the team dated 18.07.2005 and these aspects have not been dealt in correct perspective by Id. Trial Court.

58. Sh. S.P. Mehta, Id. Counsel contended that most of the documents prepared on 18.07.2005 are in the handwriting of PW-24 SI Mahender Singh who, in fact, joined the investigation only on 19.07.2005 which further proves the fabrication of the case by the prosecution.

59. It was urged that report of crime team headed by Inspector Ajit Singh (PW-14) who mentioned about only one cartridge found at the spot and contradicted the theory of prosecution, has been rejected by the Court without any basis. The bedsheet Ex.PW6/D containing blood only on one corner shows that it is not crushed at all as would have been the case if

somebody had slept on it, shows that it was planted just for the sake of photograph.

60. Challenging the contents of disclosure statement regarding financial crisis to be the motive for crime for the appellant, it was submitted that appellant had sold his house in Gautam Nagar in South Delhi just few days before and in order to deliver the vacant possession, he shifted to B-702, Jagran Apartment. Even the sale deed was executed by him when in judicial custody. He had a sweets shop in Satya Niketan and he had received part of the sale consideration before this occurrence and the remaining amount was to be received by him at the time of execution of sale deed on 19.07.2005. Thus, he was under no financial stress as to commit the murder of his own wife and children. Thus, the prosecution failed to prove the motive which is very crucial in a case based on circumstantial evidence.

61. Referring to the discrepancies in the site plan Ex.PW21/D which was supplied to the appellant in compliance of Sec.207 CrPC and site plan Ex.PW21/D1, it was submitted that both were not identical and not signed by the witnesses who had accompanied the IO. In one site plan, point-D was marked as the place where appellant admitted to killing, to his mother which shows that this site plan was prepared after arrest of the appellant in PS Kapashera in accordance with the disclosure statement Ex.PW6/D and the discrepancy has been ignored by the Trial Court.

62. Referring to the arrest memo and personal search memo Ex.PW6/E and F, it was contended that according to the IO, the mother of the appellant was present in the police station but the documents were not witnessed by her and there is Court's observation that the date and time had been filled later on and the IO also stated that at the time of arrest, appellant was in *baniyan* and Bermudas.

63. It was further contended that the MLC of Meenu Ahuja Ex.PW8/A prepared at DDU Hospital contains an observation that the patient absconded and PW-21 Inspector Ramesh Chander failed to explain his source of knowledge about her shifting to Apollo Hospital. He referred to the memo Ex.PW21/D regarding seizure of gold bangles and chain of Meenu from DDU Hospital which contained the FIR number which could not have been there as by that time, FIR was not registered. It was also highlighted that Ex.PW21/C was not in the handwriting of IO PW-21 Inspector Ramesh Chander. Also, according to PW-21, documents Ex.PW6/F were prepared in the handwriting of PW-6 and 7 which was not confirmed by them. Thus, none of the documents referred to by him is in the handwriting of the team members who were associated with the investigation of the case on 18.07.2005.

64. It was also contended that DD No.10A (Ex.PW5/A) referred to the murder of the wife and two children whereas the wife had died on 21.07.2005 and in that circumstance, when the wife was still alive, the appellant could not have confessed to her murder. This, counsel stated,

strengthens the defence version that after committing murder of two children, she committed suicide.

65. As per prosecution case, 15 exhibits were sent to the FSL, however as per report of FSL, only 11 exhibits were received.

66. One contention of Id. Counsel for the appellant is that though the photographs of the spot taken by the Crime Team show that security guard and public persons were available at the spot, none of them was joined to witness the proceedings carried out at the spot.

67. While making submission on the death reference, Sh. S.P. Mehta, Advocate submitted that the appellant being husband of Meenu Ahuja and father of Manav Ahuja and Manavi Ahuja having absolutely no motive to kill them, deserves to be acquitted in a case based on circumstantial evidence. However, if this Court feels that it is not a case of acquittal, then definitely this case does not fall under the category of rarest of the rare cases so as to invite death penalty for him. In support of his contention, he has relied upon the judgment of Division Bench of this Court in the case ***Raj Kumar Khandelwal v. State 164 (2009) DLT 713*** wherein, after being convicted for committing the murder of wife and three daughters in a hotel, the Trial Court awarded death penalty to the appellant. This Court in death reference did not confirm the death sentence and commuted the same. He submitted that present appellant does not deserve any different treatment.

State's submissions

68. On behalf of State, Sh. Rajesh Mahajan, Id. Addl. Standing Counsel has submitted that the informant is the appellant himself and in view of the legal position in *Aghnoo Nagesia's case*, his statement to the extent that it led to discovery of facts or recoveries, is admissible. It has been submitted that no doubt the case is based on circumstantial evidence but the chain of the circumstances proved by the prosecution and considered by Id. Trial Court conclusively point at the hypothesis that it is only the appellant who is perpetrator of the crime. Referring to the place of incident as appellant's flat and victims, his wife and two minor children, it has been submitted that when the appellant admitted to his presence in the flat on the night intervening 17/18-07-2005, it is for him to explain how his wife and two children died. Referring to the contention regarding discrepancy in the site plan and also on the aspect as to in whose handwriting documents Ex.PW1/A, Ex.PW1/C, Ex.PW6/B to Ex.PW6/L were prepared and it has been pointed out that the said documents have been proved by the concerned witnesses and signed by the IO.

69. So far as discrepancy in site plans Ex.PW21/D and D1 is concerned, it was submitted that the witness was not confronted with it. Further, while answering questions under Sec. 313 CrPC pertaining to gunshot injury on Meenu, he failed to mention that he prevented her from committing suicide. False answers given by him during examination under Sec.313, CrPC serve additional link.

70. Supporting the death sentence awarded to the appellant, it was submitted by the Addl. Standing Counsel that murder was committed of innocent and helpless children in a brutal manner, and of his own wife using a pistol which must have been arranged by the appellant in advance. This indicated premeditation before committing the crime and in the given circumstances, the only penalty called for is death sentence. Ld. Addl. Standing Counsel has relied upon *Ajit Singh Harnam Singh Gujral v. State of Maharashtra* 2011 (4) JCC 2482. *Sudam v. State of Maharashtra* 2011 (7) SCALE 415; *Jagdish v. State of M.P.* 2009(4) Crimes 72 (SC); *Babloo @ Mubrik Hussain v. State of Rajasthan* (2006) 13 SCC 116; *State of Rajasthan v. Kheraj Ram* 2003 SCC (Cri) 1979; *Ravji @ Ram Chandra v. State of Rajasthan* 1996 SCC (Cri) 225; *Uma Shankar Panda v. State of M.P.* 1996 SCC (Cri) 543; *Suresh Chandra Bahri v. State of Bihar* (1995) SCC (Cri) 60; *Bheru Singh v. State of Rajasthan* (1994) 2 SCC 467; *Bachan Singh v. State of Punjab* 1980 SCC (Cri) 580; *Machhi Singh & Ors. v. State of Pubjan* (1983) 3 SCC 470 in support of his contentions.

Discussion by Court

71. Before dealing with contentions of the appellant and the reappraisal of evidence, we would set out certain facts which the prosecution proved and which are not disputed by the appellant:-

(i) Sale of ancestral house situated at Gautam Nagar, New Delhi by the

appellant; he as well as his family shifting to rented accommodation i.e. B-702, Jagran Apartment on 16.07.2005 to enable him to handover the vacant possession at the time of completion of transaction.

(ii) Death of Manav and Manavi Ahuja on 18.07.2005 and recovery of their dead bodies lying on western and eastern side respectively on the ground of Jagran Apartment.

(iii) 'Brain death' of Meenu Ahuja and she being declared 'brain dead' on 21.07.2005 at 10.45 am at Apollo Hospital.

(iv) Arrival of appellant in PS Dwarka at about 6.00 am and his giving information to Duty Officer about the incident at B-702, Jagran Apartment (At this stage we are not touching the contents of DD No.10A) and visit of SI Rajnish to his flat.

(v) Confirmation of incident by SI Rajnish telephonically to Duty Officer, PS Dwarka.

(vi) As the place of occurrence was within jurisdiction of PS Kapashera, Control Room was informed and information recorded at PS Kapashera through DD No.7A and departure of PW-6 SI Mohinder Singh and SHO PW-21 Inspector Ramesh Chander for the spot.

(vii) Postmortem conducted on the bodies of Manav, Manavi and Meenu Ahuja by Dr. L.K. Baruah and cause of death in all the three cases as

‘unnatural’.

(viii) The appellant’s interrogation by SHO, PS Kapashera and his signatures on disclosure statement Ex.PW6/G, pointing out and seizure memo Ex.PW6/I about which at the stage of recording statement under Sec.313 CrPC, he claimed that his signatures were obtained on 3-4 blank papers. However, no complaint was made in this regard, immediately on his production in the Court after his arrest.

(ix) His arrest in this case on 18.07.2005 through arrest memo Ex.PW6/E and personal search through memo Ex.PW6/F.

(x) Identification of clothes of deceased Manav, Manavi and Meenu as well as gold chain and gold bangles.

72. After referring to the above referred undisputed facts, it is necessary to consider the version of appellant. It has to be noted that during trial, the incriminating evidence adduced by the prosecution was put to him in detail to enable him to explain each fact. While pleading innocence and giving reason for his visit to PS Dwarka, he claimed it to be a case of commission of murder of two children by his wife Meenu, attempt to kill him which he rendered unsuccessful by locking her in the room with pistol and commission of suicide by her due to depression and development of suicidal tendencies. This was also suggested to PW-1 Sh. Pradeep Batra which he denied.

73. There is force in the contention of ld. counsel for the appellant that the contents of DD No.10A (Ex.PW5/A) so far it relates to confession, cannot be looked. However, the portions of DD No.10A i.e. Ex.PW5/A to the extent it led to the discovery of fact and recovery, can be considered by the Court by virtue of Section 27 of the Indian Evidence Act. There is no bar on the Court from looking into the information given by a person who subsequently turns out to be offender himself. If law is needed on this point, reliance can be placed on *Faddi v. State of M.P.* 1964 (6) SCR 312.

74. DD No.10A (Ex.PW5/A) discloses the address of the appellant and murder of his wife and both the children. SI Rajnish from PS Dwarka who visited the spot, confirmed to the Duty Officer about the two bodies of the children lying, on the ground on eastern and western directions of the flat No.B-702. He also noticed one woman lay on the bed and blood oozing out from her head which he confirmed to the Duty Officer. It was only when Meenu was removed to DDU Hospital that some traces of life could be noticed by the doctor attending and only on 21.07.2005, she was declared 'brain dead'. The medical evidence proves gunshot injury and post mortem report proves that the bullet Ex.P7 recovered from the head was fired from the pistol Ex.P3. These circumstances lead to the conclusion that after she received gunshot injury from close range on the forehead, Meenu Ahuja must have been presumed to be dead, leading to the information recorded in DD No.10A (Ex.PW5/A). Recovery of the two bodies of Manav and Manavi Ahuja from the ground floor and Meenu lying unconscious with

gunshot injury on the forehead are facts discovered on the basis of information received by the police through DD No.10A and contents of the information to that extent are admissible.

75. The appellant also made disclosure statement on 18.07.2005 and the postmortem report of Manvi proves that she was strangled with some soft ligature material whereas cause of death of Manav Ahuja was due to fall from height/thrown from height. Thus, whatever was recorded in the disclosure statement made on 18.07.2005 regarding the manner in which death of Manav and Manavi Ahuja was caused stood confirmed from the postmortem conducted on 19.07.2005.

76. The weapon of offence i.e. pistol has been recovered from the washing machine on 18.07.2005 at the behest of appellant as per testimony of PW-21 Inspector Ramesh Chander, PW-6 SI Mohinder Singh and PW-7 Ct. Prem Prakash. Why the appellant had not taken the pistol alongwith him at the time of surrender, is a question which the prosecution cannot answer. Behavior of people under such circumstances cannot be expected to conform to any set pattern.

77. As far as not joining public witnesses at the time of recovery of pistol is concerned, the Court recollects that there is really no such legal prerequisite. [Ref. *State, (Govt. of NCT of Delhi) v. Sunil & Anr. (2001) 1 SCC 652*, which held that there is no requirement in law either under Section 27 of the Indian Evidence Act or under Section 161 CrPC to obtain

signatures of independent respectable persons of the locality on the statement made by the accused.] We would like to extract relevant paragraphs of the judgment:-

“20. In this context we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the CrPC, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code.”

78. Taking into consideration that there is no legal requirement to join independent public witnesses for the recovery effected on the basis of disclosure statement made by the accused, the recovery of the pistol Ex.P3 at the instance of appellant stands proved through testimony of PW-21 Inspector Ramesh Chander, PW-6 SI Mohinder Singh and PW-5 Ct. Prem Prakash, which are creditworthy. Recovery of the weapon of offence on the basis of disclosure statement Ex.PW6/G stands proved by the prosecution.

79. Now, turning to the admissibility of contents of the information Ex. PW-5/A. The appellant argued that the document was inadmissible; reliance was placed on the ruling in *Aghnoo Nagesia* (supra).

80. The earliest judgment on the point is *Nissar Ali v. The State of Uttar Pradesh*, AIR 1957 SC 366, where the Supreme Court outlined the position as follows:

“A First Information Report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under s. 157 of the Evidence Act or to contradict it under s. 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself comes an accused, nor to corroborate or contradict other witnesses. In this case, therefore, it is not evidence.”

81. In **Nagesia**, the court clarified the position as follows:

“If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by s.25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of s. 25 is lifted by s.27.”

82. The matter was put to rest, in the judgment reported as **Khatrī Hemraj Amulakh v. State of Gujarat, AIR 1972 SC 922**, where the Supreme Court held that:

“...no part of a first information report lodged by the accused with the police could be admitted into evidence if it was in the nature of a confessional statement. The statement could, however, be admitted to identify the accused as the maker of the report. The part of the information as related distinctly to the fact discovered in consequence of the information could also be admitted into evidence under Section 27 of the Indian Evidence Act if the other conditions of that section were satisfied.”

83. It is thus clear that if the first information report, or intimation of the crime, is by the accused, courts cannot look into portions containing confessional statements. However, the exception is that if the statement

contains reference to objects, facts or incriminating articles, which can, on their basis be recovered, those portions are admissible in evidence. In this case, learned counsel argued that the disclosure statement was recorded later, and the body was recovered earlier, and that the FIR does not contain any statement by the Appellant, volunteering to lead the police to any spot to recover articles or the body. This Court is of opinion that the latter submission is unfounded. The construction sought to be advanced for Section 27 of the Evidence Act, is unduly and illogically narrow. All that the provision requires is the mention of facts, leading to their recovery, or mention of details, which enable the police during investigation to recover objects or articles. So far as the first argument is concerned, the Court feels that it only requires to be rejected, because the DD Ex. PW5/A itself mentions the place of occurrence i.e. B-702 Jagran Apartment, where Meenu's body was lying on the bed with gunshot wound and the bodies of Manav and Manavi were lying in different directions on the ground in Jagran Apartment.

84. As to whether the recovery of a dead body stands on the same footing as the recovery of any other object, cannot be open to debate. The position was spelt out clearly in ***State of Maharashtra v. Suresh* (2000) 1 SCC 471** where the Supreme Court observed that:

"Three possibilities are there when an accused points out the place where dead body or an incriminating material was concealed without stating that it was concealed by him. One is that he himself would have concealed it. Second is that he would have seen somebody else

concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by him. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act."

85. Again, in ***Hosamani and Ors. Vs. State of Karnataka and Ors: (2009) 14 SCC 582*** where the dead body was recovered pursuant to disclosure of appellant from the canal, the Supreme Court held as under:-

"9. xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx

As regards accused Nos. 1 and 2, since the dead body of Namadev was recovered in furtherance of the voluntary information furnished by them, the natural presumption, in the absence of explanation by them is that it was those two persons, who had murdered Namadev and had buried the dead body."

86. On the basis of information contained in DD no.10A Ex.PW5/A and disclosure statement Ex.PW6/G dead bodies of Manav, Manavi were found, and Meenu was lying unconscious with gunshot wound. On the basis of disclosure statement Ex.PW6/G, the pistol was recovered from the washing machine. On the ratio of ***Ram Kishan Mithanlal Sharma v. State of Bombay, AIR 1955 SC 104 and State of Karnataka v. David Rozario***

(2002) 7 SCC 728, the information leading to recovery is admissible in evidence.

87. The conduct of the appellant in going to the police station in a vest and Bermudas, and not taking the weapon of offence with him is a conduct which the prosecution was not expected to explain. The appellant had shifted to the said flat just two days before and offence was not even committed within the jurisdiction of P.S. Dwarka.

88. The conduct of the appellant in himself going to the police station to inform about the occurrence was been explained by him stating that he was unknown to the neighbours who could inform about the occurrence, seeing the dead bodies of his children and the murderous attack on him by his wife with pistol, concern for the safety of his mother and sister, compelled him to visit the police station to seek security, after informing security guards of the society. This contention is unacceptable because when such a tragedy strikes a family, the office bearers of RWA of the society would normally provide necessary support to him if they were informed even through the security guard. The security guards have not been cited or examined as prosecution or defence witnesses. The appellant by all accounts simply walked out of the gate and reached PS Dwarka under the impression that the place of occurrence fell within the jurisdiction of that police station.

89. The entire case of the prosecution is based on circumstantial evidence. When the case of the prosecution rests on circumstantial

evidence, all circumstances should in the first place be conclusively proved; the circumstances so proved must unerringly point to the guilt of the accused; the circumstances proved must form a complete chain of evidence not to leave any reasonable ground for conclusion consistent with the innocence of the accused and the circumstances proved must be such that within all human probability the act must have been done by the accused.

90. ***Hanumant Govind Nargundkar & Anr. v. State of M.P.*, AIR 1952 SC 343**, is the basic judgment of the Supreme Court on appreciation of evidence, when the case depends only on circumstantial evidence, which has been consistently relied in later judgments. In ***Sharad Birdhichand Sarda v. State of Maharashtra***, AIR 1984 SC 1622, the three Judge Bench of the Supreme Court relying on *Hanumant Govind Nargundkar* (*supra*) set out the conditions which must be fulfilled before a case against the accused can be said to be fully established. The conditions are:

“1. The circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established,

2. All the facts so established should be consistent only with the hypothesis of the guilt of the accused.

3. 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.

4. 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

5. It must be such as to show that within all human probability the act must have been done by the accused.”

91. The occurrence took place in the four walls of the house of the appellant. The motive, as disclosed in the disclosure statement could not be confirmed through oral or documentary evidence. We have to deal with the facts and circumstantial evidence adduced by the prosecution, and consider whether the version put forward by the appellant that it is not him but his wife who is the perpetrator of the crime, is probable.

92. The version put forward by the appellant is that when he woke up and found his son Manav not on the bed, he went to the room where his wife alongwith his daughter was sleeping. He saw his wife coming from the balcony in anger and on being questioned about the children, she said that she had killed them and she would kill all. She took out a pistol from under the pillow, attempted to fire at him but was pushed inside the room by him and locked. Thereafter he tried to wake up his mother but then leaving her sleeping in, ran downstairs. Seeing the bodies of his two children lying on the ground, he went to the PS to report about the incident.

93. This version of the appellant is falsified as PW-5 SI Rajnish reached immediately to his flat and saw bodies of Manav and Manavi on ground. He did not see Meenu being locked in the bedroom as claimed. Instead, there was a gunshot injury on her forehead and blood was oozing out. He informed the Duty Officer, PS Dwarka. PCR was also informed and Meenu was removed to DDU Hospital in unconscious state by ASI Surjeet of PCR

as per MLC Ex.PW8/A. The postmortem report ruled out the case of suicide. PW-3 Dr. L.K. Baruah was cross examined at length to prove the gunshot injury to be suicidal. His conclusive opinion is that it is a case of homicide.

94. The appellant admitted that on the date of incident in the said flat (i.e. B-702, Jagran Apartment, which had earlier been taken on rent by him), he along with his wife, two children, mother and sister were residing. No outsider had accessed that room during the night intervening 17/18th July, 2005 when Meenu was removed to DDU Hospital and the dead bodies of Manav and Manavi were seen lying on the ground. Neither the prosecution nor the appellant examined his mother and sister though they were present in the flat at that night. PW-21 Inspector Ramesh Chander has given the reason for their non-examination that for obvious reasons, they would not go against their own son/brother. Though the Appellant initially wanted to lead defence evidence but opted not to examine any witness. They were not claimed to be suspects or eye witness by either side, hence the effect of their non-examination is neutral.

95. Another improbability in the version of the appellant is his reply to the question as to where was his mobile phone; that it was locked in the room of Meenu which is false.

96. It is said that the man may lie but not the circumstances. The call details in respect of mobile phone No.9891984444 and landline phone No.

0129-2269870 were summoned and admitted by the appellant to be correct. The itemized call details record shows mobile No.9891984444 was constantly in use on 18.07.2005 right since morning after 6.00 AM till about 1.00 pm and in the circumstances, it is for the appellant to explain that if his mobile was locked in the room of Meenu , (as claimed by him), then the question who was making the calls from that mobile, arises. This is especially so because by 6.15 AM SI Rajnish visited the spot and found Meenu unconscious with gunshot wounds. Definitely Meenu was not the caller from the mobile of appellant. It was also nowhere stated by the appellant that the phone was used by his sister/mother or by him. There was no other person present in the house and in these facts, the only inference that can be drawn is that the appellant himself was making the calls. Hence, his statement that he had to personally visit the PS as he was not having the mobile to inform the control room about the incident stands falsified. In the case of *Anthony D'souza Vs. State of Karnataka (supra)*, it was held that false statement under Section 313 Cr.P.C. completes the chain of circumstances. The call details record which has been admitted by the appellant is sufficient to conclude that a false answer has been given by him during his examination under Section 313 Cr.P.C.

97. The contention of the appellant that prosecution avoided to lead any relevant evidence of the events dated 18.07.2005 is unmerited as right from the stage of recording of DD No.10A (Ex.PW5/A) till adducing scientific evidence to prove the chain of circumstances connecting the appellant to the

crime, all evidence was collected and proved.

98. The contention of appellant that impugned judgment is based mainly on the statement under Section 313 CrPC, is unfounded as in his statement except the simpliciter denial and advancing theory of commission of murder of two children by his wife and then suicide, by him, no explanation was given. The Trial Court considered all the circumstantial evidences to base the conviction of the accused/appellant.

99. Ld. Counsel for the appellant devoted substantial time in arguing that the handwriting on Ex.PW1/A, Ex.PW1/C, Ex.PW6/B to Ex.PW6/L is not that of any team member. It proved that they were not prepared at the spot but subsequently in the police station by some other police officer, may be PW-24 SI Mahender Singh, who was not part of the team on 18.07.2005 (he joined investigation on 19.07.2005). It is sufficient in this context, to mention that the SHO himself was investigating the case with the assistance of other police officials of different ranks. At that time, his attention was not on the issue as to who was asked to do the writing work but to see the contents of the memo prepared on his directions and witnessed by the team members. We have seen Ex.PW1/A, Ex.PW1/C, Ex.PW6/B to Ex.PW6/L of the Trial Court record and find them to have been written in different hands. Therefore, the contention of counsel for the appellant that only PW-24 SI Mahender Singh has prepared the memos is unfounded. Even otherwise, for the case, the contents of the various memos prepared during investigation and their correctness had to be proved by the witnesses. It

cannot be ignored that witnesses appeared in the Court after lapse of sufficient time and as memory fades with the passage of time, it may not be humanly possible to remember the name of the police officials asked to scribe the documents. Investigation in a triple murder case, based on circumstantial evidence, required concentration, attention and energy on vital aspects of the case and not on the scribe.

100. So far as rejection of the report of the crime team by Trial Court is concerned, that would not exonerate the appellant for the simple reason that the jacketed bullet recovered during postmortem from the body of Meenu Ahuja on 21st July, 2005 was found to have been fired from the pistol Ex.P3 recovered at the instance of appellant on 18th July, 2005. It is true that if on account of any lapse doubts are created in prosecution case, the accused would be entitled to the benefit of that doubt. But, if the prosecution is able to establish its case beyond reasonable doubt against the accused in spite of the lapses, the accused cannot be acquitted because of such lapses unless they are so grave as to prove fatal to the charges.

101. The discrepancy referred to in the site plan Ex.PW21/D and D1 has been dealt with by the Trial Court in its correct perspective. The case of the prosecution is not based on eye witness account but on circumstantial evidence and the relevant portion of the site plan where Menu was lying unconscious with corner of the bedsheet soaked in blood as well as the places where bodies of Manav and Manavi were found lying, are corroborated by the photographs, correctness of which has not been

challenged. The site plan prepared by the IO was not required to be signed by any witness as it was based on the observations of IO himself.

102. Ld. Counsel for the appellant referred to the photographs of the bedsheet and submitted that it ruled out its being used for sleeping during night as it was not crushed and it also has some blood stains on it. The photographs depict that bedsheet was tightly placed under the mattress and that one corner of the bedsheet was blood soaked which could be the place where head of Meenu Ahuja was placed. By the time IO of this case reached the spot, Meenu Ahuja had already been removed to DDU Hospital by PCR and the appellant was sitting in the police station. The blood stains on the bedsheet have been found to be of human origin of blood group 'B' which is of Meenu. The date of seizure of bedsheet is 18.07.2005. So far as some other blood stains appearing on the bedsheet are concerned, (referred during the course of arguments), while being folded for purpose of seizure, the blood soaked portion was bound to come in touch with other portion of the bedsheet thus leaving blood stains there also.

103. The arrest memo and personal search memo Ex.PW6/E and F were prepared at PS Dwarka where the appellant himself had gone to give the information. No doubt in column 'name of the person informed' in the arrest memo, his mother has been referred and her signatures do not appear on the arrest memo but here the question is whether the appellant is denying his arrest and personal search in this case, obviously not. It has already been observed that mother and sister of the appellant were not examined

during the trial. According to the appellant, his sister and mother were present at home on the fateful day and in natural course of events, the mother could have been informed about his arrest. If mother is not a signatory to the document, it cannot be faulted as there was no legal requirement.

104. The contention made by the appellant counsel was that on the MLC Ex.PW8/A, the patient was shown as 'absconded from ward' at about 8.30 am and there was no basis for the IO to infer that she has been removed to Apollo Hospital. In this regard, the itemized call details are required to be mentioned which shows that mobile No.9891984444 was constantly in use on 18.07.2005 right since morning after 6.00 am till about 1.00 pm. Of course, we do not have the benefit of details of conversations that took place between the caller from this mobile phone and the person attending the call. However, the fact that Meenu was taken from DDU Hospital and admitted in Apollo Hospital by her brother Sh. Sushil Batra who completed the admission formalities in Apollo Hospital explains it. Instead of going into the technicalities 'patient absconded from ward', it can only be interpreted to mean that patient was removed from the hospital without getting formal discharge. Obviously, in view of her critical condition, her brother was more interested in saving her life by providing medical facilities at one of the best hospitals.

105. From the testimony of PW-8 Dr. Sameer Kapoor and PW-26 Dr. Pranav Kumar, it is established that right from the time of admission by

PCR in DDU Hospital till she was declared 'brain dead' in the Apollo Hospital, she did not gain consciousness. Hence, there was no question of patient absconding. So, this endorsement on the MLC Ex.PW8/A is of no benefit to the appellant.

106. The contention of the appellant regarding inadmissibility of DD No.10A (Ex.PW5/A) which refers to the murder of wife also apart from two children, though she was alive, is more for the purpose of challenging the confession made vide above DD. We also hold that the confession by informant, so far it is inculpatory and does not lead to discovery of fact or recovery of any object, is inadmissible in view of case law referred to above. Here the contents of DD No.10A regarding murder of wife though she was alive, led to the discovery of fact that she was found lying unconscious with gunshot wound on her forehead which was not found to be suicidal by PW-3 Dr. L.K. Baruah who conducted postmortem. She also had two injuries on her neck which were ante-mortem. The condition of Meenu Ahuja as described in her MLC Ex.PW8/A and death summary Ex.PW26/A is sufficient to infer that after causing gunshot injury, appellant presumed her to be dead, thus, leading to mention of murder of his wife, though it took three days to declare her 'brain dead'.

107. The exhibits in this case are the clothes of the deceased, blood and earth control, pistol and cartridges recovered. The statement of PW-15 HC Ravinder Kumar and PW-17 HC Jaswant Singh is sufficient to prove that exhibits were sent with intact seal and were so mentioned in the FSL report

by the examiner. The contention of Id. Counsel for the appellant that only 11 exhibits were examined though 15 were sent, is without any basis as remaining were sample seals required for comparison of seals only and not for examination. Such type of contention seems to have been made just to distract from the main case.

108. There is always some motive for commission of crime. In a case based on ocular evidence, motive loses significance; however, in a case based on circumstantial evidence, motive does become relevant but at the same time, saying that absence to prove motive would be fatal to prosecution, would amount to giving undue importance to it. In the latest report of the Supreme Court in *G. Parshwanath v. State of Karnataka*, (2010) 8 SCC 593; it was held that where the proved circumstances complete the chain of events, it cannot be said that in the absence of motive, the other circumstances are of no consequence.

109. In the instant case, financial distress and huge liability was described as motive in the disclosure statement Ex.PW6/G which could not be corroborated through any oral or documentary evidence. So we have to take this case where prosecution has not been able to prove the motive for the appellant to get rid of his own wife and two children but at the same time we may hasten to add that failure of the prosecution to prove the motive in no way weakens the chain of circumstances proved by the prosecution to establish his guilt.

110. Ld. Counsel for the appellant also referred to the discrepancies appearing in the testimony of various police officials associated with the investigation especially who informed the PCR. It is relevant to mention here that proceedings of Id. Trial Court reflect that the PCR record was destroyed. The mere fact that Meenu Ahuja was removed by ASI Surjeet of PCR as recorded in the MLC Ex.PW8/A prepared at DDU Hospital, statement of PW-9 HC Rajpal, Duty Officer, PS Dwarka about giving information to Control Room, statement of PW-20 SI Virender Singh, Duty Officer, PS Kapashera about the information received through wireless operator, remove the suspicion, if any, as to how the control room came to know about the occurrence, so as to take Meenu Ahuja to DDU Hospital. So far as other minor discrepancies appearing in the testimony of police officials are concerned, the same can be attributed to the loss of memory and relate to matters which are peripheral or trivial. The testimony of prosecution witnesses cannot be rejected on account of some minor variations especially when they are not on material aspects.

111. Regarding the contention of Id. Counsel for the appellant that though the photographs taken by crime team show that public persons were available at the spot, none of them was joined to witness the proceedings, suffice it to say that the occurrence was committed in the wee hours so much so that the residents were not even aware of lying of dead bodies of two children on the ground till the arrival of police. In that circumstance, when nobody had witnessed the occurrence, appellant came there to reside

just two days before, even the faces of the children might not be familiar to the other residents so as to connect them with the appellant. General attitude of the public to shy away in criminal cases to become witness especially when they have not witnessed the occurrence, explain the non-joining of the residents who can be seen in the photograph as mere spectators.

112. We notice that while DD No.10A (Ex.PW5/A) records time of arrival of appellant to inform PS Dwarka as 6.00 am, correctness of which is not disputed by the appellant, at the same time the admitted call detail record pertaining to mobile No.9891984444 of the appellant reveal that mobile was constantly in use on 18.07.2005 right since morning after 6.00 am till about 1.00 pm. A natural question arises from the above details that if at 6.00 am, he was sitting in the Police Station Dwarka and had already given the information, who was making/receiving calls on his mobile, which he alleged to have left in the room in which his wife was locked, during the above period.

113. The appellant has not claimed use of his mobile phone by any of his family members who were alive during that time i.e. mother and sister. It has also been established that Meenu Ahuja was lying unconscious on her bed at the time of recording of DD no.10A (Ex.PW5/A) and was not in fit condition to use the mobile phone of the appellant. In such circumstances, the conclusion can only be that the appellant was the person using the mobile phone.

114. After carefully considering the testimony of all police officials who were associated with the investigation of this case, as well as medical and scientific evidence, we find that testimony of prosecution witnesses is creditworthy and inspiring confidence. The police witnesses associated with the investigation had not only deposed in a consistent manner about the investigation being carried out in discharge of their public/official duty, it was carried out in a fair and unbiased manner. Rather the circumstances indicate that they were sympathetic towards the appellant who alleged the financial distress to be the cause.

115. Merely because the prosecution witnesses are police officials in itself is no disqualification or reason to discard their testimony. The Court may adopt a circumspect approach in considering their evidence, and scrutinize it with care; yet, there cannot be stereotypical assumptions about the quality of such evidence, which has to withstand the same tests, i.e of credibility and trustworthiness. Nothing was found in the cross examination of these witnesses which could throw any doubt about the consistency of their version. The cross examination of PW-21 Inspector Ramesh Chander, (the investigating officer) runs into 48 pages and despite this lengthy cross examination, the intrinsic worth of his testimony remained unchallenged and his testimony inspires full confidence.

Circumstances proved

116. Now we would synchronize the various circumstances we have found

to have been established beyond reasonable doubt and are sufficient enough to complete the chain of events in such manner that there is no escape from the conclusion that within all human probabilities, the appellant committed the crime:

Circumstance No.1

117. Appellant visited PS Dwarka at about 6.00 am and on the basis of information provided by him, PW-5 SI Rajnish Yadav was sent to Flat No.B-702, Jagran Apartment, Sector-22, Dwarka to confirm the information recorded through DD No. 10A (Ex. PW5/A).

Circumstance No.2

118. By 6.15 am confirming the information, the Duty Officer of PS Dwarka was telephonically informed by PW-5 SI Rajnish Yadav that bodies of Manav and Manavi were found lying on the ground and Meenu Ahuja was lying unconscious with gunshot injury on her forehead.

Circumstance No.3

119. Information provided by the appellant through DD no.10A Ex.PW5/A at PS Dwarka is admissible to the extent that it led to the recovery of bodies of Manav and Manavi and Meenu Ahuja was found lying unconscious with gunshot wound (presumed to be dead by the appellant).

Circumstance No.4

120. Postmortem report of Manav reveals that the postmortem was conducted on 19.07.2005 from 1.00 pm to 2.00 pm and cause of death is possible fall from height/thrown from height and death due to cumulative injuries and time since death is 36 hours, which is around 1 AM to 2 AM on the night intervening 17/18.07.2005. Similarly, Postmortem report of Manavi reveals that the postmortem was conducted on 19.07.2005 from 12.00 noon to 1.00 pm and injury to neck was caused by soft ligature material. Death due to cumulative effect of all injuries and time since death is 36 hours, which is around 1 AM on the night intervening 17/18.07.2005. As per postmortem report of Meenu Ahuja, her postmortem was conducted on 21.07.2005 from 4.00 pm to 5.00 pm and cause of death was cranio-cerebral damage by the bullet and time since death is given as 6 hours and she was declared brain dead at 10.45 am on 21.07.2005. Thus, all the three deaths were opined to be homicidal by PW-3 Dr. L.K. Baruah.

Circumstance No.5

121. At the time of visit by PW-5 SI Rajnish Yadav or removal of Meenu Ahuja in unconscious condition by PCR, pistol Ex.P3 was not found lying either on the bed or nearby in that room, thus, ruling out commission of suicide. Even otherwise, there was no evidence, in the form of testimony of medical or ballistic experts, that the bullet injury on the deceased Meenu was self-inflicted. In fact, PW-3's opinion was to the contrary.

Circumstance No.6

122. Recovery of pistol Ex.P3 on the basis of disclosure statement Ex.PW6/G from the washing machine and the expert opinion (admissible under Sec. 45 of Indian Evidence Act) that jacketed bullet Ex.P7 recovered from the skull of Meenu was fired from pistol Ex.P3, connecting the recovered weapon Ex.P3 with the murder of Meenu. The manner of killing of Manav and Manavi as mentioned in the disclosure statement recorded on 18.07.2005 was confirmed by the postmortem report. Furthermore, a pistol is not expected to be hidden in a washing machine; till its recovery, pursuant to the accused's disclosure statement, the police had no knowledge where it could be found. The disclosure statement was thus admissible to the extent of the recovery, under Section 27 of the Evidence Act; it pointed also to the knowledge of the Appellant – both as to existence and the location of the weapon.

Circumstance No.8

123. The Appellant's reply to question (f) and (g) under Sec.313 CrPC, (as to whether he tried to find out the truth when his wife told him that she had killed the children and whether he asked how she killed the children) is a pointer in this regard. His reply to question (f) is that she only told him that she had killed the children and to question (g), that she gave no time to ask this question as she pointed out the pistol towards him.

Circumstance No.9

124. The accused's knowledge about where the children were, when he went to see them, is a circumstance which has to be considered by the court. When neither the manner of killing was asked by him nor did his wife, the deceased Meenu, disclose it, and there was no communication even as to the place where bodies (of the children) were lying and the appellant had not even peeped from the balcony, there was hardly any reason for him to run downstairs from the 7th floor in search of the bodies of Manav and Manavi, unless he was author of the crime and knew where the bodies were thrown by him.

Circumstance No.10

125. This circumstance pertains to the procurement and use of the firearm. Though the appellant alleged that his wife had told him that she had used the weapon, (which was recovered subsequently and produced during the trial), he did not discharge the onus of establishing that fact. The totality of circumstances proved before the Trial Court pointed to his knowledge about the weapon. His explanation in this regard, and the responsibility to establish those allegations (not beyond reasonable doubt, but on reasonable probabilities) was cast on him, by virtue of Section 106 of the Evidence Act. The explanation, without any shred of proof, therefore does not appeal to reason. Meenu Ahuja, who was residing with her mother-in-law, sister-in-law and other members of the family, was a housewife and could not-

until there was material on record, otherwise, be expected to have any access to anyone dealing in illegal firearms as to procure them or know how to operate such weapons. This circumstance was established against the appellant; there is no infirmity with the Trial Court's findings in that regard.

Circumstance No.11

126. Certain photographs were filed by the appellant, - two of marriage and twelve of other happy moments, with no history of marital discord alleged. There was no motive for Meenu Ahuja to kill her own children especially when her death though claimed to be suicidal, has been proved to be homicidal.

127. Even if the version given by the appellant that his wife was depressed and after killing two children, committed suicide and also made murderous attack on him with the pistol is assumed to be correct for the sake of argument, the following improbabilities are writ large:

- (i) Time of death of Manav & Manvi which is around 1 AM to 2 AM on the night intervening 17/18th July, 2005.
- (ii) If he saw his wife in a violent mood armed with pistol claiming killing both the children, admittedly she was unarmed at that time and natural question would have been why and how she killed the children and look for the bodies in the flat itself.

(iii) Even if it is assumed that there was swift movement by Meenu Ahuja in reaching the bedroom and taking out the pistol from under the pillow, the appellant was physically strong enough to disarm her, control her emotions and then take stock of the situation including as to how she came in possession of pistol.

(iv) The appellant would not have locked her in bedroom along with pistol so that she could harm herself.

(v) If the threat was to the safety of his mother and sister as claimed in reply to question (h) of his statement under Sec.313 CrPC, only a call to PCR from his mobile was required. The appellant's mobile phone was in use when Meenu was lying unconscious in the bedroom and the call detail record shows calls being made to different numbers including Meenu's brother. These calls would not have been made, had the mobile been locked in the bedroom in which Meenu was locked.

(vi) The incident happened in the flat of appellant where there was none else except he and his family members including his mother and sister. His deceased children, Manavi and Manav were sleeping at the time they were killed and a murderous attack with pistol was made on Meenu Ahuja. A false plea has been taken by him of being attacked with pistol by his wife and she being locked in the bedroom with mobile and suicide by her which can be considered as another circumstance against him.

128. Here in the present case, the murder was committed within the four walls of Flat No.B-702, Jagran Apartments, Dwarka, New Delhi which was in exclusive possession of the appellant. The plea of murder of both the children by Meenu Ahuja and suicide by her has been found to be false for the reasons mentioned above. In the case reported as ***Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681***, while referring to the cases where the offence takes place in the privacy of house without any eye witness available, it was held as under:

“If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecution 1944 AC 315 quoted with approval by Arijit Pasayat, J. in State of Punjab v Karnail Singh MANU/SC/0585/2003: 2003CriLJ3892). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading having regard to the facts and circumstances of the case.”

129. It was a well thought and pre-planned murder case. The appellant had arranged a pistol and cartridges to execute his plans. Ordinarily, no one keeps illegal weapons at home especially when they are likely to endanger

life of one's children, if they fall in their hands.

130. Having independently considered the circumstantial evidence relied upon by the prosecution, we concur that the view of Trial court that the evidence on record conclusively established the guilt of the appellant excluding every hypothesis consistent with his innocence. There is no merit in the appeal and the same is liable to be dismissed. This court is also satisfied that all the circumstances alleged were proved beyond reasonable doubt as also all the links in the chain of circumstances and that every hypothesis of the accused's innocence is ruled out; likewise, there is no possibility of anyone except the appellant having committed the crime.

Death Sentence

131. While dealing with the Reference for confirming the death sentence, an onerous task is cast upon this Court to consider the balance sheet consisting of the aggravating and mitigating circumstances. We have perused the order on sentence passed by the learned Trial Court, giving reasons while awarding death penalty to him. The only submission made before the Trial Court, recorded at page 6 of the order on sentence, is reproduced as under:-

“On the other hand, Ld. Defence counsel has submitted that the convict had no motive or enmity to kill the deceased persons who were his family members. He has prayed that the accused be awarded the life imprisonment instead of death sentence.”

132. Here too, while claiming murder of Manav and Manavi by Meenu Ahuja, a murderous attack on the appellant which he escaped and thereafter Meenu's suicide by her, the appellant has argued for acquittal. At the same time, while concluding the arguments and making submission on death reference, reliance was placed on the judgment of this Court in ***Raj Kumar Khandelwal vs. the State (Govt. of NCT of Delhi) Crl.A.No.294/2008***, seeking commutation of sentence.

133. In the above judgment relied upon by counsel for the appellant, for committing murder of wife and three daughters due to financial crisis, although the death penalty was awarded by the Trial Court, was not confirmed by this Court. The court articulated its reasons as follows:

“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.

134. Each case has its own facts and circumstances which unfold during trial. The prosecution argument in this case is that the reliance placed by the appellant on the judgment of ***Raj Kumar Khandelwal (supra)*** is of no avail, because, the offence in that case was committed due to financial distress and to relieve the family to end their misery. Here, no motive has been brought on record as to why Manav, Manavi and Meenu were killed by the appellant in a pre-planned and brutal manner. Thus, the reliance placed by counsel for the appellant on the above judgment, submitted the prosecution, is of no consequence.

135. It was submitted that the appellant's financial condition was extremely good as just before this occurrence he had sold his South Delhi property i.e. F-132, Gautam Nagar, New Delhi, received token money and was to complete the transaction on 19.07.2005 when he would have received the balance payment. The purpose of shifting to B-702, Jagran Apartments, Dwarka, New Delhi was to enable him to hand over the vacant possession and to complete the deal.

136. In this case, for unfathomable reasons, during the night intervening 17/18.07.2005, the Appellant's entire family i.e. the wife and two children, were wiped out in an extremely brutal manner. The seemingly motiveless crime, and the manner of its execution, is disturbing. Even those with a

propensity to crime and violence, ordinarily do not train their sights at their families. This motiveless – perhaps mindless crime indicates one grave, and perhaps aggravating circumstance, which the court has to take into consideration, i.e. its sheer heartlessness. To compound this, for strange reasons, the appellant's counsel did not argue about any mitigating circumstance, for the purpose of preparing the balance sheet. Nevertheless, the Court can perceive the following mitigating circumstances:-

- (i) Lack of criminal record as the appellant is first offender.
- (ii) Character of the offender as perceived in the society by men of social standing.
- (iii) His age at the time of commission of crime i.e. 31 years
- (iv) His mental condition, anxiety, depressive state, emotional disturbance which lower the degree of culpability.
- (v) Probability of the offender's rehabilitation, reformation and re-adaptation in society.
- (vi) One significant factor which the Court cannot lose sight of is the testimony of Meenu's brother, PW-2. In Court, he deposed, voluntarily, that
“Accused Naveen Ahuja came to my office prior to 4/5 days of the incident. He remained in my office for 2 hours and had tea with me. He discussed the problem regarding his sister Nidhi Ahuja regarding her martial discord and his financial problem. At that time I assured him full support.”

137. Inexplicably, the accused did not throw any light on this aspect. As noticed previously, he did not volunteer any explanation for his conduct,

nor provide any key to what compulsions motivated him to do what he did. Having regard to these facts, the undeniable circumstance that he went to the police station soon after the incident and further, the evidence on record shows that the accused used his mobile phone to contact his in-laws' landline at Faridabad (telephone No.0129-2269870). These were placed on the record as Ex. C-1 and not objected to on behalf of the appellant. The phone call was apparently made at 06:15 hours on the day of the incident; it lasted for nearly one minute. These facts point a slightly different picture. PW-2 had no motive to depose falsely, in favour of the appellant, considering that he (the accused) was arrayed for killing his sister and her children. Similarly, though the objective fact of a telephone call appears on the record, the prosecution witnesses are silent as to what the accused said. It can reasonably be inferred that he mentioned about the incident in those calls. One reasonable hypothesis – considering that the appellant is unhelpful, either out of choice, or (if the hearings in this court are any indication, on account of legal advice) - can be that due to the stress mentioned by PW-2, he committed the crime, and was overcome by remorse almost immediately, which also explains his reporting the matter without any delay, to the police.

138. In the recent judgment reported as *Ajit Singh Harnam Singh Gujral v. State of Maharashtra 2011 (Supra)*, the Supreme Court dealt with the question whether the appellant deserved death sentence for killing his wife and three children by pouring petrol on them and setting them on fire. After

considering death penalties worldwide and in India and the basic cases on the subject i.e. *Bachan Singh* and *Machhi Singh*, also considered some other decisions, where death penalty has been affirmed by that Court. The same are as under:-

- (1) *Sunder Singh vs State of Uttranchal* (2010) 10 SCC 611
- (2) *C. Muniappan vs State of T.N.* (2010) 9 SCC 567
- (3) *M.A. Antony vs State of Kerala* (2009) 6 SCC 220
- (4) *Jagdish vs State of M.P.* (2009) 9 SCC 495
- (5) *Prajeet Kumar Singh vs State of Bihar* (2008) 4 SCC 434
- (6) *Ram Singh vs Sonia* (2007) 3 SCC 1
- (7) *State of U.P. vs Satish* (2005) 3 SCC 114
- (8) *Holiram Bordoli vs State of Assam* (2005) 3 SCC 793
- (9) *Saibanna vs. State of Karnataka* (2005) 4 SCC 165
- (10) *Karan Singh vs State of U.P.* (2005) 6 SCC 342
- (11) *Gurmeet Singh vs State of U.P.* (2005) 12 SCC 107
- (12) *Sushil Murmu vs. State of Jharkhand* (2004) 2 SCC 338
- (13) *State of Rajasthan vs. Kheraj Ram* (2003) 8 SCC 224
- (14) *Om Prakash vs. State of Uttranchal* (2003) 1 SCC 648
- (15) *Gurdev Singh vs. State of Punjab* AIR 2003 SC 4187
- (16) *Praveed Kumar vs. State of Karnataka* (2003) 12 SCC
- (17) *Suresh vs. State of U.P.* AIR 2001 SC 1344
- (18) *Molai vs. State of M.P.* AIR 2000 SC 177
- (19) *Ramdeo Chauhan vs. State of Assam* AIR 2000 SC 2679

- (20) *Narayan Chetanram Chaudhary vs. State of Maharashtra* AIR 2000 SC 3352
- (21) *State of U.P. vs. Dharmendra Singh* AIR 1999 SC 3789
- (22) *Ronny vs. State of Maharashtra* AIR 1998 SC 1251
- (23) *Surja Ram vs. State of Rajasthan* AIR 1997 SC 18
- (24) *Umashankar Panda vs. State of M.P.* AIR 1996 SC 3011
- (25) *Ravji vs. State of Rajasthan* AIR 1996 SC 787
- (26) *Suresh Chandra Bahri vs. State of Bihar* AIR 1994 SC 2420
- (27) *Bheru Singh vs. State of Rajasthan* (1994) 2 SCC 467
- (28) *Sevaka Perumal vs. State of T.N.* AIR 1991 SC 1463
- (29) *Sudam @ Rahul Kanjram Jadhav vs. State of Maharashtra* (Criminal Appeal Nos. 185-186 of 2011)
- (30) *Ranjeet Singh vs. State of Rajasthan* (1988) 1 SCC 633
- (31) *Atbir vs. Govt. of NCT Delhi* AIR 2010 SC 3477
- (32) *Surendra Koli vs. State of U.P.* AIR 2011 SC 970

139. The facts and circumstances of the cases in which death penalty was affirmed, were considered at length and while dealing with the case of appellant, observed that as held in ***Bachan Singh Vs. State of Punjab*** (supra) that death sentence should only be given in the rarest of rare case, the case of the appellant *Harnam Singh* was one of such cases. Relevant paragraphs of the report are extracted as under:-

“96. In our opinion, a person like the appellant who instead of doing his duty of protecting his family kills them in such a cruel and barbaric manner cannot be reformed or rehabilitated. The balance sheet is heavily against him and accordingly we uphold the death sentence awarded to him.

97. In the present case the accused did not act on any spur of the moment provocation. It is no doubt that a quarrel occurred between him and his wife at midnight, but the fact that he had brought a large quantity of petrol into his residential apartment shows that he had pre-planned the diabolical and gruesome murder in a dastardly manner.”

140. Courts in India have, post *Bachan Singh* a duty to satisfy themselves that there are elements in the proven facts and circumstances of a given case, which set it apart, or constitute the “rarest of rare” category of cases, which warrant imposition of death penalty. The singular feature of the duty cast is highlighted by the fact that death penalty was upheld as a valid punishment, and not violative of Article 21, provided it was imposed in the “rarest of rare” cases. Later decisions, particularly of the Supreme Court have sought guide as to the correct approach, stressing the need to draw up a balance sheet of aggravating and mitigating circumstances (*Machi Singh v State of Punjab*, AIR 1983 SC 17) while considering the appropriateness of imposing the death sentence, and the need for the Court to ask the question if the death penalty was the only sentence that could be imposed in the given facts. *Anshad v. State of Karnataka* (1994 (4) SCC 381) addressed the issue of subjective judicial-decision making. The Court commuted the death sentence to life imprisonment observing that the courts are expected to

exhibit sensitivity in the matter while awarding a sentence especially if the case involves the question of 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*, AIR 2008 SC 3040 it was held that if the case falls short of the rarest of rare category and the Court is reluctant to award the death penalty, but at the same time, it feels that life imprisonment, subject to remission, which is usually of 14 years is inadequate, then recourse should be taken to the extended option. The Court should direct that the convict should be given life imprisonment and he must not be released for the rest of his life.

141. 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 an onerous responsibility which has to be lived with for the rest of one’s life.

142. *Panchhi v. State of Uttar Pradesh*, AIR 1998 SC 2726 is an important case, where the Supreme Court held that brutality is not the sole criterion of determining whether a case falls under the “*rarest of rare*” categories, 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.”

143. It would be useful for the Court to recollect that the court’s task is not lightened only by noticing the brutality of the crime, because a focus only on that aspect tends to obscure all other features, some of which might be mitigative in character. This Court recollects, in this context, the following poignant passage from *Rajendra Prasad Singh v State of UP* AIR 1979 SC 916 (that was a case leading to the reference to *Bachan Singh*):

“An easy confusion is over-stress on the horror of the crime and the temporary terror verging on insane violence the perpetrator displays, to the exclusion of a host of other weighty factors when the scales are to settle in favour of killing by law the killer who resorts to unlaw. Speaking illustratively is shocking crime, without more, good to justify the lethal verdict? Most murders are horrifying, and an adjective adds but sentiment, not argument. Did not Lord Camden, one of the greatest and purest of English judges, say

"that the discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature can be liable." (State v. Cummings 36 Mo.263 278 (1865) When life is at stake, can such frolics of fortune play with judicial veriest?

The nature of the crime-too terrible to contemplate-has often been regarded a traditional peg on which to hang a death penalty. Even Ediga Annamma (supra) has hardened here. But 'murder most foul' is

not the test, speaking scientifically. The doer may be a patriot, a revolutionary, a weak victim of an overpowering passion who, given better environment, may be a good citizen, a good administrator, a good husband, a great saint . What was Valmiki once? And that sublime spiritual star, Shri Aurobindo, tried once for murder but by history's fortune acquitted....

If we go only by the nature of the crime we get derailed by subjective paroxysm.”

144. If the decision in *Ajit Singh Harnam Singh Gujral* (supra) falls in one end of the spectrum about killing of members of the accused's family, being construed as brutal and diabolical, as to warrant death penalty, *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 2002 SC 3006 indicate a contrary approach. In *Rajpara* 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* the accused murdered his wife and five children, but again the death penalty was not awarded. *Ram Anup Singh* was a case of murder of four persons including the accused's brother and family members; yet death penalty was not awarded). Curiously, *Ajit Singh Harnam Singh* notices none of these judgment; it also misread *Ronny vs. State of Maharashtra* (1998) 3 SCC 625. In fact, despite the accused having been found guilty under Sections 376 and 302/34 IPC for committing rape and gruesome murder and being sentenced to death by the

Trial Court and the High Court concurrently, the Supreme Court commuted the sentence to imprisonment for life.

145. This Court takes into consideration the above decisions, (as they are useful guidelines for the court to focus its mind, and not as containing binding, inflexible principles) though the heartless nature of the crime is shocking, yet, it cannot be said that the appellant is irredeemable as a human being; he is not “*shut out from God and man*” for the court to say that death penalty is the only sentence fit for his crime, and that it falls within the rarest of rare category of offences.

146. In view of the above discussion, the sentence of death imposed by the Trial Court is not confirmed; it is accordingly reduced to life imprisonment, which, shall mean the rest of his life as held in *Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka (supra)*. The conviction and sentence imposed in respect of the offences under the Arms Act are, for the above reasons, upheld.

147. The Death Reference is answered accordingly. The Appeal is, for the above reasons, allowed in part.

PRATIBHA RANI, J

S. RAVINDRA BHAT, J

November 20, 2012
st/dc/aka