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

\+ **CRL.A.289/2013**

NITIN VERMA ..... Appellant
Through: Mr. Sumeet Verma, Advocate

versus

STATE ..... Respondent
Through: Ms. Ritu Gauba, APP.

AND

\+ **Death Sentence Ref.4/2012**

STATE ..... Appellant
Through: Ms. Ritu Gauba, APP.

versus

NITIN VERMA ..... Respondent
Through: Mr. Sumeet Verma, Advocate

% **Date of Decision : 06th September, 2013**

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Appellant Nitin Verma in Crl.A No.289/2013 and accused in Death Sentence Ref. No.4/2012 is charged with the commission of

offence of patricide, matricide and uxoricide. Vinod Verma, Pushpa Verma and Pooja Verma are the father, mother and wife of appellant-accused.

2. Prosecution case emanates from the fact that DD No.5A was recorded in P.S Dwarka on receipt of an information through telephone from G-50 to the effect that 2-3 persons had been killed in House No.136, Gali No.9, Raj Nagar-II. The copy of DD was sent to SI Rajender Singh(PW19) through Ct. Raj Singh for necessary action. SI Rajender Singh (PW19) along with Ct. Surender (PW22) reached H.No.136, Gali No.9, Raj Nagar-II and on enquiries came to know that the incident has taken place in H.No.234A, Gali No.9, Raj Nagar-II. Meanwhile, Insp. Anil Kumar(PW31) was also apprised about the incident through wireless. He along with his staff reached the place of incident where he found a male person drenched in blood, lying on the floor outside a room on the ground floor, who was wearing a pant, whereas the upper portion of his body was without clothes. There were injuries inflicted by a sharp edged weapon all over his body. Blood trail was seen from that place upto the stairs leading to first floor. Insp. Anil Kumar reached the first floor and found a lady, who

was already dead in a sitting poster on a sofa in the verandah, on whose body also, there were injuries inflicted by sharp edged weapon. There was blood on the sofa as well as on the floor. On entering the room, in front of sofa, a lady was found lying dead on the entrance, drenched in blood and having injuries all over her body, inflicted by a sharp edged weapon. Blood stains were found on the walls also. Blood had spread on the stairs and impression of blood stains were on various places on the walls. The lights and fans were switched on in the house. The ornaments kept in the house had not been touched. The ladies were found wearing their ornaments. The mangalsutra as well as purse etc. were found intact on the dressing table. Inquiries from the neighbourhood revealed that the dead body on the ground floor is that of house owner, namely, Vinod Verma, the dead body of the lady on sofa on the first floor is that of Pushpa Verma, wife of Sh. Vinod Verma and the dead body of the lady inside the room on the first floor is that of Pooja Verma, daughter-in-law of Vinod Verma and wife of accused Nitin Verma. Crime team was called at the spot and the spot was photographed from various angles, chance fingerprints were lifted from the spot, blood samples and earth control

were lifted from near the dead body and seized by the police. It came to be known that Nitin Verma, son of Sh. Vinod Verma, has been taken in PCR van to the DDU hospital in an injured condition. Insp. Anil Kumar, prepared a rukka and got the FIR registered.

3. Insp. Anil Kumar reached DDU hospital and found Nitin Verma admitted there. There were injuries on his fingers, palms and thigh inflicted by a sharp edged weapon. Blood sample of Nitin Verma was collected and he was shifted to Safdarjung hospital for treatment. After his discharge from Safdarjung hospital, he was brought to police station where he was interrogated. He was arrested vide arrest memo Ex.PW1/F and his personal search was taken vide memo Ex.PW31/A. He made a disclosure statement Ex.PW20/D, wherein he admitted his involvement in the offence. He got recovered one blood-stained baniyan (vest), one small towel and knife, which were seized. One mobile phone make Huawei C-2601 was also recovered from his possession in the hospital and the same was seized vide seizure memo Ex.PW20/C. During further investigation, it was revealed that the reason for the murders was a lady named Surbhi Rana PW 27, who lived in the neighbourhood of the accused and who

was the bone of contention between the accused and the deceased. Surbhi Rana was contacted and her mobile phone of make Haier HCC-2000 was taken into possession vide seizure memo Ex.PW10/A. The call details of the mobile phone of accused Nitin were obtained from his service provider M/s. Tata Indicom, which revealed that accused Nitin was present in his house at the time when the murders took place i.e. On 18.04.2008 from 9:26 p.m. to 12:27 a.m. in the night. Rough site plan of the place of crime was prepared. Post mortem on the dead bodies was got conducted. Thereafter, the dead bodies were handed over to their relatives. The exhibits were sent to FSL, Rohini for examination. After completing the investigation, charge sheet was submitted.

4. Charge for offence under Section 302 IPC was framed against the accused to which he pleaded not guilty and claimed trial. In order to substantiate its case, prosecution examined 32 witnesses. All the incriminating evidence was put to the accused while recording his statement under Section 313 Cr.P.C., who denied the case of prosecution and claimed innocence. Although, initially he stated that he wants to lead defence evidence but no evidence was led by him.

5. Vide order dated 16.08.2012, the accused was convicted of offence under Section 302 IPC and vide order dated 04.09.2012, he was awarded death sentence and was directed to be hanged till death. The sentence was however subject to confirmation by this Court under Section 366 Cr.P.C. As such, death reference was received. The accused also assailed the impugned order by filing appeal bearing Crl.A.No.289/2013.

6. We have heard Shri Sumeet Verma, learned counsel for the appellant and Ms. Ritu Gauba, learned Additional Public Prosecutor for the State and have perused the record.

7. It was submitted by the learned counsel for the appellant that on the intervening night of 18th/19th April, 2008 at about 12:40 a.m. accused gave a call to PW1 Shri Vijay Kumar, his uncle that he has met with an accident, his motorcycle is lying on the road and that he was trying to contact his family members but they are not picking up the phone. Thereupon, Vijay Kumar (PW1) rang up father of Nitin Verma but no response was received. As such, he made a call to one Ravinder Singh who used to reside in the neighbourhood of Vinod Verma (deceased) to inform as to why he is not picking up telephone.

Ravinder Singh went to the house of Vinod Verma and informed Vijay Kumar that no response is being received. Thereupon, Vijay Verma asked him to forcefully open the door and then Ravinder Singh opened the door and found the dead bodies. It was submitted that Ravinder Singh was the first person who had seen the dead bodies lying in the house. He was the most material witness, but he was not examined by the prosecution. Furthermore, the initial information on which DD No.5A was recorded was regarding killing of 2-3 persons at House No.136, Gali No.9, Raj Nagar, Palam Village. However, house No.136 does not belong to the deceased but belong to PW8 Arun Kumar Mittal, which fact was suppressed by the prosecution. DD No.3A was received regarding quarrel at House No.H-234, Raj Nagar-II. However, it is not clear as to who gave this call to the police. When Inspector Anil Kumar initially visited house No.136, Gali No.9, Raj Nagar-II, it was clarified that the incident had occurred at House No.H-234A, Gali No.9, Raj Nagar-II. Then, how the site plan was prepared in respect of House No.237. The accused has been implicated in this case on the basis of recovery of a vest, towel and a knife. The vest was having blood of 'B' group, which is

also alleged to be blood group of the accused. As such, this is not an incriminating piece of evidence against him. Moreover, there is no evidence to prove that the vest belongs to the accused. Towel was opined to be having blood of 'O' group, whereas on the knife although blood was found but the blood group could not be given. The recovery is alleged to have taken place from an open place which is accessible to all. As such, there is no evidentiary value of such recovery allegedly at the instance of the accused. It is further the case of the prosecution that the accused was having mobile phone bearing No.9210359955, however, this mobile phone belongs to deceased Vinod Verma and no evidence has come on record to prove that it was in possession of the accused. Another mobile bearing No.9250968973 was seized, however, there is no evidence to prove that it belongs to Surbhi. Both Surbhi and her father were examined by prosecution but have not deposed anything against the accused. Both of them have deposed that their signatures were obtained on blank papers. The call details of mobile phone No.9250968973 were not produced. As regards the knife is concerned, it was submitted that total length of the knife has been shown as 28 cm, whereas as per the

length of blade and handle it comes to 29 cm. The knife was measured with scale and normally total length is measured first and then bifurcated. The discrepancy in measurement reflects that no such sketch was prepared at the spot, hence no recovery was effected. Referring to the testimony of witnesses, it was submitted that relations between the accused, his parents and wife were cordial. Although, PW3 Amit Verma tried to implicate the accused by deposing that accused was having relation with Surbhi and complaints used to be made by his father in this regard but he also deposed that the relations were cordial. As regards the injury on the person of accused is concerned, it was submitted that due to fall from the motorcycle he had sustained injuries and even prosecution witnesses admitted this fact. As regards opinion of the doctor that the injuries were not possible by fall from the motorcycle, it was submitted that Doctor Dipali (PW12)was recalled for further examination by prosecution after a lapse of about one year and seven months and at that time the knife was shown to her. No such opinion was obtained during the course of investigation. As such, no reliance can be placed on her testimony. As regards the testimony of PW6 Sai

Purshottam Kumar, it was submitted that he is a stock witness of police and admitted that people in thousands were present when recovery was effected but no other person was joined in investigation. The almirah was found open and no inventory of articles was prepared. As such, possibility of robbery cannot be ruled out.

8. Under the circumstances, it was submitted that there is no eyewitness to the incident. The case of the prosecution is based on circumstantial evidence. There is no reason as to why the accused would commit triple murder of his parents and wife when the relations between them were quite cordial. As such, prosecution has failed to bring home the guilt of the accused beyond reasonable doubts. As such, accused is liable to be acquitted.

9. It was further submitted in alternative that in case the conviction is upheld, even then extreme penalty of death is not warranted as accused in a young boy, his antecedents are clean, he is not involved in any other criminal case, there is possibility of his reformation and rehabilitation, the case does not fall in the category of "rarest of rare case". Reliance was placed on ***Mahender Singh vs. State of Punjab***,2013(2) Scale 24.

10. Rebutting the submissions of learned counsel for the appellant, it was submitted by learned public prosecutor for the State that it is a case of cold blooded triple murder. On receipt of call, police reached the spot, found the lights on, everything was in order. Therefore, there is no possibility of committing murder for robbery. The accused after committing murder went to Budha Jayanti Park and tried to take a false plea of accident and informed his uncle regarding having met with an accident. It was submitted that why no information was given to his parent or wife regarding the accident. This clearly shows the guilty mind of the accused, who knew it fully well that he has already committed their murder and therefore in order to take a plea of *alibi,* cooked up a false story of having met with an accident. When his cousin brothers reached the spot, they found injury on his person and wanted to take him to hospital, but the accused declined. Ultimately, when accused was taken to DDU Hospital, his MLC was prepared which reflected 'history of assault'. The injuries on his person were opined to be by a 'sharp edged weapon' which belies his plea of sustaining injuries in an accident. The accused in his statement recorded under Section 313 Cr.P.C. does not explain as to under what

circumstances he made telephone call to his uncle instead of his parents. The mobile phone in the name of Vinod Verma, father of accused/deceased was recovered from the possession of accused. His plea that it belong to Vinod Verma and was not in his possession is belied by the call details record which show that calls were made even after Vinod Verma had died. There were only four members in the family. Three of them were murdered. Only accused was left from whose possession the mobile phone was recovered. The call details of the mobile phone in the name of Vinod Verma recovered from the possession of accused and Surbhi reflected that on 18th April, 2008 at least 21 calls were made, which clearly shows the close relationship between the two and which was also the motive for committing the heinous crime.

11. The fact that Surbhi and her father did not support the case of prosecution is of no consequence because in order to save her honour and prestige, Surbhi did not admit her relationship with Nitin and her father also got her hurriedly married in order to avoid any further complication, which is reflected from the fact that when she appeared

in the witness box she was already married and was even reluctant to give her address of Chandigarh.

12. Further recovery was effected at the instance of accused in the presence of an independent witness. He is not a stock witness of the police as submitted by learned defence counsel. Rather it has come in his testimony that he had come to appear in the court for the first time. Non-joining of other independent witnesses is of no consequence as it has come on record that no other person was ready to join the proceedings. As regards non-examination of Ravinder Singh is concerned, it was submitted that he was not a material witness inasmuch as he is not an eyewitness of the incident. Moreover, it is prerogative of the prosecution as to whom it has to examine. As regards discrepancy in the number of the house in the site plan, it was submitted that clarification has already been given by the Investigating Officer that number of the house was given by the neighbour and no such number was displayed outside the house. As such, the confusion arose. Moreover, it is not in dispute that the murder had been committed in the house of Vinod Verma. As such, identity of the place of commission of offence is not in dispute. It was

submitted that there is no infirmity in the impugned order which calls for interference. As such, appeal preferred by the appellant deserves to be dismissed.

13. Regarding quantum of sentence, it was submitted that no interference is called for inasmuch as the appellant committed the murder of his old aged parents and wife in a most brutal and diabolic manner in order to facilitate his affair with another girl. Hence he deserves nothing less than death sentence.

14. We have given our considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

15. At the outset, it may be mentioned that there is no eyewitness to the incident and the case of prosecution is based on circumstantial evidence only. Before we analyse and appreciate the circumstances that have weighed with the Trial Court, we think it apposite to refer to certain authorities pertaining to delineation of cases that hinge on circumstantial evidence.

16. In ***Sharad Birdhichand Sarda v. State of Maharashtra*** AIR 1984 SC 1622, a three-Judge Bench has laid down five golden

principles which constitute the "panchsheel" in respect of a case based on circumstantial evidence. Referring to the decision in ***Shivaji Sahebrao Bobade v. State of Maharashtra***, AIR 1973 SC 2622: (1973) 2 SCC 793, it was opined that it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between `may be' and `must be' is long and divides vague conjectures from sure conclusions. Thereafter, the Bench proceeded to lay down that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; that the circumstances should be of a conclusive nature and tendency that they should exclude every possible hypothesis except the one to be proved; and that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

17. In ***Padala Veera Reddy v. State of Andhra Pradesh and Ors.*** 1989 Supp (2) SCC 706 : 1991 SCC (CRI) 407, Supreme Court held

that when a case rests upon circumstantial evidence, the following tests must be satisfied: (SCC pp. 710-11, para 10)

> *"10……(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
>
> *(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*
>
> *(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*
>
> *(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.*
>
> A similar view has been reiterated in ***Ramreddy Rajesh Khanna Reddy v. State of A.P.*** (2006) 10 SCC 172.

18. In ***Balwinder Singh v. State of Punjab***, AIR 1996 SC 607, it has been laid down that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and

totally inconsistent with his innocence. In a case based on circumstantial evidence, the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, however strong they may be, to take the place of proof.

19. In ***Harishchandra Ladaku Thange v. State of Maharashtra*** AIR 2007 SC 2957, while dealing with the validity of inferences to be drawn from circumstantial evidence, it has been emphasised that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person and further the circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

20. In ***State of U.P. v. Ashok Kumar Srivastava,*** AIR 1992 SCW 640 : AIR 1992 SC 840, emphasis has been laid that it is the duty of

the Court to take care while evaluating circumstantial evidence. If the evidence adduced by the prosecution is reasonably capable of two inferences, the one in favour of the accused must be accepted. That apart, the circumstances relied upon must be established and the cumulative effect of the established facts must lead to a singular hypothesis that the accused is guilty.

21. In ***Ram Singh v. Sonia and Ors.,*** AIR 2007 SC 1218, while referring to the settled proof pertaining to circumstantial evidence, Supreme Court reiterated the principles about the caution to be kept in mind by Court. It has been stated therein that:

> *"39……in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts."*

22. In ***Ujagar Singh v. State of Punjab***, (2007) 13 SCC 90, after referring to the aforesaid principles pertaining to the evaluation of circumstantial evidence, Supreme Court stated that:

> *"14……it must nonetheless be emphasised that whether a chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted."*

23. Keeping in view the aforesaid principles, we shall presently proceed to scrutinize and evaluate the circumstances whether the said circumstances establish the guilt of the accused beyond reasonable doubt.

24. It is not in dispute that deceased Vinod Verma, Pushpa Verma and Pooja Verma met homicidal death. This stands established from the medical evidence adduced on record. Post mortem of deceased Vinod Verma was conducted by Dr. Komal Singh (PW15), who found following injuries on his person:-

> Multiple clean incised wounds on his neck, face, lower chest, abdomen and back. He had a CIW on left side of face 3.3 cm x 1.1 cm, three traversely placed clean incised wounds over anterior surface of the neck, CIW on gastric region seven clean incised wounds of varying size on right and left side of the body, three CIW below the umbilicus of varying size, three CIW on right lateral side of abdomen of varying size, seven CIW on the back, one

defence wound each on right and left palm of varying size. Time since death was 15 hrs.

25. Dr. Komal Singh gave post mortem report of deceased Vinod Verma, Ex.PW15/B and opined the cause of death to be haemorrhagic shock and the injuries to the vital organs of body subsequent to multiple stab injuries and it was also opined that the injuries to the vital organs were sufficient to cause death individually as well as collectively in ordinary course of nature. All the injuries were ante mortem in nature. Time since death was approximately 15 hrs.

26. Post mortem of deceased Pushpa Verma was also conducted by Dr. Komal Singh, who found following injuries on her body:-

(i) One clean incised wound on the left side of neck.

(ii) Another CIW over thoracic near scalpel.

(iii) One clean incised wound below wound no.2.

(iv) One clean incised wound 3 cm below wound no.3.

(v) One clean incised wound 4 cm below wound no.4.

(vi) One clean incised wound 4 cm below wound no.5.

(vii) One clean incised wound 3 cm below wound no.6.

(viii) One clean incised wound 3 cm left to wound no.6.

(ix) One traversely placed clean incised wound on the anterior surface of the neck.

(x) One clean incised wound on lower margin of thyroid.

(xi) One clean incised wound 2 cm above wound no.9.

(xii) One clean incised wound 3 cm below wound no.9.

(xiii) One clean incised wound at epigastric region.

(xiv) One clean incised wound at umbilical region.

(xv) Three clean incised wound on left lateral side of hypochondrium.

(xvi) One clean incised wound on left side of thoracic region.

(xvii) One clean incised wound on right hand.

(xviii) One clean incised wound on lateral side of right hand.

(xix) One abrasion on left knee.

Dr. Komal Singh also gave post mortem report of deceased Pushpa, Ex.PW15/A and opined the cause of death to be hemorrhagic shock subsequent to multiple stab injuries and all injuries in

combination were sufficient to cause death in ordinary course of nature. The injuries were stated to be ante mortem in nature. Time since death was approximately 14 hrs.

27. Post mortem on the dead body of Pooja Verma was conducted by Dr. B.N.Mishra (PW16), who found following injuries on her person:-

> A cut throat injury at the level of thyroid cartilage, incised wound at left face extended upto forehead, one stab wound present at epigastric region (abdominal cavity), another two separately placed incised stab wounds present in abdomen cavity, multiple incised stab wounds present at left lateral aspect of chest with penetration upto lungs and liver with sharp in margin, multiple stab incised wounds at back with penetration into thoracic and abdominal cavity, multiple incised wounds present in both hands (palm and dorsal aspect), one stab wound present at back of neck and one stab wound at the base of chin.

28. Dr. B.N.Mishra(PW16) gave post mortem report of deceased Pooja, Ex.PW16/A and opined the cause of death to be haemorrhagic

shock caused by multiple incised stab wounds on the body by using sharp edged weapon like knife. The manner of death was opined to be homicidal. Time since death was approximately 10-12 hrs.

29. The nature and extent of sharp cut injuries found all over the bodies of the three deceased reflects that they were brutally stabbed by a sharp edged weapon which resulted in their death. As such, the death is homicidal which is not even disputed by the accused. As per the post mortem report, time of death of deceased Pooja Verma comes to about 1.45 a.m. in the night, whereas the time of death of deceased Vinod Verma and his wife Pushpa Verma comes to around 12 midnight. Thus, it is clear that all three deceased were stabbed approximately, at around 12:00 a.m. i.e. midnight of 18th/19th April, 2008.

30. The crucial question for consideration is: who is responsible for committing such brutal and ghastly crime.

31. PW1 Vijay Kumar is the uncle of the accused. PW3 Amit Verma and PW4 Sumit Verma are sons of PW1. PW7 Bharat Singh is the friend of PW3 and PW4. All these witnesses have deposed that they were present in the house of Vijay Kumar in late hours of 18th

April, 2008, when a telephone call was received by PW1 Vijay Kumar from the accused, who informed him that he has met with an accident near Budha Garden and was not in a position to move. Accordingly, Vijay Kumar (PW1) directed his sons Amit Verma (PW3), Sumit Verma (PW4) and their friend Bharat Singh(PW7) to go and see what has happened to the accused. In the meanwhile, he also made calls to his brother Vinod Verma to inform him about the condition of accused but there was no response from other side of telephone. He made continuous 7-8 telephone calls but nobody responded. Having no other option, he made a call to one Ravinder Singh, who used to reside in the neighbourhood of deceased Vinod and requested to check why Vinod Kumar was not picking up phone. After sometime, Ravinder Singh informed Vijay Kumar that nobody is responding to his repeated calls at the door of house of Vinod Verma. Vijay Kumar again requested Ravinder Singh to open the door forcefully. After sometime, he again made a call to Ravinder, who informed him that his brother was lying in a pool of blood on the floor. On receipt of this information Vijay Kumar (PW1) also informed another brother of deceased Vinod Verma, namely, PW2

Rajesh. They rushed to the house of Vinod Verma and on reaching there they noticed that his brother was lying on the ground floor in a pool of blood. When he went upstairs, he found his bhabi i.e. wife of Vinod Verma also lying in a pool of blood on the sofa at first floor and wife of accused Nitin, namely, Pooja was also lying in a pool of blood near the door.

32. It has come in the testimony of witnesses that when PW3 Amit Verma, PW4 Sumit Verma and PW7 Bharat Singh reached Budha Jayanti Park on motorcycle, they found the accused lying near a tree along with his motorcycle. He was having cut injury on his right hand. The injury seems to have been inflicted by a sharp edged weapon. On enquiry from the accused as to how he has sustained injuries, no reply was given by him. They wanted to take him to the hospital but accused declined. Thereupon, they brought the accused along with his motorcycle to his house. When they reached the house of accused, they found their father outside the house, who told them regarding murder of parents and wife of the accused and that this fact be not divulged to him, however, accused insisted to go inside the house. On going inside the house and on seeing the condition of his

wife and parents, he fainted. Somebody informed PCR. PCR van came to the spot and took accused Nitin to DDU hospital. It is pertinent to note that despite the fact that according to accused he met with an accident near Budha Jayanti Park, instead of making any call to his parents or wife he made a telephone call to his uncle for help. This conduct of the accused is quite unnatural inasmuch as when a person faces some adversity, the natural and normal reaction is to call his close relations i.e. parents and wife, but the accused did not do so. Although a submission was made during the course of arguments that the accused tried to contact his parents and wife but on finding no response he made a call to his uncle, however, this submission is not fortified by the record. Absolutely, no suggestion was given to any of the prosecution witnesses that the accused made efforts to contact his parents or wife after having met with an accident and having failed in his attempt, contacted his uncle. So much so, his statement under Section 313 Cr.P.C. is also conspicuously silent in this regard and he admitted that he made a call to his uncle PW1 Vijay Kumar after the accident at Budha Jayanti Park. No explanation has been furnished by him as to why he did not inform his parents or the wife regarding the

accident. This unnatural conduct and behavior of the accused is inconsistent with his plea of innocence.

33. It has come in the testimony of PW3 Amit Verma that when accused Nitin was found lying near a tree there was blood spot on his hand and injury was dry. When he inquired from Nitin as to how he received injuries, he did not reply anything. He insisted Nitin to remove him to hospital but he refused. PW4 Sumit Verma, however, had deposed that accused Nitin was having injuries on his right hand which he tied with a handkerchief. On enquiry, he stated that he fell down from the bike and sustained injuries. But the fact remains that both these witnesses have deposed that despite their insistence to remove him to hospital, he refused to go there. Having no option, they brought him along with his motorcycle to his house where on seeing the condition of his parents and wife he fainted. PCR van came and shifted Nitin to DDU hospital. MLC of Nitin Verma, Ex.PW12/A was prepared by Dr. Sajid under the supervision of PW12 Dr. Deepali and as per this MLC, the accused had one clean incised wound on his right hand, one clean incised wound on his left hand, one clean incised wound on his left thigh on the anterior aspect, one incised

wound at the internal aspect of right hand, one clean incised wound on the ring finger of right hand at the internal aspect. The injuries were opined to be inflicted by a sharp edged weapon. The accused was also found smelling of Alcohol. PW12 Dr. Deepali in her cross-examination had deposed that the injuries can be caused only by a sharp edged weapon and cannot be sustained by any accident or by a fall on the ground. The submission of learned defence counsel that PW3 Amit Verma, although was bent upon supporting the case of prosecution and to see that the accused is sent to jail, admitted in cross-examination that injuries sustained by accused could have been caused in roadside accident and this witness was not recalled by prosecution for further examination after seeking opinion of Dr. Dipali(PW12) is devoid of merit inasmuch as the opinion given by the doctor has to be given preference than that of a layman. Moreover, even if Dr. Dipali (PW12) was recalled for further examination after a gap of substantial period, MLC Ex.PW12/A itself reflect that the nature of injuries were opined to be "sharp" and the history was of "assault". The MLC was prepared at the very first juncture and the same finds corroboration from the testimony of

doctor. Under the circumstances, it becomes clear that the injuries on the person of accused were caused by sharp edged weapon and not in an accident. As such, he gave false information to his uncle that he met with an accident at Budha Garden probably in order to take a false plea of *alibi*. In ***Mulak Raj vs. Satish Kumar***, 1992, Crl.L.J 1529, ***Balvinder Singh vs. State of Punjab*** (1987) 1 SCC 1, ***Anurag & Others vs. State***, 2010 II AD (Delhi) 105, it was held that a false plea of *alibi* is an incriminating circumstance giving rise to an inference of guilt of the accused. It was further held in ***Sharad Birdhichand Sharda Vs. State of Maharashtra,*** 1984 SCC (Cri.) 481, ***Rameshbhai Mohanbhai Koli Vs. State of Gujarat,*** (2011) 3 SCC (Cri.) 102 that a false plea taken by an accused in a case of circumstantial evidence is an additional link in the chain of circumstances.

34. It is the case of prosecution that after his arrest, accused made a disclosure statement Ex.PW20/D that he can get the weapon of offence and his blood-stained clothes worn by him at the time of commission of offence recovered. The recovery was effected in the presence of Inspector Anil Kumar (PW31), SI Jitender Dagar (PW20)

and an independent witness Sai Purshottam Kumar(PW 6). Inspector Anil Kumar (PW31) has deposed that after making disclosure statement accused led them to a place near railway line in front of Maya Medicos, Palam and pointed out the place where he had thrown his clothes worn by him at the time of commission of offence as well as the weapon of offence. At his instance, one bloodstained baniyan (vest) and one small towel were recovered, which was seized vide seizure memo Ex.PW6/C. He also got recovered weapon of offence i.e. knife from a place about 20 paces ahead towards south of the aforesaid place. The sketch of the knife Ex.PW6/B was prepared and it was seized vide seizure memo Ex.PW6/A. At the time of recovery, PW6 Sai Purshottam Kumar, an independent witness was present. It has come in the testimony of this witness that on 19.04.2008 during evening time he was returning from his business place. He came to know that one Nitin had murdered somebody and he was in custody of police at that time. Police requested him to join the investigation and he joined the investigation of his free will. He corroborated PW31 Inspector Anil Kumar by deposing that accused led them near Palam Fatak, near Transformer, Railway Line in front of Maya

Medicos, where he pointed out bloodstained vest and towel by which he cleaned the blood on the knife. At a distance of approximately 20 steps the accused pointed out towards a knife. The knife was taken into possession vide memo Ex.PW6/A after preparing its sketch and sealing the same. The vest and towel were also taken into possession vide memo Ex.PW6/C after sealing the same. PW9 Rajiv Kumar, photographer took the photographs of the spot where the recoveries were effected at the instance of accused as Ex.PW9/A1 to Ex.PW9/A6. The witness Sai Purushottam Kumar (PW6)identified the knife Ex.P1, vest Ex.P3 and towel Ex. P2 when shown to him during his examination. Despite cross-examination nothing material could be elicited to discredit his testimony. There is no reason as to why he would falsely implicate the accused. There was no suggestion of any motive for such alleged false implication. There was not even a suggestion that the witness had any animosity towards the accused. It is common experience that public persons are generally reluctant to join police proceedings. There is generally apathy and indifference on the part of public to join such proceedings. This position of law was reiterated in ***Aslam & Ors. Vs. State***, 2010 III AD (Delhi) 133 where

it was observed by this Court that reluctance of the citizens to join police proceedings in well known and needs to be recognized. It cannot be disregarded that public does not want to get dragged in police and criminal cases and wants to avoid them because of long drawn trials and unnecessary harassment. In ***Manish vs. State***, 2000 VIII AD SC 29 and in ***A. Bhai vs. State***, AIR 1989 SC 696 also it was held that we cannot be oblivious to the reluctance of the common man to join such raiding parties organized by the police, lest they are compelled to attend police station and Court umpteen times at the cost of considerable inconvenience to them, without any commensurate benefit. It is an irony of fate that in the face of all these, if an independent witness joins police proceedings, then he is labeled as a stock witness of the police. In the instant case, the witness has deposed that this is the first case in which he has appeared as a witness. In pursuance to an application moved under Section 311 Cr.P.C. this witness was called for further cross-examination and deposed that videography and photography of the place where knife was got recovered by the accused was done. The exact spot where the knife was found and was recovered was shown

by accused himself. There is nothing on record to show even remotely that he was a stock witness of the police and not an independent witness. He is a resident of Raj Nagar-II, Palam and therefore, his presence at the spot of recovery of articles was quite natural. Nothing has been brought on record on behalf of the accused either in the cross-examination of this witness or by any other independent witness that he was a stock witness of the police or that articles were not got recovered by the accused in his presence. Even no suggestion was given to the Investigating Officer of the case that this witness was a stock witness of the police. Testimony of both these witness also find substantial corroboration from SI Jitender Dagar(PW20). Under the circumstances, recovery of knife, vest and towel at the instance of accused stands proved by cogent, convincing and reliable testimony of police officials and a totally independent witness.

35. The other plea that the recovery was effected from an open space which was accessible to all is also devoid of merit inasmuch as in ***Tahir & Ors. Vs. State***, 87 (2000) DLT 207, it was observed that there is nothing in Section 27 of the Evidence Act which renders statement of accused inadmissible if recovery of the article was made

from any place which is open or accessible to others. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others for example, if the article is buried on the main road side or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office the article would remain out of the visibility of others in normal circumstances. Until such article is discovered its hidden state would remain unhampered. The person who had hid it alone know where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the place of concealment is accessible to others. In the instant case, recovery was effected near the bushes in a deserted place and as such it cannot be said that the knife was recovered from an open space which was accessible to all. Under the circumstances, recovery of knife, vest and towel at the instance of accused stands duly proved.

36. As regards the submission that there is variation in the measurement of the knife in as much as total length has been mentioned as 28 cm, whereas if the length of the blade and handle as mentioned in the sketch is calculated it comes to 29 cm. This is a very minor variation which is hardly of any significance and does not in any manner affect the recovery.

37. The knife, the vest and the towel were sent to FSL, Rohini for forensic examination. As per report Ex.PW30/A given by Dr.Dhruv Sharma blood was detected on all the three articles. The report of biology division of FSL Ex.PW30/B shows that the blood group of the blood found on the vest was 'B' group which matched with blood group of accused himself, found on his blood sample which was also sent to FSL. The report also reflect that the blood group found on the towel was of group 'O' which matched the blood group of the three deceased found on the sofa set cover, cotton wool, bloodstained floor lifted from the spot and the clothes of the deceased. However, the blood on the knife did not show any reaction. It has come on record that after wiping the knife with hand towel, blood had come on the towel and its blood group was same as that of the deceased. This is a

very strong clinching incriminating piece of evidence against the accused. This suggests that the deceased have been stabbed and killed with knife Ex.P1. Knife Ex.P1 was shown to PW12 Dr. Dipali, who had examined the accused Nitin when he was brought to hospital and she deposed that it is possible that accused could have sustained injuries mentioned in the MLC by this knife. The knife was also shown to Dr. Komal Singh, who conducted post mortem examination on the dead body of Vinod Verma and Pushpa Verma and he deposed that the injury Nos.1 to 17 mentioned in post mortem report Ex.PW15/A of Pushpa Verma and injury Nos.1 to 9 in post mortem report Ex.PW15/B of Vinod Verma were possible by the knife Ex.P1. Similarly, Dr. B.N.Mishra, who conducted post mortem on the dead body of Pooja deposed that the injury Nos.1 to 9 mentioned in post mortem report Ex.PW16/A could be possible by knife Ex.P1. Under the circumstances, it stands proved that all the three deceased had been stabbed and killed by knife Ex.P1, which was got recovered by the accused himself and he himself also sustained injuries by the same knife while attacking the deceased.

38. Motive to commit the crime also stands proved inasmuch as PW3 Amit Verma had deposed that during visit to the house of his uncle Vinod Verma, he used to make complaints that even after the marriage, Nitin has not mended his behaviour. He used to tell that although they had married Nitin according to his wish but Nitin had relation with a girl, namely, Surbhi, who was residing in the neighbourhood. Father of the Nitin used to advise him to mend his behaviour on the aspect of relation with Surbhi but in vain. PW8 Arun Kumar Mittal has also deposed that Nitin was residing in the same vicinity. He was having affair with a girl, namely, Pooja with whom he married. After about one year,he came to know that accused had an affair with one more girl. Although, this witness does not name the girl with whom accused was having affair, but fact remains that he came to know about the accused having affair with some other girl. It is pertinent to note that testimony of both these witnesses regarding accused having relation with Surubhi goes unrebutted, unchallenged and unshattered as the same was not assailed in cross examination. Even no suggestion was given to any of these witnesses that accused was not having any relation with another girl (as deposed

by PW 8, Arun Kumar Mittal) or Surubhi (as deposed by PW 3 Amit Verma). It is settled law that where a party fails to avail right of cross examination of witness despite there being sufficient opportunity and testimony of such witness remains unrebutted and unimpeached, then in such circumstances, such testimony has to be given due credence vide ***Mst.Kesar Jahan Begum vs. Ramjan Karim & Ors***, 1998 (46) DRJ 7; ***Rajender Prasad by Lrs vs. Smt. Darshana Devi***, 93 (2001) DLT 1 (SC); ***Sterling Holiday Resorts (India) Ltd. Vs. Mr. Manohar*** 2011 (1) AD (Delhi) 387.

39. Prosecution examined Surubhi PW27 who did not support the case of prosecution and denied any acquaintance with the accused. The reason was obvious. Ours is a conservative society and therefore, a young unmarried girl will not put her reputation in peril by admitting her relationship with a stranger, more particularly so, if the allegation against such stranger is of triple murder. In the tradition bound non-permissive society of India, a girl would be reluctant to admit such relationship in the prevailing circumstances of the case. She would be conscious of the danger of being ostracized by the society or being looked down by the society including her own

family members, friends and relatives. She would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable family. The natural inclination would be to avoid giving publicity to the incident lest the family name and honour is brought into controversy. Her parents would also like to avoid publicity on account of fear of social stigma on the family name and family honour. That being so, the reason for this witness being declared hostile was quite obvious that she would not like to put her prestige at stake by admitting her relationship with accused Nitin. As per prosecution version , at the time of incident she was only 17 years of age. When she came to depose in the Court on 13.01.2011, she was already married and when the witness appeared in the witness box, she was even reluctant to give her address of Chandigarh where she was residing. Under the circumstances, the mere fact that Surubhi denied her relationship with Nitin is of no consequence in view of the unchallenged testimony of PW 3 Amit Verma and PW 8 Arun Kumar Mittal.

40. It is the case of the prosecution that accused had provided a mobile phone of Haier HCC-2000 with Sim card of Tata Indicom

bearing No.9250968973 to Surbhi and she used to remain in touch with him from this phone. Inspector Anil Kumar has deposed that he contacted Surbhi. Her Haier HCC-2000 mobile phone was taken in possession vide memo Ex.PW11/A. Surbhi Rana admitted her signatures at point 'B' on seizure memo Ex.PW10/A and deposed that usually she does not sign any document without going through its contents but went on stating that her signatures were obtained on a blank paper. Even her father PW10 Hari Singh Rana had deposed that his signatures were obtained on blank paper. The reason for Surbhi or for that matter her father for not supporting the case of prosecution are quite obvious as discussed above.

41. However, Inspector Anil Kumar(PW31) and SI Jitender Dagar (PW20) both have deposed that they went to the house of Surbhi at Palam Colony, where she produced her mobile phone in the presence of her father, which was taken into possession vide seizure memo Ex.PW10/A. There is no reason to disbelieve the testimony of the police officials in this regard. The testimony of police personnel have to be treated in the same manner as testimony of any other witnesses and there is no principle of law that without corroboration by

independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies, as much in favour of police personnel as of other person and it is not a proper judicial approach to distrust and suspect them without good ground. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down as held in ***Karanjit Singh Vs. State (Delhi Admn.***) 2003 5 SCC 291, ***C. Ronald & Anr. Vs. Union Territory of Andaman & Nicobar Islands,*** (2001) 1 SCC (Crl.) 596. In ***Sunil Clifford Daniel vs. State of Punjab***, 2012 11 SCC 205, Apex Court referred to ***State Govt. of NCT of Delhi v. Sunil and Anr.,*** (2001) 1 SCC 652, wherein Court held as under:-

> *"20. ... But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.*
>
> *21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust.....At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way round. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence*

when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

42. In ***Madan Singh vs. State of Rajasthan***, 1979 SCC (Cri) 56, it was observed that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in ***Mohd. Aslam vs. State of Maharashtra***, 2002 SCC (Cri) 1024.

43. In ***Antar Singh vs. State of Rajasthan***, 2005 SCC (Cri) 597, it was further held:

"10.....even if Panch witness turn hostile which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated."

44. This view was reiterated in ***Rameshbhai*** (supra) by observing that merely because the Panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone.

45. In the instant case, testimony of the police officers does not suffer from any infirmity or doubt. Record reveals that no ill-will or animus has been alleged against any of the police officials for which reason they will falsely depose regarding handing over of mobile phone by Surabhi. In fact, testimony of SI Jitender Dagar (PW20) and Insp. Anil Kumar (PW31) that Surabhi produced her mobile phone make Haier in presence of her father goes unrebutted as same was not assailed in cross examination. Even no suggestion was given that Surabhi did not produce her mobile phone to police. Under the circumstances, the only conclusion which can be derived is that Surbhi had handed over a Haier HCC-2000 mobile phone with Sim card of Tata Indicom bearing No.9250968973 to the police which was seized vide seizure memo Ex.PW10/A.

46. The mobile phone No.9210359955 was issued in the name of Mr. Vinod K.Verma as per record produced by Nodal Officer Shri

M.N.Vijayan (PW13). According to the accused he was not using this mobile phone, however, it has come in the testimony of Inspector Anil Kumar and SI Jitender Dagar that one mobile phone make Huawei C-2601 having a Tata Indicom Sim with mobile number 9210359955 was recovered from the possession of the accused in the hospital and was seized vide seizure memo Ex.PW20/C. Call details of this mobile phone on 18.04.2008 and 19.04.2008 were proved by PW13 M.M.Vijayan as Ex.PW13/A. A perusal of the same shows that the calls were made from this phone and were received on this phone from 10.48 a.m of 18.04.2008 till 04:11 a.m. of 19.04.2008. As stated earlier, the approximate time of death of Vinod Verma was around 12 midnight. Therefore, after having been murdered by this time, he could not have talked on this mobile phone after midnight and thereafter. The other two ladies in the family were also dead by that time. There was no other member in the family and therefore, it is only the accused, who was in a position to make and receive calls at this mobile phone number and in fact he had used this mobile number on the fateful night. The call detail records Ex.PW13/A reveals that this mobile number was in touch with Surbhi Rana's number i.e.

9250968973 throughout the day of 18.04.2008 since 10:48 a.m. and at least 21 calls were made on that day and 3 calls on 19.04.2008. Such frequent calls made by accused to Surbhi on a single day indicate that two were having some sort of intimate relationship which finds corroboration from the testimony of PW3, Amit Verma and PW8 Arun Kumar Mittal, both of whom have deposed regarding affair of accused with another girl Surbhi. Under the circumstances, the plea of the accused that he was not using the mobile phone No.9210359955 which is in the name of his father is belied by the fact that it was seized from his possession in the hospital and the call details also negatives his pleas.

47. Another material circumstance which deserves to be noted is that all the articles were found in intact condition. The deceased were found to be wearing all their jewellery articles. The ornaments kept in the house had not been touched. A Mangalsutra and ladies purse was found intact on the dressing table. The lock of the gate was found in order. All these rules out the possibility of any theft, robbery etc.

48. Much emphasis was laid by learned counsel for the accused on the rough site plan of the place of incident, Ex.PW31/B prepared by

Insp. Anil Kumar for submitting that it pertains to House No.H-237, whereas the incident had taken place in the House No.234A, Gali No.9, Raj Nagar-II, Palam Colony. Therefore, the whole investigation has been carried of some other offence and not of the offence involved in the present case. This anamoly has been explained by the Investigating Officer in his cross-examination by deposing that house number shown by him on the rough site plan was told to him by a neighbour and number plate was not available at the main gate of the house of the colony. As such, the Investigating Officer was mislead by a neighbour regarding number of the house in which the offence had taken place and, therefore, wrong house number was mentioned in the rough site plan. This discrepancy is even otherwise inconsequential inasmuch as it is not in dispute that murder had taken place in the house belonging to Vinod Verma and dead bodies were also recovered in their own house. That being so, mere mention of wrong house number in the site plan by Insp. Anil Kumar is of no consequence and does not affect the prosecution case.

49. As regards the submission that Ravinder who was the first person to see the dead body and as such was the most material witness

and his non-examination is fatal to the prosecution, we are unable to accept the said contention as it is not necessary that all those persons who were present at the spot must be examined by the prosecution in order to prove the guilt of the accused. Section 134 of the Indian Evidence Act provides that no particular number of witnesses are required for proof of any fact. It is trite law that it is not the number of witnesses but it is the quality of evidence which is required to be taken note of for ascertaining the truth of the allegations made against the accused. In ***Thakaji Hiraji vs. Thakore Kubersing Chamansing*** (2001) 6 SCC 145, it was observed as follows:-

> *"It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself --*

> *whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."*

50. In ***Raj Narain Singh vs. State of U.P & Ors***. 2009 (12) SCALE 627, similar plea was taken that the prosecution did not examine other witnesses available on the spot. Repelling the contention, it was held that if the testimony of the witnesses who depose during the trial are found to be reliable, trustworthy and cogent, then the said evidence cannot be disbelieved or discarded merely because the prosecution failed to examine other witnesses allegedly present on the spot. ***Surinder Narain @ Munna Pandey vs. State of U.P***, AIR 1998 SC 192 was also a case where murder took place while deceased was travelling in rickshaw. Non- examination of rickshaw puller was held not to be fatal by observing that evidence has to be weighed and not counted. In the instant case, Ravinder is not an eye witness of the incident. He was merely asked by Vijay Kumar (PW1) to go to the house of Vinod Verma in order to check

as to why he was not responding to his telephone calls and thereafter he informed him that he is lying murdered in the house. That being so, he was not an eye witness of the incident. The Investigating Officer has explained that he did not deem it necessary to examine Ravinder as a witness since he was not an eye witness to the incident. No flaw can be found with this explanation given by the Investigating Officer of the case. Under the circumstances, non-examination of Ravinder does not cause any dent on the prosecution case.

51. Another aspect is to be taken note of. All the incriminatory circumstances which point to the guilt of the accused had been put to him while recording his statement u/s 313 Cr.P.C, and it was obligatory on his part to furnish some explanation with respect to incriminating circumstances associated with him, yet he did not give any explanation except choosing the mode of denial. In ***State of Maharashtra vs. Suresh***, (2000) 1 SCC 471, it has been held that when the attention of the accused is drawn to such circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for completing the chain of circumstances.

Similar was the view taken in ***Jagroop Singh vs. State of Punjab***, (2012) 11 SCC 768, ***Alagupandi @ Alagupandian vs. State of Tamil Nadu, Munish Mubar vs. State of Haryana***, (2013) 1 SCC (Cri) 52.

52. A perusal of statement of accused recorded u/s 313 Cr.P.C reveals that it is either evasive or one of denial simplicitor. To cite a few, despite the fact that specific questions are put to the accused that on coming to know that accused was admitted in DDU hospital, Insp. Anil Kumar visited hospital and found injuries on his fingers, palms, thigh inflicted by sharp edged weapon, recovery of blood stained vest, towel knife was effected at the instance of accused in the presence of public witnesses Sai Purushottam Kumar, call details of his mobile phone was obtained from M/s Tata Indicom as per which he was present in his house at the time when the murders took place i.e from 9.26 p.m on 18.04.2008 to 12.27 in the night, instead of furnishing any explanation, his answer was simply, "*I do not know*". Thus failure on the part of accused to furnish some explanation with respect to incriminating circumstances appearing against him also complete the chain in the circumstances appearing against him.

53. Learned Additional Sessions Judge enumerated the following circumstances which emerged from the evidence laid by the prosecution:-

(i) The deceased were found brutally murdered in their own house;

(ii) No ornaments worn by the deceased or kept in the house had been touched, thereby ruling out the possibility of theft or robbery;

(iii) Accused does not call either his wife or his parents from Budha Garden. He calls his uncle PW1;

(iv) Accused tells lie to PW1 that he has met with an accident and has suffered injuries in the road accident;

(v) The injuries found on the body of the accused were sharp cut injuries, possibly with knife Ex.P1, which he has failed to explain;

(vi) Accused refused to go to the hospital and insisted he be taken home;

(vii) Accused got recovered the blood stained knife and blood stained clothes (vest, and small towel) pursuant to his disclosure statement;

(viii) The blood group of the blood on the vest matches with blood group of the accused and the blood group of the blood on the towel matches with the blood group of the deceased;

(ix) Accused has not offered any explanation how his clothes got blood and why he had hid the knife and the clothes near the Railway Line;

(x) The accused should have normally been at his home when the murders took place i.e. around midnight and he even did not offer any explanation when he has left house and why he was away from his house at such late hours of the day;

(xi) PW27 handed over a mobile phone of make Haier HCC 200 having mobile no.9250968973 to the police vide seizure memo Ex.PW10/A;

(xii) Accused had been talking on the aforesaid mobile number from his mobile no. 9210359955 since the morning of 18.04.08 and continued so till the morning of 19.4.08, which

indicate that there was some kind of intimate relationship between the two.

54. It is opined that Circumstances (iii), (iv), (v), (vi), (vii), (viii), (ix) and (x) directly point towards the guilt of the accused that he is involved in the murder of the deceased. Circumstance (ii) eliminates any possibility that the murder may have been the handiwork of thieves, dacoits etc. Circumstances (xi) and (xii) relates to the motive for the crime. It was further observed that the death has taken place around 12 midnight when accused is normally expected to be at his house. Accused has failed to furnish any explanation about his absence from his house. Rather as per the testimony of Inspector Anil Kumar, the call detail records of the mobile phone number shows that accused was in the area of Raj Nagar-II, Palam Colony till about 12 midnight on 18th April, 2008. The case of accused is one of denial simplicitor and absolutely in regard to any of the incriminating circumstance appearing against him, he has not furnished any explanation. Under the circumstance, the overwhelming evidence coming on record established that it is the accused alone who is the perpetrator of the triple murders. Aforesaid findings of learned

Additional Sessions Judge, does not suffer from any perversity which calls for interference. Having taken into consideration the totality of the evidence and the circumstances alleged and proved, this Court has no doubt that prosecution was able to bring home the guilt of the accused. The prosecution eliminated the possibility of any one else being guilty and at the same time, established that the circumstances proved are such that every hypothesis consistent with the appellant's innocence has been ruled out. As a consequence, this Court affirms the finding of the Trial Court in the impugned judgment.

55. The vexed question which now arises for consideration is: whether the facts of the instant case warrants the imposition of extreme penalty of death.

56. The guiding principle which Courts have to look at, for deciding whether to impose capital punishment in the facts of the given case is if the circumstances are in the opinion of the Court, such that they fall in the `rarest of rare' category warranting the award of that punishment after the decision in ***Bachan Singh Vs. State of Punjab***, 1980(2) SCC 684.

57. In ***Sangeet and Another vs. State of Haryana***, (2013) 2 SCC 452, Hon'ble Supreme Court travelled back to ***Jagmohan Singh*** (1973) 1 SCC 20 for indicating the legislative change. ***Jagmohan Singh*** was decided when Code of Criminal Procedure 1898 was in force. Section 367(5) of the old Code provided that if an accused person is convicted of an offence punishable with death, and he is sentenced to a punishment other than death, the Court was required to state the reason why a sentence of death was not passed. Section 367(5) of the old Code reads as follows:

> *"367.(5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed."*

58. ***Bachan Singh*** was, however, heard and decided when the Code of Criminal Procedure, 1973 (for short `Cr.P.C') had come into force w.e.f. 01.04.1974. Cr.P.C contained Section 354(3), which provided that for an offence punishable with death, the first option for punishment would be imprisonment for life and the second option would be a sentence of death. Section 354(3) Cr.P.C reads as follows:-

> *"354.(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a terms of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence."*

59. Cr.P.C effectively reversed the position as it existed under the old Code and also placed a requirement that if a sentence of death is awarded, the Court should record special reasons for awarding that sentence.

60. Following guidelines for imposing death sentence upon a murder convict were laid down by Hon'ble Supreme Court in ***Bachan Singh***(supra):-

> *I. The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;*
>
> *II. Before opting for the death penalty, the circumstances of the offender also required to be taken into consideration along with the circumstances of the crime;*
>
> *III. Life imprisonment is the rule and death sentence is an exception. In other words, the death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously*

exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;

61. ***Macchi Singh vs. State of Punjab***, 1983 (3) SCC 470 is a three Judge Bench decision of the Supreme Court which mentioned the need for Courts to draw "*a balance-sheet of aggravating and mitigating circumstances*" and grant full weight to mitigating circumstances, to strike a just balance before the option to award death penalty is exercised. ***Anshad v. State of Karnataka***, 1994 (4) SCC 381 addressed the issue of subjective sentencing in matters involving death penalty. The manner in which the crime was committed, the weapons used and the brutality or the lack of it are some of the considerations which must be present in the mind of the court. It was further stated that the Court while taking into account the aggravating circumstances should not overlook or ignore the mitigating circumstances. In ***Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka***, 2008 (13) SCC 767 the Court noticed that there was lack of evenness in the sentencing process. The later decision in ***Sangeet v. State of Haryana***, 2012 (11) SCALE 140 doubted the "aggravating-mitigating balance sheet"

approach commended in ***Macchi Singh*** (supra). ***Sangeet*** noted, pertinently, that in ***Bachhan Singh***, the Constitution Bench refrained from enumerating circumstances relating to the crime or the criminal and merely noticed submissions made with regard to weighing the factors in each case. ***Sangeet*** held that:

> *"32. It does appear that in view of the inherent multitude of possibilities, the aggravating and mitigating circumstances approach has not been effectively implemented.*
>
> *33. Therefore, in our respectful opinion, not only does the aggravating and mitigating circumstances approach need a fresh look but the necessity of adopting this approach also needs a fresh look in light of the conclusions in* Bachan Singh. *It appears to us that even though Bachan Singh intended "principled sentencing", sentencing has now really become judge-centric as highlighted in Swamy Shraddananda and Bariyar. This aspect of the sentencing policy in Phase II as introduced by the Constitution Bench in Bachan Singh seems to have been lost in transition."*

62. 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. In ***Panchhi v. State of Uttar Pradesh*** 1998 (7) SCC 177, the Supreme Court held that brutality is not the sole criterion of determining whether a case falls under the "rarest of rare" categories,

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."*

63. It has been held that imposition of the death sentence is an exception, and the courts bear an onerous responsibility in administering the "rarest of rare" test. The decision making process of the Court in arriving at the conclusion-of the appropriateness of the death sentence-should not be perfunctory and has to fulfill the rigors of procedural justice (***Mohd. Farooq Abdul Ghafur v. State of Maharastra***, 2010 (14) SCC 641). Furthermore, it has been held that death penalty would be warranted where the court concludes that the convict would be a menace and threat to the harmonious and peaceful existence of society; the possibility of reformation and rehabilitation of the convict should be absent (***Mohandas Rajput v. State of Maharastra*** , 2011 (12) SCC 56; ***Mohinder Singh*** (supra).

64. There are several decisions, which, depending on the way the judge chooses to look, would be determinative of the fate of the accused. In ***Rajpara v. State of Gujarat***, (2002) 9 SCC 18; ***Sheikh Ayub v. State of Maharashtra***, 1998 SCC (Cri) 1055; ***Ram Anup Singh v. State of Bihar,*** AIR 2002 SC 3006, ***Sangeet*** (supra) and ***Mohinder Singh*** (supra), death sentence imposed for brutal murders of family members were commuted by the Supreme Court. In ***Rajpara*** (supra) the accused was convicted for murder of wife and four daughters by pouring petrol on them and setting them on fire when they were asleep. But the Court commuted the death penalty to life imprisonment. In ***Sheikh Ayub*** (supra) the accused murdered his wife and five children, but again the death penalty was not awarded. ***Ram Anup Singh*** (supra) was a case of murder of four persons including the accused's brother and family members; yet death penalty was not awarded. In ***Sangeet*** (supra), appellant was convicted of murder of four members of a family but Court commuted the death penalty to life imprisonment. ***Mahender Singh*** (supra) was a much more serious case where the accused was earlier sentenced to rigorous imprisonment for 12 years for committing rape on his daughter in

which case, his deceased wife was a witness. In retaliation, when he was released on parole, he committed double murder of his wife and daughter. Yet keeping in view the fact that probability of offender's rehabilitation and reformation was not foreclosed, death sentence was commuted to life imprisonment.

65. There are some precedents for example ***Sahdeo & Others vs. State of U.P.*** AIR 2004 SC 3508, ***Sheikh Ishaque & Ors. vs. State of Bihar***, 1995 Crl.L.J.2682,; ***Aloke Nath Dutta & Ors. vs. State of West Bengal***,: (2006) Suppl(10) SCR 662 which are authorities for the proposition that if the offence is proved by circumstantial evidence, ordinarily, death penalty should not be awarded.

66. Discussing the nature of the content of the *rarest of rare* dictum, the Supreme Court observed, that a real and abiding concern for the dignity of human life postulates resistance to taking a life through the instrumentality of law. That ought not to be done, save in the rarest of rare cases, *when the alternative option is unquestionably foreclosed.*

67. Imprisonment for life as a penalty entails that the accused must remain in prison till his life i.e. would never be set free from jail.

However, the executive has the power of remission under Section 433 Cr.P.C., which is subject to the restriction imposed by Section 433-A Cr.P.C. as per which a person sentenced to imprisonment for life or one whose sentence of death has been commuted to imprisonment for life cannot be released from prison unless he/she has served at least 14 years of imprisonment.

68. The alternative option considered by the Courts, is to pass a direction that the accused, who has been held guilty would not be released from prison, till a sentence more than 14 years imprisonment has been suffered by the accused, who has been sentenced to undergo imprisonment for life.

69. The option was exercised in ***Jayawant Dattatraysuryarao & Ors. vs. State of Maharashtra***, AIR 2002 SC 143, ***Swami Shraddhanand***(supra) in which case some of the earlier decisions reported as ***Shri Bhagwan vs. State of Rajasthan***, 2001(6) SCC 296, ***Prakash Dhawal Khairnar(Patil) vs. State of Maharashtra***, 2002(2) SCC 35; ***Ram Anoop Singh vs. State of Bihar***, 2002(6) SCC 686 and ***Mohd. Munna vs. Union of India***, 2005 (7) SCC 417 were noted. However, in ***Sangeet***(supra), it was observed that by doing so,

remission power of the appropriate government has effectively been nullified by awarding sentence of 20 years or 25 years or in some cases without any remission. Same is, however, not permissible. The appropriate government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever be the reason. It was further observed that there is a misconception that a prisoner serving life sentence has an indefeasible right to release on completion of either 14 years or 20 years imprisonment. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by appropriate government u/s 432 of the Code, which in turn, is subject to procedural checks mentioned in the said provision and further substantive checks in Section 433A of the Code. The view was subsequently followed in ***Mahender Singh*** (supra) where it was held that in order to check all arbitrary remissions, the Code itself provides certain conditions. Sub-section(2) to (5) of Section 432 of the Code laid down basic procedure for making an application to appropriate government for suspension or remission of sentence either by the

convict or someone on his behalf. Exercise of power by the appropriate government under sub-section (1) of Section 432 of the Code cannot be taken away for the simple reason that this is only an enabling provision and the same would be possible subject to fulfillment of certain conditions. Those conditions are mentioned in the jail manual or in statutory rules. Power of remission cannot be exercised arbitrarily. In other words, the decision to grant remission has to be well informed, reasonable and fair to all concerned. The statutory procedure laid down in Section 432 of the Code itself provides this check on the possible misuse of the power by the appropriate government.

70. The factors which weighed with the learned Additional Sessions Judge for awarding death sentence were:

- The accused was in a dominating position upon all the three deceased who were his parents and wife. His father was a handicapped old person and the other two were helpless ladies.
- There was no provocation to the convict from any of the three innocent helpless victims.
- The murder was committed in a pre-planned manner.

- Brutal, diabolic and grotesque manner in which murder was committed.
- Accused was legally and morally bound to take care of his parents and wife.
- He wiped out his whole family in order to ensure that he continued his liaison with a girl in the neighbourhood and marry her.

71. The only mitigating circumstance was the young age of the accused. It was observed that the only mitigating circumstance pales into insignificance in view of the aggravating circumstances appearing in the case against him, as such, life imprisonment would be all together inadequate punishment, having regard to the nature of the crime and the manner and circumstances in which it was committed.

72. No doubt triple murder has been convicted by the convict in a gruesome and diabolical manner, but it cannot be lost sight of that this was not a murder to satisfy any greed. The accused has no bad antecedents nor is a hard core criminal nor an anti-social element nor an anti national element. He is a young boy. The possibility of his

rehabilitation and reformation is not foreclosed. As such, we are of the opinion that this is not a case where death penalty is warranted.

73. For the reasons mentioned above, the appellant-accused, therefore, instead of being awarded death penalty is sentenced to undergo rigorous imprisonment for life, meaning thereby the end of his life subject to any remission granted by the appropriate government satisfying the conditions prescribed in Section 432 of the Code and further checks under Section 433 A of the Code by passing appropriate speaking orders. The appeal and death reference are disposed of on the above terms.

SUNITA GUPTA
(JUDGE)

REVA KHETRAPAL
(JUDGE)

September 06, 2013
as/rs