

**IN THE HIGH COURT OF CALCUTTA
AT JALPAIGURI CIRCUIT BENCH
(Criminal Miscellaneous Jurisdiction)**

Appellate Side

Present:

The Hon'ble Justice Rajarshi Bharadwaj

And

The Hon'ble Justice Md. Shabbar Rashidi

**DR 01 of 2024
With
CRA (DB) 30 of 2024**

**State of West Bengal
Vs.
Hangjit Rai**

For the Appellants : Mr. Arjun Chowdhury, Adv.

: Mr. Abhishek Sarkar, Adv.

**For the State : Mr. Aditi Shankar Chakraborty,
Ld. APP**

: Mr. Aniruddha Biswas, Adv.

: Mr. Sourav Ganguly

Hearing Concluded on: July 11, 2024

Judgment on : August 16, 2024

MD. SHABBAR RASHIDI, J.:-

1. This death reference as well as the Criminal Appeal being CRA (DB) 30 of 2024 has arisen from the judgment

of conviction dated December 20, 2023 and the order of sentence dated December 21, 2023 passed by the learned Additional Sessions Judge, Kalimpong, Darjeeling in Sessions Trial No. 04/ December/ 2014 arising out of Sessions Case No. 34 of 2014.

2. By the impugned judgment of conviction dated December 21, 2023, the learned trial court found the appellant guilty of murder; attempt to commit murder and causing grievous hurt with dangerous weapon under Sections 302/307/326/34 of the Indian Penal Code. The learned trial court by its order dated December 21, 2023, sentenced the convict to death and to pay a fine of ₹. 20, 000/- for the offence punishable under Section 302/34 of the Indian Penal Code, 1860.

3. The convict was further sentenced to Rigorous Imprisonment for 10 years and to pay a fine of ₹. 5, 000/- and in default of payment of fine to undergo Rigorous Imprisonment for another period of 3 months for the offence punishable under Section 326/34 of the Indian Penal Code.

4. The convict was also sentenced to Rigorous Imprisonment for 10 years and a fine of ₹. 6,000/-and in default of payment of fine to undergo Rigorous Imprisonment for another period of 3 months for the offence punishable under Section 307/34 of the Indian Penal Code.

5. As per the case made out by the prosecution, PW1 lodged a complaint with Kalimpong Police Station on June 19, 2014 to the effect that on the said day i.e. June 19, 2014 at about 4.30 am, a child namely Yang Ongmu Bhutia D/o Dominic Bhutia of Lower Biong Busty, Gitdabling G.P. came to his residence and shouted, 'Aunty', 'Aunty'. Wife of PW1 asked her the reason of shouting. In reply, the child told her that her father and mother were killed by two persons armed with 'Khukri' and 'Danda'. The child also informed the wife of PW1 that she was hiding inside a blanket.

6. Hearing about the incident, PW1 rushed to the place of occurrence and found another child Renzee Ongmu Bhutia with her hand cut and hanging with her

arms. She begged for help. The said child was also the daughter of Dominic Bhutia. Thereafter, PW1 called upon the neighbors of Dominic Bhutia namely Amos Lepcha, Rubal Rai, Bikram Subba, Gilbert Lepcha and Rinchen Lepcha. On their arrival three of them accompanied the victim child Yang Ongmu Bhutia to Kalimpong Sub-divisional Hospital for her treatment. The de-facto complainant also stated in the written complaint that later, he came to know over phone that the victim child Yang Ongmu Bhutia disclosed in the Hospital that her parents were killed by one Puran Rai S/o Hangjit Rai.

- 7.** On the basis of such written complaint, Kalimpong Police Station Case No. 243/2014 dated June 19, 2014 was started against Puran Rai and one unknown person under Section 326/307/302/34 of the Indian Penal Code, 1860. The police took up investigation and on completion thereof, submitted charge-sheet under the aforesaid Sections against Puran Rai and Hangjit Rai.
- 8.** Accused Puran Rai died of committing suicide after conclusion of investigation and the case against him was

filed for ever. On the basis of materials in the case diary, charges under Sections 326/307/302/34 of the Indian Penal Code were framed against the convict Hangjit Rai on December 5, 2014. The present convict denied the charges and claimed to be tried.

9. Learned advocate for the convict submitted that there are material contradictions in the statement of the witnesses examined on behalf of the prosecution vis-à-vis other witnesses. It is also submitted that the statement of certain prosecution witnesses examined on dock are contradictory to their own statements recorded under Section 164 of the Code of Criminal Procedure.

10. Learned advocate for the convict also submitted that the seizure of alleged offending weapon, has gone doubtful in so far as the same was not done in strict compliance of the provisions contained in Section 27 of the Indian Evidence Act. Moreover the injuries, found on the person of the victims, do not conform to the dimension of the seized offending weapon. Learned advocate for the convict also submitted that alleged

offending weapon seized as per the leading statement of the convict and that sent to Regional Forensic Science Laboratory for chemical examination does not seem to be same and identical.

11. Learned advocate for the convict also contended that the investigating officer failed to bring on record the statement of the convict recorded under Section 161 of the Code of Criminal Procedure, on the basis of which, the alleged offending weapon was recovered so as to attract the provisions of Section 27 of the Indian Evidence Act, 1872. In support of such contention, learned advocate for the convict relied upon **2024 INSC 320 (Bubu Sahebagouda Rudragoudar and others vs. State of Karnataka)**.

12. Learned advocate for the convict further submitted that while passing sentence, the learned trial court did not consider the possibility of reformation. In fact, there was no material available with the learned trial court to consider such aspect. The advance age of the convict was also not taken into account at the time of awarding

sentence of capital punishment. It is contended that there is no subjective determination by the learned trial court as to the circumstances that the alternative punishment of life imprisonment was not available and the court had no option but to award the death sentence.

13. Learned advocate for the convict also contended that the learned trial court went overboard the evidence available on record in holding that the alleged murder was pre-planned and a cold blooded one and wrongly held that death sentence was the only appropriate punishment in the facts and circumstances of the case.

14. Learned advocate for the convict also submitted that the learned trial court failed to take into consideration the aggravating and mitigating circumstances in awarding the punishment of death. On such proposition, learned advocate for the convict relied upon **(1980) 2 Supreme Court Cases 684 (Bachan Singh vs State of Punjab), 2023 LiveLaw (SC) 217(Sundar@ Sundarrajan vs. State by Inspector of Police), (2019) 12Supreme Court Cases 460 (Rajendra**

Pradhanrao Wasnik vs. State of Maharashtra), (2009) 6 Supreme Court Cases 498 (Santosh Kumar Satishbhushan Bariyar vs. State of Maharashtra), (2014) 4 Supreme Court Cases 69 (Anil vs. State of Maharashtra) and 2023 SCC Online (Cal) 1877 (Surjeet Bhujel vs. State of West Bengal).

15. On the other hand learned advocate for the State submitted that the prosecution has sufficiently proved the charges leveled against the convict with the help of cogent and convincing evidence. It was submitted with reference to the evidence of PW2 that the witness happens to be an eyewitness to the incident and she has proved the same in her examination under Section 164 of the Code of Criminal Procedure.

16. Learned advocate for the State further highlighted the evidence of the injured eyewitness PW3 and relying upon **2023 SCC On Line SC 355(Balu Sudam Khalde And Another vs. State Of Maharashtra)** submitted that evidence of injured witness has greater evidentiary value

and unless compelling reasons exist, their statements are not to be discarded lightly.

17. Learned advocate for the State also submitted that it is sufficiently proved that the alleged offending weapon as also the wearing apparels and other articles were recovered as per the leading statement of the present convict from a hideout indicated and identified by him. Consequently, the learned advocate for the State submitted that the prosecution has been able to prove the charges against the convict convincingly and there are no materials to interfere with the judgment of conviction and order of sentence passed by learned trial court. The same is liable to be upheld.

18. In order to bring home the charges, the prosecution examined 33 witnesses in all. In addition, prosecution also relied upon several documentary and material evidences proved at the trial.

19. The de facto complainant himself deposed as PW1. He claimed to be a man of the local area where the victims resided. He knew the victims Dominic Bhutia and

his wife Christina Bhutia. He also knew their children Renzee Ongmu Bhutia and Yang Ongmu Bhutia. PW1 identified the convict in court. He also claimed identifying the other accused Puran Rai.

20. PW1 further stated that the incident took place on June 19, 2014. On the said day at around 4.30 in the morning Yang Ongmu Bhutia came to his house and started calling the wife of PW1. The wife of PW1 came out on such call when the child informed her that her parents were murdered. Hearing this, PW1 also came out. He was informed by the child that two persons wearing masks came with 'Khukri' and 'Lathi'.

21. Hearing this, PW1 rushed to the house of victim situated at a distance of two minutes' walk from his house. Going there, PW1 found the other child Renzee Ongmu Bhutia in badly injured condition with her hand almost cut and hanging. PW1 also noticed that she had been assaulted with a khukri on her face starting from her forehead through her eyes up to the chin and her eyes had bulged out in a split manner. He also noticed

several cut marks on different parts of the person of Renzee Ongmu Bhutia like hand, elbow, and chin etc.

22. PW1 further stated that he also found the victims Dominic Bhutia lying in a pool of blood on the bed and Christina Bhutia, lying in a pool of blood on the floor. Christina had several injuries on her person. Her hand was chopped and was lying beside her body. He then came out and called the villagers. On his call some of the residents of locality namely Amos Lepcha, Rubal Rai, Bikram Subba, Gilbert Lepcha and Rinchen Lepcha came there. Seeing the condition of Renzee Ongmu Bhutia, Gilbert, Bikram and Amosh wrapped her in a bed sheet and took her to hospital.

23. Upon information, police arrived at the residence of the victims. Inquest was conducted on the dead bodies. PW1 proved his signature on the inquest report (Exhibit 1). He also proved his signature on the written complaint scribed by one Mahesh Chhetri at his instructions (Exhibit 2).

24. In his deposition, PW1 also stated that the victim child Renzee Ongmu Bhutia, was later shifted to Sub-divisional Hospital Kalimpong. She stated before PW1 that Puran Rai came to her house and assaulted herself as well as her parents. PW1 further stated that convict Hangjit Rai accompanied the police to place of occurrence as well as his house and as shown by him, the police recovered the wearing apparels, bloodstained khukri and a pair of plastic chappals which were seized by police under several seizure lists. PW1 proved his signature on such seizure lists. PW1 stated that he signed on such seizure lists. PW1 also identified the Khukri (Mat Exhibit I) and a shirt (Mat Exhibit II).

25. The victim child Renzee Ongmu Bhutia was examined as PW2. She stated the late Dominic Bhutia and Christina Bhutia were her parents. The incident took place on June 19, 2014 at about 3.20 am. She also stated that on the day prior to the date of incident in the evening, Puran Rai and Hangjit Rai came to her house and demanded ₹.5, 000/- from her father. Her father told

them that he did not have the money. Whereupon the two persons had altercations. Her father pacified them and left them at their residence at a distance of five minute walk from his house.

26. PW2 further stated that in the following morning, at about 3.20 am, the said Puran Rai and Hangjit Rai came to her house and started knocking at the door and windows. PW2 and her mother, sleeping in the other room woke up hearing the sound of knocking. Mother of PW2 put on the lights and opened the door. The moment she opened the door the convict Hangjit Rai, assaulted her with a Khukri on her chest and head. The hand of her mother was completely severed off as a result of such assault. PW2 also stated that thereafter, accused Puran Rai took the Khukri from Hangjit Rai and went to the other room where her father was sleeping. Accused Puran Rai repeatedly assaulted the father of PW2 with the Khukri on his stomach.

27. PW2 embraced her father in order to save him and in doing so, she received a Khukri blow on her right

hand. She then came out of her bed and touched the feet of Puran Rai begging him not to hit her father at which accused Puran Rai slashed her left hand with the Khukri. He also assaulted PW2 on her face with the Khukri causing injuries on her face extending from temple to her chin. As a result of such assault, the hand of PW2 was hanging by a piece of skin and her right eyeball was also damaged. Her right eyeball had to be removed later and she was not able to work with her left limb.

28. PW2 further stated that after such assault she fell unconscious and after regaining senses she found herself lying on the floor of her house. She somehow moved to other room and found her mother lying in a sitting posture leaning against the wall. Thereafter, she went to the other room where her younger sister Yang Ongmu Bhutia was lying on the bed. When PW2 called her sister she looked at her. Then she showed her hands to her sister and asked her to call Anu Aunty. PW2 again lost her senses. She also stated that at the time of incident, she was sleeping with her father. Her mother and

younger sister were sleeping in the other room. She also stated that the assailant had already left when she regained senses for the first time. She identified the convict in court.

29. PW2 further stated that after her mother was slashed with Khukri by Hangjit, Puran had taken the Khukri from Hangjit and entered the room where she was lying with her father and at that time she noticed that Puran had tied a piece of cloth to cover his face. When PW2 rose from her bed to touch the feet of Puran and was begging mercy, the piece of cloth covering his face fell off and she could see him. She categorically stated that face of Hangjit was not covered. PW2 also stated that she was interrogated by police and her statement was also recorded by a Magistrate in Kalimpong Court. She proved her signatures on the statement recorded under Section 164 of the Code of Criminal Procedure (Exhibits 6 series).

30. In her cross examination, PW2 reiterated that she had made a statement before the police as well as learned

Magistrate to the effect that in the previous evening, the accused persons had come to her house demanding ₹.5,000/- and on his father's inability to meet such demand, the accused persons had an altercation among themselves. Her victim father intervened in the altercation, pacified them and left them to their house. She also stated in her cross examination that she did not go to the house of de facto complainant to call Anu aunty. It was her younger sister Yang Ongmu Bhutia.

- 31.** The other daughter of the victim couple, Yang Ongmu Bhutia deposed as PW3. She stated in her deposition that on the relevant date when she woke up she saw her elder sister Renzee Ongmu Bhutia (PW2) lying on bed beside her having deep cut injuries on her hand and eye. PW2 informed her that both her parents were killed. She however, could not say the name of assailants. Thereafter, on the request of PW2, PW3 went to call Anu aunty. She went to the house of Anu aunty situated close by and called from outside. On such call, Indira aunty and Mangal opened the door. PW3 informed

them that her father and mother had been killed. Both of them rushed to her house. She also stated that she had been to the court for recording her statement but could not state anything. She however, proved her signatures thereon (Exhibit 7 series). She identified the convict in court.

32. PW3 also stated that on the date of incident, she was sleeping with her mother Christina whereas, her sister Renzee was sleeping with her father Dominic in the other room. She however, could not say as to when her sister came to her room. Her sister had injuries on her left hand and right eye and she was not able to rise from the bed. Thereafter, PW3 was asked to stay back at the house of Indra aunty. She heard later that her parents were killed and her sister was injured by Puran Rai and Hangjit Rai.

33. The sister of victim Dominic Bhutia was examined as PW4. She stated that she was resident of lower Biong, Gitdabling and Dominic and Christina were her brother and sister-in-law. The incident took place on June 19,

2014. On that day she was staying at her sister Marina's house at Budhabara. She further stated that in the morning of the fateful day at about 5/5.30 am she was informed by her brother-in-law Mangal Lepcha (PW1) that something had happened with her brother and sister-in-law and asked her to rush to their house.

- 34.** Hearing this, PW4 and her sister Marina rushed to the house of Dominic Bhutia. Reaching there, she saw Mangal Lepcha outside the house and when she got inside the house she found blood all over the house. Thereafter, PW4 lost her senses and had streak of unconsciousness every off and on throughout the day. Subsequently, she got informed that police had arrived and took the dead body of her brother and sister-in-law for post mortem examination. On the next day i.e. June 20, 2014 there was funeral of her brother and sister-in-law and on June 22, morning, PW4 left for Silliguri to meet Renzee Ongmu Bhutia. She got information that Renzee was also assaulted by the assailants.

35. PW4 further stated that from Renzee she came to know that in the prior to the date of incident, Hangjit Deva and Puran Mama had come to her house asking ₹.5000/- from her father. When her father told them that he had no money, they started abusing her father. The two accused persons also started fighting with each other. The parents of Renzee intervened and left them at their residence situated at 5 minutes' walk. PW4 further stated that Renzee also reported to her that in the darkness on loud banging on the door of her house she woke up. Her mother also woke up, switched on the lights and opened the door. With the opening of the door, the convict Hangjit started assaulting the mother of Renzee (PW2) with a Khukri on her hand and head.

36. PW4 was also reported by PW2 that thereafter, accused Puran Rai snatched the Khukri from the hand of Hangjit and came inside the room where PW2 was sleeping with her father. Her hand was on the chest of her father. Accused Puran Rai assaulted on the chest of Dominic with the Khukri causing severe injury to the

hand of PW2. PW2 then got out from the bed and held the feet of Puran seeking mercy. At that time, Puran assaulted Rinzee with the Khukri on her hand and face. Thereafter, PW2 fell unconscious and regained senses in the following morning. Rinzee was then taken to hospital for treatment. PW4 also stated that she had narrated the incident as reported by PW2, to a police officer on June 22, 2014. PW4 identified the convict in court.

37. A local resident deposed as PW5. He stated that he was previously a school teacher but later he resigned. On June 19, 2014 at about 5.30 am he heard a hue and cry in the village, a short distance from his house. On hearing the hue and cry, he went to the house of Dominic Bhutia. He witnessed from the open doors that dead body of Dominic Bhutia was lying on the bed whereas that of Christina Bhutia was on the floor. There was blood all over. However, nobody in the crowd could answer his queries about the incident.

38. Police arrived at the spot after 10 am and asked for volunteers. PW5 volunteered to collect blood samples.

Police also seized the bed sheet, mobile phone and sling bag from the place of occurrence. PW5 identified his signature on the seizure list (Exhibit 8) and the articles seized (MAT. Exhibit III, IV and V). PW5 however, could not give the details of the injuries on the person of victims. He also stated that later on, he heard that the murder of two persons was committed by Hangjit Rai and his son Puran Rai. They also injured the daughter of the victims namely Rinzee Ongmu Bhutia @ Yangki Bhutia.

- 39.** Another person from the village was examined as PW6. He stated that he know the victims Dominic Bhutia and his wife Christina Bhutia. On June 19, 2014, at his house, he heard about a murder case at Beong Busty, less than a Kilometer from his house. Reaching there at about 11 am, he found that police had arrived at the house of Dominic Bhutia. The dead body was removed from inside the house and the place was smeared with blood. Police seized blood samples from two places, bloodstained bed sheet, mobile phone and a bag. PW6 proved his signature on the seizure list (Exhibit 8/1). He

also identified the seized articles. PW6 also stated that later, he heard that Dominic Bhutia and his wife Christina Bhutia were murdered by Hangjit Rai and Puran Rai. He identified the convict in court. Nothing favorable could be elicited in the cross examination of this witness by the defense.

- 40.** PW7 is another person from the locality. He stated that on June 19, 2014 at about 4.30/5.00 am, Mangal Lepcha (PW1) called him by shouting at the house of Dominic Bhutia, at a distance of 10/15 minutes' walk. Going there, he found Mangal, Rinzee Ongmu Bhutia and some co villagers outside the house. Rinzee had severe cut injuries and bleeding on one of her hands and eyes. PW7 did not go inside the house as he was asked to immediately take Rinzee to hospital. He along with Gilbert and Bikram accompanied Rinzee to Gitdabling hospital whom they carried in turns. Rinzee was shortly referred to Sub divisional Hospital, Kalimpong. PW7 however, did not accompany her to Kalimpong and returned to the place of occurrence.

41. PW7 also stated that as requested by the police, he accompanied the dead bodies of Dominic Bhutia and Christina Bhutia to hospital for post mortem. This witness also heard that Hangjit Rai and his son Puran Rai were the assailants.

42. PW 8 was at Gitdabling on June 19, 2014. At about 5/5.30 am in the morning PW8 was informed by one Mujan Lepcha that there was some trouble at the house of Dominic Bhutia which was situated at 2/3 minutes' walk from where PW8 was staying. Hearing this, PW8 went to the house of Dominic Bhutia along with Vikram Subba. They found one child outside the house of Dominic Bhutia. One of the hands of the said child was almost severed and hanging by skin. PW8 also noticed that the child had suffered severe cut injury on one of her eyes. Somebody arranged for curtain with which the child was wrapped and rushed to the hospital. The child was then senseless. PW8 returned to his house from the hospital. He however did not state anything about the

incident. PW8 also stated that on his way to hospital, he was accompanied by Amos Lepcha, Gilbert and Vikram.

- 43.** Another resident of lower Biong, Gitdabling deposed as PW9. He stated that on June 19, 2014, he was at his house. He was a relative of Dominic Bhutia and Christina Bhutia. He further stated that the incident took place in the house of Dominic Bhutia. At about 5 in the morning on the date of the incident, PW9 received a phone call from Andrew Lepcha informing him that Dominic Bhutia and Chiristina Bhutia had been cut by somebody and were taken to Gitdabling Primary Health Centre. PW9 went to the health centre. The child of Dominic Bhutia was not found by him. He later heard that the child of Dominic Bhutia was referred to Kalimpong Hospital. He then went to the house of Dominic Bhutia at about 6.30 am and saw gathering and the door of the of Dominic Bhutia was open and he could see that the body of Christina Bhutia lying on the floor having severe cut injuries on her face. PW9 also noticed that upper portion of the hand of Christina was severed and was lying on

the floor. The entire area was smeared with blood. From the open door, PW9 also saw the body of Dominic Bhutia lying on the bed in the same room. He arranged for informing the relatives of Dominic Bhutia. PW9 heard that the daughter of Dominic had been assaulted causing severe cut injury on one of her eyes and one of her hands. Her hand was also severed hanging by the skin. PW9 also heard that Manjit Rai and Puran Rai were arrested by police. He identified the convict in Court.

- 44.** PW10 is the wife of de facto complainant (PW1). He stated that he knew the deceased Dominic Bhutia and his wife Christina whose house was situated at a distance of 2/3 minutes' walks from that of PW10. PW10 also stated on June 19, 2014 at about 5 am, her niece Yang Ongmu Bhutia came outside her house and started shouting. On hearing the shouts PW10 and her husband opened the door whereupon her niece reported them that her sister Rinzee Ongmu Bhutia had been severely assaulted with a khupri. Hearing this, the de facto complainant rushed to the house of her niece. PW10

stated back and informed the incident to the brother of her husband namely Richen Lepcha who also went to the house of Dominic. PW10 also stated that subsequently she heard from her husband that both Dominic and Christina were severely assaulted and murdered whereas the child Rinzee was severely assaulted. She also stated that Rinzee had identified Hangjit Rai and Purna Rai as assailants upon her and her parents. PW10 identified the present convict in the Court.

45. The brother of de facto complainant deposed as PW11. He stated that his young brother PW1 stayed adjoining his house sharing a common courtyard. He also stated that on 19 June, 2014 at about 5 am the wife of his brother Indira Lepcha called her and reported that Dominic Bhutia and his wife Christina Bhutia had been assaulted and killed in their house. PW 11 rushed to the house of Dominic and opened the door. He saw the dead body of Christina Lepcha lying on the floor just beside the door with one of her hands severed off. She was lying in a pool of blood. PW11 also saw the dead body of

Dominic Bhutia lying in a pool of blood on the bed in the same room. PW11 also witnessed that the child Rinzee Ongmu Bhutia in the adjoining room lying unconscious on the bed in a pool of blood. He also noticed one of her hands almost severed and she had a cut injury on her face starting from the eyes to her lips. PW11 wrapped the child in a towel and carried her outside the house. He also called for help of Gilbert Lepcha, Amos Lepcha and Bikram Subba who came there and took the injured child to hospital. PW11 also stated that he heard subsequently that the child Rinzee Ongmu Bhutia had revealed at Kalimpong hospital that she had been severely assaulted and her parents had been killed by Hangit Rai and Puran Rai. He identified the convict in court.

- 46.** The person accompanied the victim child deposed as PW12. He stated that on June 19, 2014, at about 5 am, he received a telephone from his would-be wife Birmith Lepcha informing that Dominic and his wife had been murdered in their house. PW12 rushed to the house of Dominic situated at a distance of $\frac{3}{4}$ minutes walks

from his house. Reaching near the place of occurrence, he heard hue and cry and saw a gathering there. He also found Rinzee Ongmu Bhutia daughter of Dominic Bhutia brought outside the house. Her hand was almost severed off and she had a severe cut injury starting from her eyes to lips. PW12 carried the child to hospital accompanied by Amos, Rubal and Vikram. She had been referred to Sub-divisional Hospital Kalimpong and ultimately to North Bengal Medical College and Hospital. PW12 also stated that he heard later on that Rinzee Ongmu Bhutia had disclosed to her aunt at Kalimpong hospital that the assault was committed upon her by a Hangjit Deva and Puran Mama. PW12 identified the convict in court.

47. The driver of an ambulance deposed as PW13. He stated that on June 19, 2014, he used to reside at Gitdabling. He was called by PW12 at about 6 am on June 19, 2014 and accompanied him to Gitdabling hospital. He carried a small girl with severe cut injuries from Gitdabling hospital to Kalimpong sub-divisional Hospital and reached there at about 8 am. Thereafter,

he left the hospital. The person who worked as interpreter in the recording of statement of Rinzee Ongmu Bhutia under Section 164 of the Code of Criminal Procedure deposed as PW14. He stated that he had interpreted the statements of Rinzee Ongmu Bhutia before Learned Judicial Magistrate, Kalimpong. He narrated the manner and proceedings in the recording of statement of the victim child Rinzee Ongmu Bhutia before learned magistrate. PW14 proved his endorsement on such a statement recorded under section 164 of the Code of Criminal Procedure (Exhibit 6/3). In his cross-examination, he stated that he worked as an interpreter as per the notice of police.

- 48.** Another resident of Gitdabling deposed as PW15. He stated that his house was situated a distance of 30 minutes walks from the house of Dominic Bhutia and Christina Bhutia. He further stated that on June 19, 2014, at about 6 am, he visited a small Bazar in the village where he saw a group of people gathering. PW15 overheard that Dominic and his wife had been killed in

their house by unknown people. Hearing this he visited the house of Dominic but did not enter. He could see the dead body of Christina Bhutia resting on something inside the room of the house with a pool of blood. Thereafter, police arrived and started primary investigation. Later on, PW15 and his friend Andrew were called by police. Entering the room, PW15 noticed the dead body of Christina Bhutia next to the door in a sitting position and the dead body of Dominic lying on the bed of the room. He also noticed cut injuries upon the face head and hand of Dominic Bhutia. PW15 also saw that her hand was severed off. PW15 signed on two inquest reports prepared by the police. He proved his signatures thereon (Exhibit 1/1 and Exhibit 9). He identified the present convict in court. PW15 was informed by police that Dominic and his wife Christina Bhutia were murdered by Hangjit and his son Puran Rai.

- 49.** A village police volunteer was examined as PW16. He stated that on July 10, 2014, police seized wearing apparel produced by Constable Ringi Napu Bhutia at

Kalimpong PS. He identified his signature on the seizure list (Exhibit 10). He also identified the seized wearing apparels (MAT Exhibit VI, VII and VIII).

- 50.** Another resident of Gitdabling deposed as PW17. He stated that on June 22, 2014, police accompanied the accused Hangjit Rai to his house and recovered a khukri with broken tips as shown by Hangjit Rai. It was seized by police under a seizure list. PW17 signed on seizure list which he identified (Exhibit 3/1). PW 17 also identified the seized Khukri. He further stated that police also seized a full pant from a ditch near the house of Andrew Lepcha as shown by the convict. He proved his signature on the seizure lists and identified the seized article. The scribe of the written complaint deposed as PW8. He stated that on June 19, 2014 at about 9 am, he was called by PW1 to write down a complaint. He scribed a written complaint as narrated by PW1. He read over and explained the contents thereof to the de facto complainant and made an endorsement to the effect. PW 18 proved the written complaint (Exhibit 2/1) and his

endorsement thereon (Exhibit 2/2). PW18 also stated that on August 4, 2014, he recorded a statement under Section 164 of the Code of Criminal Procedure. He proved his signature on such a statement (Exhibit 11). The sister of the victim Dominic Bhutia deposed as PW19. She stated in her deposition that she was a resident of hill top area within Kalimpong PS. On June 19, 2014 at about 6/6.30 am, she received a call from the de facto complainant informing her that her elder brother Dominic Bhutia and his wife Christina Bhutia were murdered and that the daughter of Dominic, Renzee Ongmu Bhutia was also assaulted causing severe injuries on her face and hand. The de facto complainant also reported to PW19 that the victim child was being taken to Kalimpong Sub-division Hospital. At about 8.30 am when PW19 reached Kalimpong hospital, the victim child had already been taken to operation theatre. With the permission of the hospital, PW19 went inside the operation theatre. The child Renzee was then conscious. She noticed that the child had severe cut injury on her

forehead crossing one of her eyes up to the chin and one of her hands almost severed off and hanging by skin. PW19 also stated that Renzee Ongmu Bhutia confided to her that Puran Mama and Hangjit Deva had cut her parents Dominic and Christina and also assaulted her. PW19 reported the narration to the de facto complainant. PW19 further stated that as per the advice of the doctors, the victim child was taken to North Bengal Medical College and hospital for better treatment. She also stated that she recorded her statement under Section 144 of the Code of Criminal Procedure before the learned magistrate. She proved her signatures on such a statement (Exhibit 12 and 13). In her cross-examination, PW19 admitted that she had stated before the learned Magistrate that Puran Rai had murdered her brother Dominic and his wife Christina.

- 51.** PW20 is another local resident of Gitdabling. On June 14, 2014 at about 5.30 am he was informed over phone by his brother Gilbert Lepcha that Dominic Bhutia and his wife had been killed at their house. Hearing this,

he immediately rushed to the place of occurrence situated at 3/4 minutes' walk. Reaching there he saw Mangal Lepcha along with a child who had received injuries. One of the hands of child was almost severed off hanging with skin. She had also received another injury running from forehead to her chin.

52. PW20 also stated that he did not enter the house of Dominic Bhutia but had seen the dead bodies. The dead body of wife of Dominic was lying near the door in a sitting posture whereas, that of Dominic was lying on the bed. The entire room was full of blood. He further stated that in the meantime, the child was sent to hospital for treatment. Police arrived there and after making preliminary investigations, requested PW20, Nursing Lepcha and Rinchen Lepcha to accompany them inside the house.

53. PW 20 also stated that one of the hands of wife of Dominic Bhutia was completely severed off and was lying on the floor. She had also suffered a sharp cut injury over her forehead. He also saw the dead body of Dominic with

multiple sharp cut injuries on his face. There was blood everywhere. PW 20 proved his signature on the inquest report (Exhibit 9/1 and ½). He also came to know that the child victim was taken to hospital where she disclosed the name of Puran Rai as assailant. PW20 also stated that sniffer dog was brought and as per the trail of sniffer dog, Hangjit Rai was arrested. He identified Hangjit Rai in court.

- 54.** PW21 is another resident of locality. He stated that on June 19, 2014 there was hue and cry in the village. Hearing this he along with co villagers went to the house of Dominic Bhutia. Going there, he found one small girl Rinzee Ongmu Bhutia with severe cut injuries running from her forehead up to chin with profuse bleeding. There was a severe cut injury on her left hand. PW21 along with Rubel, Gilbert and Amos wrapped in a bed sheet and took the child to Gitdabling hospital wherefrom she was referred to Kalimpong hospital. He also stated that when he reached Kalimpong hospital, he saw the paternal

aunts of the child namely Anita and Manika had already arrived there.

55. PW21 further stated that the child was referred to North Bengal Medical College & Hospital for better treatment. He returned to Gitdabbling when the child was taken inside accompanied by her aunts. PW21 was reported by Manika that the child Rinzee had regained senses in the Kalimpong hospital and confided that Puran Mama and Hangjit Rai had entered her house and had severely assaulted her and her parents Dominic Bhutia and Christina Bhutia. PW21 identified the convict.

56. A resident of Middle Biong deposed as PW22. He stated that on June 24, 2014 at about 12.30 pm, he went to the house of Hangjit Rai with one Climant Karthak. Police had brought Puran Rai. Puran Rai brought out a Nokia phone and currency notes from a room of his house which were seized under a seizure list. PW22 proved his signature on the seizure list (Exhibit 14). He also identified the recovered mobile phone (MAT Exhibit

XI) and the currency notes (MAT Exhibit XII). He identified the convict in court.

57. PW23 is another seizure list witness. He stated that on June 24, 2014 at about 12.30 pm he was working in the fields and went to the house of Hangjit. He made statement similar to that of PW22. He also testified the recovery of Nokia Mobile and currency notes as shown by Puran Rai which were seized under a seizure list. PW23 also proved his signature on such seizure list and identified the mobile phone and currency notes produced in court.

58. The doctor of Kalimpong Hospital, who treated the victim child Rinzee Ongmu Bhutia, deposed as PW24. He stated that on June 24, 2014 one patient Rinzee Ongmu Bhutia aged 12 years was brought by one Gilbert Lepcha. PW24 examined the patient and found several injuries namely:

1. Incised cut injury 11cm extending from forehead above right eyebrow to the middle of

the nose injuring the right eyeball. Outer table of the skull was cut.

2. Incised oblique cut injury over chin measuring 2cm x 1cm.

3. Incised cut injury measuring 2.5 cm x 1 cm on the inner side of right wrist joint.

4. Through and through incised cut injury, cutting both bones of left forearm proximal to the left wrist joint.

The injuries were grievous and seemed to be caused by heavy sharp cutting weapon.

59. PW24 also stated that when the patient was brought by Gilbert Lepcha, she was shocked and in trauma due to excessive bleeding and injuries and was not in a position to talk. He proved the injury report prepared in his pen and signature (Exhibit 15). He also stated that he immediately referred the patient Rinzee Ongmu Bhutia to operation theatre for repair and resuscitation including blood transfusion. Since then the patient went into the care and treatment of surgical team.

PW24 opined that as both the bones of left hand at the wrist were cut, the hand remained hanging with skin of soft tissues. In his cross examination, PW24 stated that the relatives of patient are often allowed inside the operation theatre for discussion.

60. The autopsy surgeon deposed as PW25. He stated that on June 19, 2014 he was attached to Kalimpong Hospital. He conducted post mortem on the dead body of one Dominic Bhutia aged 44 years and found injuries viz.

- Deep cut injury on chin about 4 inch x 2 inch,
- Deep cut injury from left ear to the nape of neck, 6 inch x 3 inch x 3 inch,
- Another injury was on face near left eye 2 inch x 1 inch,
- Another injury on forehead 2 inch x 1 inch
- Deep cut injury from nose to mouth 5 inch x 2 inch,
- Right hand severed and separated at palm just above thumb,
- Deep cut injury over right elbow.

61. Almost all the injuries were deep cut and inflicted by sharp instrument. PW25 opined that the cause of

death of Dominic Bhutia was hemorrhagic shock due to multiple injury as well as head injury.

62. PW25 further stated that on the same day he also conducted post mortem on the dead body of Christina Bhutia aged 35 years. He found the following injuries on the dead body of Christina Bhutia namely:

- Deep cut injury of about 4 inch x 2 inch x 2 inch from right chin to the neck,
- Cut injury on left cheek to neck 5 inch x 2 inch x 3 inch,
- Cut injury on forehead 3 inch x 2 inch,
- Cut injury over right brow 2 inch x 2 inch,
- Cut injury over right forearm near elbow 2 inch x 2 inch x 1 inch,
- Left hand severed and separated 2 inch above the wrist.

63. PW25 opined that the cause of death of Christina Bhutia was hemorrhagic shock due to multiple injury which may have been inflicted by heavy sharp cutting instrument. He proved the post mortem reports of

Dominic and Christina Bhutia prepared in his pen and signature together with the dead body challans (Exhibits 16, 17, 18 and 19 respectively).

64. A police constable deposed as PW26. He stated that on July 28, 2014 he along with another police constable accompanied Sub inspector of police to North Bengal Medical College & Hospital where certain medical documents concerning Rinzee Ongmu Bhutia were seized. PW26 proved his signature on the seizure list.

65. PW27 is a village police volunteer. He proved his signature on a seizure list dated July 10, 2014 by which SI Saran Sarki had seized certain wearing apparels produced by Rinzee Ongmu Bhutia. He also identified the seized articles.

66. The medical officer of Gitdabling Primary Health Centre deposed as PW28. He stated that on June 19, 2014, some 20/25 persons knocked at his door who were carrying an injured child Rinzee Ongmu Bhutia. He examined the said child and found deep cut injuries over right forehead. Eye. Nose and chin. She also had a deep

cut injury over her left forearm. Her hand was almost cut and was hanging with skin. He then referred the child to Sub Divisional Hospital, Kalimpong. He proved the outdoor ticket of the child (Exhibit 22). In his cross examination, PW28 could not say the name of the persons who accompanied the child.

67. The police constable who accompanied the dead body of Dominic Bhutia deposed as PW29. He proved his signature on the dead body challan as well as on the seizure list dated July 28, 2014.

68. Another police constable who accompanied the dead body deposed as PW30. He stated that on June 19, 2014 he was on duty with SI Saran Sarki. After getting a message, they went to Gitdabling and came to know that two persons, one male and a female were murdered. After making enquiry the dead bodies were taken to Kalimpong hospital for post mortem examination. He accompanied the dead body of Christina Bhutia.

69. The judicial Magistrate was examined as PW31. He proved the statements of victim girl and that of Monika

Tamang and Mahesh Chhetri (Exhibits 6, 12/1 and 11/1 respectively).

70. Sub Inspector Saran Sarki, the investigating officer was examined as PW32. He stated that on June 19, 2014, he was endorsed with the investigation of this case. He proved the formal First Information Report and endorsement thereon. In his deposition, he narrated the purport of investigation of the case. As directed by the Inspector-in-charge he went to the place of occurrence and conducted inquest on the dead bodies. The injured child was already sent to hospital. In course of investigation, he prepared rough sketch map of the place of occurrence, recorded statement of the witnesses, seized articles including the alleged offending weapon and medical documents under several seizure lists. He also sent certain seized articles for chemical and forensic examination.

71. PW32 also recorded the statement of the convict on the basis of which he took the convict on police remand and seized the offending weapon and wearing apparels as

per such statement leading to recovery. He proved such statement recorded under Section 161 of the Code of Criminal Procedure. On completion of investigation, PW32 submitted charge sheet against the present convict Hangjit Rai and Puran Rai.

72. The recording officer deposed as PW33. He received a written complaint on June 19, 2014 and started Kalimpong Police Station Case No. 243 of 2014 dated June 19, 2014 under Section 326/307/302 of the Indian Penal Code. He also filled up the Formal First Information Report and endorsed the case to Sub inspector Saran Sarki for investigation.

73. Accused Puran Rai died of committing suicide after conclusion of investigation and the case against him was filed for ever. On the basis of materials in the case diary, charges under Sections 326/307/302/34 of the Indian Penal Code were framed against the sole accused Hangjit Rai. Upon conclusion of the evidence of prosecution, accused Hangjit was examined under Section 313 of the Code of Criminal Procedure. The accused pleaded

innocence having no knowledge of the incident. He however, declined to adduce any defense witness.

74. According to the case made out by the prosecution, two persons Dominic Bhutia and his wife Christina Bhutia were killed in the incident. The elder daughter of the unfortunate couple suffered severe injuries including injuries on her hands and eyes. The incident was reported to police. The child was taken to hospital for treatment. Upon arrival, police conducted inquest upon the dead bodies. Several of the local people had gathered hearing the news of the incident. The aforesaid persons including the de facto complainant have consistently stated having seen the dead bodies.

75. The dead bodies were sent by police for post mortem examination under proper dead body challans proved at the trial. The autopsy surgeon PW25 had noted several injuries on the dead bodies and also proved the reports prepared in this regard (Exhibits 16 and 18). It was opined by PW25 that the cause of death of the two victims was hemorrhagic shock due to the injuries.

76. On the basis of such evidence, it is sufficiently proved that two persons Dominic Bhutia and Christina Bhutia died of injuries inflicted by heavy sharp cutting instrument and that they died an unnatural death.

77. As to the persons responsible for such death, the victim child Rinzee Ongmu Bhutia (PW2) is an eyewitness to the incident. She has narrated the incident with sufficient details. She was sleeping with her father whereas her sister Yang Ongmu Bhutia was sleeping with her mother. The accused persons knocked at her doors in the wee hours of June 19, 2014 whereupon she woke up. Her mother also woke up and opened the door.

78. Immediately on opening of the door, the present convict Hangjit Rai assaulted the mother of PW2 with a khukri on her chest and hand due to which, the hand of her mother was completely severed off from her body. Thereafter, the other accused Puran took the Khukri from the hands of Hangjit and started incessantly assaulting the father of PW2 on his stomach. The hand of PW2 was on the chest of her father and due to such assault, she

sustained severe cut injury on her right hand. Her hand was almost severed.

79. She has also stated that when Puran was hitting her father, she touched his feet and begged for mercy whereupon; she was assaulted with the Khukri on her face causing severe injuries. She somehow managed to go to the other room and report the matter to her sister asking her to call Anu aunty and fell unconscious.

80. The sister of the victim girl, PW3, went and called at the house of Anu aunty and reported the incident whereupon, her relative, PW1 came to the house of victims. In turn, he called upon the neighbours and lodged a written complaint. On arrival of the neighbours, PW2 was wrapped in a cloth and was taken to hospital for treatment.

81. The witnesses who accompanied PW2 to the hospital have testified such fact. There are consistent statements that the victim was taken to hospital being accompanied by Amos, Gilbert and Vikram. The aforesaid persons were examined on behalf of the prosecution and

all of such witnesses have testified that they carried the child to hospital. Even the medical officer of the hospital has testified that the victim child was brought by Gilbert.

82. The narration of PW2 with regard to the manner and mode of incident and injuries sustained by all the three victims are quite commensurate to the medical evidence. The mother and younger sister of PW2 were said to be sleeping in the inner room. It was her mother who opened the door after hearing knocks and was instantly assaulted the moment she opened the door. Thereafter, the other accused took the weapon and assaulted the father of PW2 who was sleeping in the room where the door was situated. PW2 was with her father and sustained injuries in trying to save her father. There are consistent unshaken statements of the witnesses examined on behalf of the prosecution that the dead body of Christina was lying in sitting posture just beside the door and that of Dominic was lying on the bed.

83. The injuries found on the person of victims as noted in the post mortem reports (Exhibits 16 and 18) as well

as medical documents of PW2 (Exhibits 22) are in absolute conformity with the manner of incident narrated by PW2. The defense has completely failed to dislodge such testimony of PW2. In fact, the defense has also not endeavored to cross examine the witness on such aspect.

84. The Hon'ble Supreme Court in the case of **Balu Sudam Khalde (Supra)** laid down certain guidelines with regard to appreciation of evidence of an injured eyewitness in the following terms:

26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded

- 85.** The conduct of the witnesses subsequent to the incident in calling the relatives, relatives coming to the place of occurrence and calling of persons from locality for help, recovery of the child and sending her for immediate medical help that she needed are all quite

natural expected of ordinary prudence. There are no material contradictions in the statement of witnesses examined on behalf of the prosecution as to such subsequent conduct.

86. Besides unambiguous narration of incidents by PW2 there is evidence on record that the accused was arrested after being led to by the sniffer dog brought by police. We hesitate to take note of such statement since the trainer of the dog has not been examined by the prosecution. But we are not unmindful of the fact that alleged offending weapon and bloodstained wearing apparels were recovered being led by the accused on the basis of his statement recorded under Section 161 of the Code of Criminal Procedure. Such statements were duly proved, though in entirety. We are minded to take into account the relevant portion of such statement strictly to the extent permissible under the provisions of Section 27 of Indian Evidence Act, 1872.

87. In his deposition recorded on November 28, 2023, the investigating officer, PW32 categorically stated that

he interrogated the accused Hangjit Rai and recorded his statement under Section 161 of the Code of Criminal Procedure wherein he stated that if was given a chance, he shall be able to recover the offending weapon and wearing apparel where they were kept. The said statement of accused Hangjit Rai was duly proved by PW32 and was marked as Exhibit 33, though in its entirety.

88. We are conscious that the entire statement of accused Hangjit Rai ought not to have been admitted in evidence. The relevant portion thereof, to the extent it led to recovery, was only admissible in terms of the provisions of Section 27 of the Indian Evidence. We have considered only the particular portion of the statement which led to recovery leaving aside the confession by him. In that view of the facts, the argument made on behalf of the defense to the effect that, the statement of accused Hangjit Rai leading to recovery was not brought on record, seems to be factually misdirected. Therefore, we find no necessity to consider the case of **Babu**

Sahebagouda (Supra) relied in support of such proposition.

89. The entire gamut of the prosecution evidence taken together seems to neatly woven. The chain of circumstances and action performed by each and every witness examined at the trial are closely stitched leaving no room for any reasonable doubt regarding involvement of the accused persons in the commission of the crime under reference. The evidence on record has left no scope for slightest inference of the involvement of anyone other than the arrayed accused persons in the commission of the crime involved herein.

90. The manner and mode of the commission of offence has been narrated by an eyewitness, PW2. She reported it to her sister who in turn, reported to the relatives and through them persons from the locality came to know of it. At every stage, the attending witnesses performed some act and such acts were testified by others and duly reflected from documents. The defense has not been able

to dislodge the testimony of the eyewitness or the supporting witnesses.

91. Evidence has disclosed that after knocking the door, when the door was opened by Christina Bhutia was first assaulted by the present convict Hangjit Rai causing complete severing of her hand and injuries on other parts of her body. Thereafter, accused Puran Rai took the weapon i.e. Khukri from the hands of Hangjit Rai and went on assaulting the victim Dominic Bhutia resulting in his death. He even did not care to hear the mercy request by PW2 rather, assaulted her as well, in response to such request causing grievous injuries resulting in permanent loss of one of her hand and eye each.

92. In consideration of the materials on record, there remains no iota of doubt that the convict Hasngjit Rai and the accused Puran Rai (since deceased) were exclusively responsible for the causing death of Dominic Bhutia and his wife Christina Bhutia and also causing grievous hurt to PW2 Rinzee Ongmu Bhutia, undoubtedly, to the exclusion of all others.

93. In view of the discussions made hereinbefore, we find no reason to interfere with the impugned judgment; so far as conviction of accused Hangjit Rai under Sections 326/307/302/34 of the Indian Penal Code, 1860 is concerned.

94. The evidence led at the trial revealed that in evening prior to the date of incident, the accused persons had an altercation with the victim Dominic Bhutia on demand of ₹. 5000/- The following morning, both the accused persons arrived at the house of Dominic being armed with a Khukri which is sufficiently indicative of the fact that both the accused persons were acting under a common intention. Although, accused Hangjit Rai was personally responsible for inflicting Khukri blows to Christina Bhutia and did not take part in assault upon Dominic and Rinzee i.e. PW2. Nevertheless, since both the accused persons shared a common intention, Hangjit Rai was rightly convicted and sentenced for the offences punishable under Section 326/307 of the Indian Penal Code. We are therefore, not minded to interfere with the

order of sentence, so far it relates to the punishment awarded for the offences punishable under Sections 326/307/34 of the Indian penal Code.

95. As regards the punishment of death awarded to the convict Hangjit Rai, for the offence punishable under Section 302 of the Indian Penal Code is concerned, it is well settled principle as of now that awarding of the sentence other than the sentence of death is the general rule only special reasons, that is to say, special facts and circumstances in a given case, will warrant the passing of the death.

96. In **Bachan Singh (Supra)** it was held by the Hon'ble Supreme Court that,

“201. With great respect, we find ourselves unable to agree to this enunciation. As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of “special reasons” in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given

to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because “style is the man”. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that “special reasons” can legitimately be said to exist.”

- 97.** The Hon’ble Court further laid down certain aggravating circumstances which may be taken into account to impose the penalty of death, in the following terms:

“202. Drawing upon

“Aggravating circumstances: A court may, however, in the following cases impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed—

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring

his assistance under Section 37 and Section 129 of the said Code.”

98. At the same time, the Hon’ble Supreme Court also laid down certain mitigating circumstances to be considered by the courts while imposing penalty where death is prescribed as a penalty. Hon’ble Court said:

“206. Dr Chitale has suggested these mitigating factors:

“Mitigating circumstances.—In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

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

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

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

207. We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence. Some of these factors like extreme youth can instead be of compelling importance. In several States of India, there are in force special enactments, according to which a “child”, that is, “a person who at the date of murder was less than 16 years of age”, cannot be tried, convicted and sentenced to death or imprisonment for life for murder, nor dealt with according to the same criminal procedure as an adult. The special Acts provide for a reformatory procedure for such juvenile offenders or children.

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209. *There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency — a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the*

onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.”

99. Similarly, in the case of **Sundar @ Sundarrajan (Supra)** the Hon’ble Court observed

“72. The High Court took into account the gruesome and merciless nature of the act. It reiterated the precedents Stating that the death penalty is to be awarded only in the rarest of rare cases. However, it did not specifically look at any mitigating circumstances bearing on the petitioner. It merely held that:

28. In a given case like this, it is an inhuman and a Merciless act of gruesome murder which would shock the conscience of the society. Under the circumstance, showing mercy or leniency to such

accused would be misplacing the mercy. That apart, showing leniency would be mockery on the criminal system. Therefore, the death penalty imposed by the trial Judge, has got to be affirmed, and accordingly, it is affirmed.

73. This Court examined the aggravating circumstances of the crime in detail. However, as regards the mitigating circumstances, it noted that:

31. As against the aforesaid aggravating circumstances, learned counsel for the accused-appellant could not point to us even a single mitigating circumstance. Thus viewed, even on the parameters laid down by this Court, in the decisions relied upon by the learned counsel for the accused-appellant, we have no choice, but to affirm the death penalty imposed upon the accused appellant by the High Court. In fact, we have to record the aforesaid conclusion in view of the judgment rendered by this Court in Vikram Singh & Ors. Vs. State of Punjab, (2010) 3 SCC 56, wherein in the like circumstances (certainly, the circumstances herein are

much graver than the ones in the said case), this Court had upheld the death penalty awarded by the High Court.

74. The above sequence indicates that no mitigating circumstances of the petitioner were taken into account at any stage of the trial or the appellate process even though the petitioner was sentenced to capital punishment.”

100. In the aforesaid case, the Hon’ble Court also laid down that possibility of reform should also be taken into account while considering death penalty to an accused. It noted that:

“79. No such inquiry has been conducted for enabling a consideration of the factors mentioned above in case of the petitioner. Neither the trial court, nor the appellate courts have looked into any factors to conclusively state that the petitioner cannot be reformed or rehabilitated. In the present case, the Courts have reiterated the gruesome nature of crime to award the death penalty. In appeal, this Court merely noted that the counsel for the petitioner could not point towards mitigating circumstances and upheld the death penalty. The state must equally place all material and

circumstances on the record bearing on the probability of reform. Many such materials and aspects are within the knowledge of the state which has had custody of the accused both before and after the conviction. Moreover, the court cannot be an indifferent by-stander in the process. The process and powers of the court maybe utilised to ensure that such material is made available to it to form a just sentencing decision bearing on the probability of reform.

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81. The duty of the court to enquire into mitigating circumstances as well as to foreclose the possibility of reformation and rehabilitation before imposing the death penalty has been highlighted in multiple judgments of this Court. Despite this, in the present case, no such enquiry was conducted and the grievous nature of the crime was the only factor that was considered while awarding the death penalty.”

101. In **Rajendra Pralhadrao Wasnik (Supra)** similar principles were laid down by the Hon’ble Apex Court. It noted that,

47. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until *Bachan Singh* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580], the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. *Bachan Singh* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in *Bariyar* [*Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150] and in *Sangeet v. State of Haryana* [*Sangeet v. State of Haryana*, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in *Sangeet* [*Sangeet v. State of Haryana*, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] “In the

sentencing process, both the crime and the criminal are equally important.” Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible.

- 102.** In the case of Santosh Kumar Satishbhushan Bariyar (Supra) the Hon’ble Supreme Court laid down that,

“66. The rarest of rare dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case? As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the court focuses on the circumstances relating to the criminal, along with other circumstances. This is not an easy conclusion to be deciphered, but Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] sets the bar very high by introduction of the rarest of rare doctrine.”

103. In Anil (Supra) the Hon’ble Supreme Court observed that,

“33. In *Bachan Singh* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] this Court has categorically stated, “the probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to the society”, is a relevant circumstance, that must be given great weight in the determination of sentence. This was further expressed in *Santosh Kumar Satishbhushan Bariyar* [*Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150] . Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts,

while dealing with the offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case.

.....

.....

36. The legislative policy is discernible from Section 235(2) read with Section 354(3) CrPC, that when culpability assumes the proportions of depravity, the Court has to give special reasons within the meaning of Section 354(3) for imposition of death sentence. A legislative policy is that when special reasons do exist, as in the instant case, the Court has to discharge its constitutional obligations and honour the legislative policy by awarding appropriate sentence, that is, the will of the people. We are of the view that incarceration for a further period of thirty years, without remission, in addition to the sentence already undergone, will be an adequate punishment in the facts and circumstances of the case, rather than death sentence.”

104. In the case of **Surjey Bhujel (Supra)** a coordinate Bench of this court, despite the gruesome manner of the crime, had commuted the death sentence to life imprisonment, in consideration of the mitigating circumstances. It was specifically held that the learned trial court while considering the punishment to the accused persons, did not take into account the mitigating circumstances and awarded the sentence of death only on the basis of aggravating circumstances.

105. In the instant case, while hearing on sentence, considered the following aggravating circumstances namely:

a. The convict Hangjit Rai, in furtherance of common intention with his son Puran Rai (Since deceased) had committed the crime of murder of Dominic Bhutia and his wife Christina Bhutia in a ghastly or diabolical, gruesome, extremely brutal, beastly, barbaric and grotesque manner which has shocked the collective conscience of the society at large.

- b. The convict Hangjit Rai, in furtherance of common intention with his son Puran Rai (Since deceased) committed the heinous offence of multiple murders of Dominic Bhutia and his wife Christina Bhutia without any provocation or instigation.*
- c. The convict Hangjit Rai is a menace to the society who cannot be reformed. Lesser punishment in my opinion shall be fraught with danger as it was expose to the society to peril once again at the hand of convict.*
- d. The convict Hangjit Rai, and his son Puran Rai came to the house of Dominic Bhutia and Christina Bhutia on the fateful day of incident in a preplanned manner when the deceased Dominic Bhutia denied to pay the money of ₹. 5, 000/- as was demanded by this convict and his son Puran Rai (since deceased) just prior day in the evening and on the next morning at around 4.30 am on June 19, 2014, they came to the house of Dominic Bhutia and committed the diabolical and gruesome*

murder of Dominic Bhutia and his wife Christina Bhutia.

e. The convict Hangjit Rai is aged about 80 years and at the time of commission of offence he was aged about 72 years. He is still strong enough and he cannot be reformed and his remaining one more son and two daughters are major. To my understanding, he should be punished with death sentence for the commission of the offence under Section 302/34 of Indian Penal Code.

f. The convict Hangjit Rai should be awarded the death sentence for commission of double murder of Dominic Bhutia and his wife Christina Bhutia under Section 302/34 of Indian Penal Code and attempting to commit the murder and causing grievous hurt to their daughter Rinzee Ongmu Bhutia under Sections 307/326/34 of Indian Penal Code in a preplanned manner with his son Puran Rai (since deceased) with extreme brutality.

106. It is in consideration of the aforesaid circumstances, the learned trial court went on to award death penalty to the convict. There appears nothing in the impugned judgment that the trial court ever sought for and considered any report from the state as to the social status, possibility of reform and his conduct in the correctional home etc. There is no substantial basis as how the trial court came to a finding that the convict cannot be reformed. In absence of any report in this regard, there appears no basis as to how learned trial court came to a conclusion that though, the convict was 80 years old but strong enough and any possibility of his reform was foreclosed. Such findings were unfounded.

107. Moreover, with a view to determine the quantum of punishment, the learned trial court proceeded to consider the aggravating circumstances relying upon the case of **Bachan Singh (Supra)**. However, the case of **Bachan Sing (Supra)** followed by a number of subsequent pronouncements by the Hon'ble Supreme

court, it has been ordained that mitigating circumstances should also be taken into consideration by the courts proposing to impose punishment in cases where death is a prescribed penalty. We are afraid; the discussion on the quantum of sentence by the learned trial court is shorn of such consideration.

- 108.** In course of hearing, we called for a comprehensive report from the State. In response thereto, a report by the Superintendent of the correctional home was placed before us which is as follows:

The conduct of the convict is good, inside the Correctional Home.

Views of Co-inmates: The convict is supportive and no complain found from co-inmates against the convict inside the Correctional Home.

- 109.** It is evident that the convict is presently 84 years of age. He has his own family. One of his sons i.e. the co-accused died during the trial. He has another son and two daughters, all of them are major. The State has not specifically brought on record that the convict was

earlier involved in any criminal case or suffered any previous conviction. The report submitted by the Superintendent of the correctional home discloses that the conduct of the convict during almost 10 years of incarceration is quite satisfactory. He is reported to be submissive and cooperative to the authorities as well as other inmates. No aggressive or obdurate behavior has been reported.

110. In consideration of the aforesaid circumstances and the present age of the convict at 84 years, we are not in a position to return a conclusive finding that the convict Hangjit Rai is not open to reform and any punishment other than death penalty would be insufficient, in consideration of the nature of the offence, he has been convicted of coupled with the manner and mode in which it was committed.

111. In the circumstances, we commute the death penalty awarded to the convict Hangjit Rai for the offence punishable under Section 302/34 of the Indian Penal Code, to one of imprisonment for life. It would be

appropriate to direct that the life sentence awarded to the convict shall be 21 years, without remission, from the date of his remand in the case.

112. DR 1 of 2024 along with the appeal being CRA (DB) 30 of 2024 is disposed of accordingly.

113. The other portions of the sentence imposed by the impugned judgment and order for the offences punishable under Section 326/307 of the Indian Penal Code shall remain the same.

114. A copy of this judgment along with the Trial Court records be remitted to the appropriate Court forthwith. In view of the commutation of the death penalty of Hangjit Rai, any warrant issued by the appropriate Court with regard thereto in respect of Hangjit Rai stands modified in terms of this judgment and order. Department will inform the Correctional Home, where the appellant is lodged, as to this judgment and order. The Correctional Home will record the fact of commutation of death penalty to the sentence awarded

by this judgment and order in respect of Hangjit Rai, in their records.

- 115.** Urgent Photostat certified copy of this judgment and order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[RAJARSHI BHARADWAJ, J.]

[MD. SHABBAR RASHIDI, J.]