**IN THE HIGH COURT OF ORISSA, CUTTACK**

**DSREF No.01 of 2021**

From judgment and order dated 21.10.2022 passed by the Sessions Judge -cum- Special Court, Rayagada in Criminal Trial No.08 of 2020.

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State of Odisha

-Versus-

1. Dengun Sabar
2. Dasunta Sabar
3. Aajanta Sabar
4. Padhantu Sabar
5. Dalasa Sabar
6. Malku Sabar
7. Bubuna Sabar
8. Lakiya Sabar
9. Iru Sabar ..... Condemned Prisoners/ Accused

For Condemned Prisoners/Accused: - Mr. Himansu Bhusan Dash Advocate

**CRLA No.750 of 2021**

1. Dengun Sabar
2. Dasunta Sabar
3. Aajanta Sabar
4. Padhantu Sabar
5. Dalasa Sabar
6. Malku Sabar
7. Bubuna Sabar

8. Lakiya Sabar
9. Iru Sabar ..... Appellants

-Versus-

State of Odisha ..... Respondent

For Appellants: - Mr. Manas Kumar Chand
Advocate

For State of Odisha: - Mr. Arupananda Das
Addl. Govt. Advocate

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P R E S E N T:

**THE HONOURABLE MR. JUSTICE S.K. SAHOO**

**AND**

**THE HONOURABLE MR. JUSTICE R.K. PATTNAIK**

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Date of Judgment: 15.01.2025

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**S.K. Sahoo, J**: In the words of great scholar, Swami Vivekananda, "Drive out the superstition that has covered your minds. Let us be brave. Know the truth and practice the truth. The goal may be distant, but awake, arise, and stop not till the goal is reached."

Even though we are in 21st century, the old superstitions of witch-hunting are still alive in some parts of rural areas of our country mainly on account of lack of education and it leads to innocent individuals, often women, fall prey to the

practice, publicly targeted, face persecution, torture and even gruesome murders on unfounded accusations of practising witchcraft.

The case in hand is depicts sordid state of affairs where accusations of practising witchcraft led to commission of triple murder of Asina Sabar, Amabaya Sabar and Ashamani Sabar in village Kitum in the evening hours of 9th September 2016 under Puttasing police station in the district of Rayagada.

The nine condemned prisoners in DSREF No.01 of 2021 who are also the appellants in CRLA No.750 of 2021 initially faced trial in the Court of learned Addl. Sessions Judge, Gunupur, Rayagada in Criminal Trial No.07 of 2017 for commission offences punishable under section 302, 201, 342, 506 read with section 34 of the Indian Penal Code (hereafter for short 'I.P.C.') and section 4 of the Odisha Prevention of Witch Hunting Act, 2013 (hereafter 'OPWH Act') and vide judgment dated 11.04.2018, they were found guilty under sections 302, 201, 365, 342, 506 read with section 34 of I.P.C. and section 4 of OPWH Act and vide sentence dated 13.04.2018, they were awarded different sentences under different charges, inter alia, death sentence for the offence under section 302 of the I.P.C. The case records were submitted to this Court for confirmation of death sentence under section 366 of Cr.P.C. and accordingly,

DSREF No.01 of 2018 was registered. The appellants also preferred JCRLA No.46 of 2018 challenging the aforesaid judgment dated 11.04.2018 and sentence dated 13.04.2018 passed by the learned trial Court. Both the matters i.e., DSREF No.1 of 2018 and JCRLA No.46 of 2018 were heard analogously and this Court vide judgment and order dated 05.11.2019, set aside the judgment and order of conviction and remanded the matter to the learned trial Court with a direction to add charges under sections 364 and 365 of I.P.C. and to proceed keeping in view the provision under section 217 of Cr.P.C.

After remand of the case, the case was tried in the Court of learned Sessions Judge -cum- Special Judge, Rayagada and it was renumbered as C.T. Case No.08 of 2020 and charges were framed against the nine appellants for commission of offences under sections 342, 364, 365, 302, 201, 506 read with section 34 of I.P.C. and section 4 of OPWH Act and the learned trial Court vide judgment and order dated 21.10.2021 found the appellants guilty of all the offences charged and sentenced each of them to undergo R.I. for six months each and to pay a fine of Rs.500/- (rupees five hundred), in default, to undergo R.I. for one month each for the offence under section 342/34 of I.P.C., to undergo R.I. for five years each and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo R.I. for

six months each for the offence under section 364/34 of I.P.C., to undergo R.I. for five years each and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo R.I. for six months each for the offence under section 365/34 of I.P.C., to undergo R.I. for five years each and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo R.I. for six months each for the offence under section 201/34 of I.P.C., to undergo R.I. for two years each and to pay a fine of Rs.2,000/- (rupees two thousand), in default, to undergo R.I. for two months each for the offence under section 506/34 of I.P.C., and to undergo R.I. for one year each and to pay a fine of Rs.1,000/- (rupees one thousand) each, in default, to undergo R.I. for one month each for the offence under section 4 of the OPWH Act, 2013 and sentenced to death with a further direction that they be hanged by neck till they are dead with a further direction to pay a fine of Rs.40,000/- (rupees forty thousand) each, in default, to undergo further R.I. for two years each for the offence under section 302/34 of I.P.C. and all the sentences were directed to run concurrently.

Since the DSREF and CRLA arise out of the same judgment, with the consent of learned counsel for both the parties, those were heard analogously and are disposed of by this common judgment.

**Prosecution Case as per F.I.R.**:

2. The prosecution case, as per the first information report (hereinafter F.I.R.) (Ext.1) lodged by P.W.1 Melita Sabar, in short, is that the deceased Asina Sabar was her father, deceased Amabaya Sabar was her mother and deceased Ashamani Sabar was her elder sister. On 09.09.2016 in the evening hours, P.W.1 had been to the house of one Anito Sabar with some corn and half an hour thereafter when she returned to her house, she found that none of her family members was present in the house. She could know from one Damanta Sabar that some of her co-villagers had tied her parents and elder sister in the cowshed of Girijana Sabar (P.W.2). She immediately rushed to that place, where she was also tied by the accused persons in a stump. The nine appellants along with one Jamsu Sabar (child in conflict with law) were present there. It is further stated in the F.I.R. that the appellants assaulted her father, mother and elder sister (who were tied up) and were accusing against them that they had killed the co-villagers Jamjam and Biranti Sabar by practising sorcery and the co-villagers Ajanta, Ghunguri and Bubuna were not getting relief from fever and that the deceased Asina Sabar and Amabaya Sabar, the parents of the informant were responsible for the same and they were compelled to tell the truth or else they would kill their family

members and burn them to ashes. At that time, Dasunta Sabar (A-2) brought out a syringe filled with medicine in it, pierced its needle in the mouth, cheek and eyes of her elder sister Ashamani Sabar and asked her to tell the truth or else he would kill her. At that time, the other nine accused persons were mercilessly assaulting her parents by means of lathis. Some of them were also dealing kick blows, fist blows and slaps to her parents by making mockery and soon thereafter, the appellants also assaulted her elder sister by means of lathi. P.W.1 witnessed the entire occurrence in the tied up condition and thereafter the appellants took her elder sister, mother and father in a moribund state (almost in dead condition) one after another from the cowshed of P.W.2 to the burial ground, who were again assaulted there, killed and buried. P.W.1 was threatened that she had been spared but if she would divulge the incident before anyone or to the police, they would kill her and her brothers and send them to the place where her parents and elder sister had been sent. Out of fear, P.W.1 did not report the matter in the police station. On 15.09.2016 she came to know that those ten accused persons exhumed the dead bodies from the place of burial and cremated it. The accused persons also threatened P.W.1 that even if they would be incarcerated, the other co-villagers would kill her and if the co-villagers would not kill her,

after returning from jail, they would kill her. She stated that after gathering courage, she lodged the F.I.R. (Ext.1) on 16.09.2016 in the evening hours after secretly escaping from the village.

**Registration of F.I.R. and Investigation**:

3. The F.I.R. was scribed by Janardana Lima and presented before P.W.11 Jnanendra Kumar Sahu, Inspector in-charge of Puttasing police station, who registered Puttasing P.S. Case No.17 dated 16.09.2016 under sections 302, 201, 342, 506 read with section 34 of I.P.C. and section 4 of OPWH Act.

P.W.11 himself took up investigation of the case. He examined P.W.1, the informant and other witnesses, sent requisition to the Sub-Collector, Gunupur to depute an Executive Magistrate to remain present at the time of spot visit to be conducted on the next day as there was possibility of recovery of dead bodies and a requisition was also sent for the scientific team from D.F.S.L, Koraput to visit the spot for collection of physical clues. During the course of investigation, P.W.11 apprehended appellants nos.1 to 6 i.e., Dengun Sabar (A-1), Dusanta Sabar (A-2), Aajanta Sabar (A-3), Padhuntu Sabar (A-4), Dalasa Sabar (A-5) and Malku Sabar (A-6) from village Kitum and brought them to the police station. During examination of those appellants, all of them confessed their guilt.

The statement of appellant Dengun Sabar (A-1) was recorded in presence of P.W.7 and P.W.9 and in his statement, he stated to have thrown the lathi used by him for assaulting the deceased persons on the eastern side of the burial ground inside the bush and offered to show the same if he would be taken to that place. The Scientific Officials along with the Executive Magistrate and P.W.11 proceeded to the scene of occurrence on 17.09.2016 with the appellant Dengun Sabar (A-1) who gave recovery of weapon of offence i.e. 'lathi' used by him after bringing out the same from the place of hiding, i.e. a bush and produced the same before P.W.11, who seized the same under seizure list Ext.5/1. The appellant Dengun Sabar (A-1) also showed the investigating team first the cow shed of P.W.2 and thereafter the cremation ground for collection of evidence and preparation of spot map. The Scientific Officials seized the charred bones and ashes from the spot where those three bodies were cremated as per seizure list Ext.4/2 and the I.O. also seized thirty five nos. of bones as per seizure list Ext.3/2. At the police station, the six appellants were re-examined and their statements were recorded by P.W.11 and they were arrested. Their wearing apparels were seized, they were medically examined and their nail clippings were collected by the doctor

and those were sent to the I.O. in sealed vials, which were seized as per seizure list Ext.20.

On 17.09.2016, all the six appellants i.e. A-1 to A-6 were forwarded to the Court. On 18.09.2016 Bubuna Sabar (A-7), Lakiya Sabar (A-8) and on 19.09.2016 Iru Sabar (A-9) was apprehended and their statements were recorded. Their wearing apparels were seized, they were medically examined, their nail clippings which were collected by the Medical Officer were seized and they were forwarded to Court on 19.09.2016. The other accused Jamsu Sabar is a child in conflict with law, whose case was dealt separately.

On 21.09.2016 and 25.09.2016, P.W.11 examined some other witnesses and sent a requisition to obtain FTA card for collection of blood sample of son of the deceased Asina for DNA profiling of charred bones and DNA report was obtained as per Ext.21. The I.O. then made a prayer to the Court of learned S.D.J.M., Gunupur for sending all the seized exhibits to R.F.S.L., Berhampur for chemical analysis and report.

On receipt of chemical examination report as per Ext.23, charge sheet has been submitted against the appellants on 12.01.2017 along with Jamsu Sabar, the CCL under the aforesaid offences to face their trial.

**Framing of Charge**:

4. After submission of charge sheet, the case was committed to the Court of Session after complying due formalities. The learned trial Court framed charges against the appellants as aforesaid and since the appellants refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute them and establish their guilt.

**Prosecution Witnesses, Exhibits & Material Objects**:

5. During the course of trial, in order to prove its case, the prosecution examined as many as eleven witnesses.

P.W.1 Melita Sabar is the daughter of the deceased Asina Sabar and Amabaya Sabar and younger sister of deceased Ashamani Sabar. She is the informant in the case. She narrated the facts as the incident unfolded on the date of occurrence and supported the prosecution case.

P.W.2 Girijan Sabar, who is a co-villager of the informant has not supported the prosecution case, rather he stated that both the parents and sister of the informant died due to cholera and no other co-villagers died of cholera during that period.

P.W.3 Irgam Sabar who is a co-villager of the informant has not supported the prosecution case, rather she stated that all the three deceased died due to cholera.

P.W.4 Suman Sabar who is a co-villager of the informant has not supported the prosecution case, rather he stated that all the three deceased died due to cholera. He has stated that he had not seen any seizure of partially burnt bones and ashes from his village cremation ground, but he had given his signature on a paper at the instance of police and he proved Ext.3 to be his signature.

P.W.5 Darsing Sabar and P.W.6 Gona sabar also did not support the prosecution cases and they were declared hostile.

P.W.7 Lugu Sabar who is a co-villager of the informant and ward member of village Kitum has not supported the prosecution case as a seizure witness, rather he stated that all the three deceased died due to cholera.

P.W.8 Srinath Sabar who is a co-villager of the informant has not supported the prosecution case, rather he stated that all the three deceased died due to cholera. He further stated that he was not present at the time of incident.

P.W.9 Jisaya Raito is the maternal uncle of the informant and he has supported the prosecution case. He is a witness to the recording of the statement of appellant Dengun Sabar under section 27 of the Evidence Act and recovery of lathi (M.O.I) at his instance, which was seized by the I.O. as per seizure list Ext.5/1.

P.W.10 Jayakrushna Nayak was working as a constable attached to Puttasing police station on the date of occurrence. He is a witness to the seizure of the wearing apparels of the appellants as per seizure lists Exts.7 to 16. He is also a witness to the seizure of nail clippings of the accused appellants as per seizure lists Exts.17 and 18.

P.W.11 Jnanendra Kumar Sahu was posted as the Inspector-in-Charge of Puttasing police station and he is the investigating officer of the case.

The prosecution exhibited twenty four documents. Ext.1 is the F.I.R., Ext.2 is the 164 Cr.P.C. statement of the informant (P.W.1) recorded by the J.M.F.C., Gunupur, Exts.3/2, 4/2, 5/1, Exts.7 to 18 and 20 are the seizure lists. Ext.6/1 is the statement of the appellant Dengun Sabar, Ext.19 is the spot visit report of the Scientific Officer, Ext.21 is the DNA report, Ext.22 is

the requisition, Ext.23 is the report from RFSL, Berhampur and Ext.24 is the spot map.

The prosecution also proved fifteen material objects. M.O.I is the charred bones (Packet A), M.O.II is the sample earth (packet B), M.O.III is the blood stained saya, M.O.IV is the charred bones in ten sealed while packets, M.O. V is the pant and M.O.V-I is the shirt of appellant Dengun Sabar, M.O. VI is the pant with belt, M.O.VI-1 is the half inner pant, M.O. VI-2 is the banian, M.O.VI-3 is the check shirt of appellant Dasanta Sabar, M.O.VII is the full pant and M.O. VII-1 is the half shirt of appellant Ajanta Sabar, M.O.VIII is the blue colour jean pant with brown colour belt and M.O.VIII-1 is the full shirt with checks of black, white and yellow colour of appellant Padantu Sabar, M.O.IX is the jean pant and MN.O.IX-1 is the half track pant and M.O.IX-2 is the half banian and M.O.IX-3 is the full check shirt of appellant Dalasa Sabar, M.O.X is the jean pant, M.O.X-1 is the half banian and M.O.X-3 is the full shirt of appellant Malku Sabar, M.O.XI is the full pant, M.O. XI-1 is the banian of appellant Bubuna Sabar, M.O.XII it eh full pant and M.O.XII-1 is the banian of appellant Lakia Sabar, M.O.XIII is the full jean pant and M.O.XIII is the half track pant and M.O.XIII-2 is the full shirt of appellant Iru Sabar and M.O.XIV series are the nail clippings kept in nine vials of the appellants and M.O.V is the lathi.

**Defence Plea**:

6. The defence plea of the appellants is one of complete denial and false implication on account of previous dispute. The defence did not examine any witness nor proved any document.

**Findings of the Trial Court**:

7. The learned trial Court after analysing the oral as well as the documentary evidence on record came to hold that the informant (P.W.1) has explained the delay in lodging the first information report satisfactorily and such delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case. It was further held that on examining the testimony of P.W.1 and the narrations made in the F.I.R. (Ext.1), it can be safely said that she gave the narration of events in a cogent and convincing manner and the non-examination of Damanta Sabar was held not fatal to the prosecution case. It was further held that the scribe of the F.I.R. was not an eye witness to the occurrence and as such no prejudice could be caused to the accused persons and no adverse inference can be drawn against the prosecution for non-examination of the scribe. It was held that there are no eye witnesses to the second scene of occurrence and the incident which took place at the second


scene of occurrence is based on circumstantial evidence. It was further held that the prosecution could be able to prove successfully that the accused persons abducted, confined and assaulted the parents and elder sister of the P.W.1 in the cowshed of P.W.2 and shifted him in a moribund condition to the second spot of occurrence in the presence of P.W.1. The learned trial Court observed that taking into account the documents available on record and the evidence adduced on behalf of the prosecution, the following circumstances are available on record:-

**(i)** The accused persons after assaulting the three deceased persons in the cow shed of Girjan Sabar (P.W.2), took all the three deceased one after another to a different place (i.e. the second scene of occurrence) in a moribund state and the informant (P.W.1) is an eye witness to the first part of the occurrence;

**(ii)** The accused persons were last seen with the deceased persons on 09.09.2016 at about 8 p.m. to which the informant (P.W.1) is an eye witness when they shifted the deceased persons to another place and the accused persons again came in contact with


the informant (P.W.1) after about one hour, but thereafter the three deceased were never seen alive;

**(iii)** The proximity of time between the company of both the parties and the death of the deceased persons is so small that the possibility of others intervening in the killing of the deceased persons can be ruled out;

**(iv)** The recovery and seizure of bones of the deceased persons from the burial ground consequent upon disclosure of statement of accused Dengun Sabar;

**(v)** Motive of the accused persons suspecting the death of Biranti and Jamjam by way of witchcraft practised by the deceased Asina Sabar and Amabaya Sabar.

It was held that the story narrated in the F.I.R. and fully corroborated by the informant (P.W.1) in her evidence before the Court is sufficient to connect the accused persons to be the real culprits, who were last seen together with the deceased persons. It was held that the evidence of the informant (P.W.1) not being demolished by the defence and the accused persons having failed to discharge their onus, it can be well said


that the prosecution could be able to establish the circumstances nos.(i), (ii) & (iii) successfully. The accused persons offered no explanation as to when and as to how they left the company of the deceased persons and also the whereabouts of the deceased persons after 8.00 p.m. of 09.09.2016. The appellants shifted the deceased persons one after another from the first place of occurrence to another place in a moribund condition and the deceased persons were never seen alive thereafter and thus, the prosecution has well proved through the evidence of P.W.1 that the appellants were the perpetrators in killing the deceased persons. When the prosecution could able to prove that the charred bones were the bones of the deceased persons, who were murdered by the appellants and the death of the deceased persons was homicidal in nature, the failure of the I.O. (P.W.11) in comparing the D.N.A. profiling is of no consequence. No prejudice could be caused to the accused persons by non-examination of the tenants of the land where from the charred bone pieces were recovered. Non-examination of the Executive Magistrate, a Government Officer, who was present at the time of spot visit on being requisitioned by P.W.11, the I.O. is a lacuna in the prosecution case. The improved version in the statement of P.W.1 in her statement made before the I.O. (P.W.11) and the Magistrate, are not fatal to the prosecution


case. It was held that in view of the statement of the informant (P.W.1) so also before the Magistrate, which corroborates her previous statement, it can be said that the guilt of the appellants has been established under the OPWH Act and accordingly, it was held that offence under section 4 of the OPWH Act has been proved by the prosecution against the appellants. The learned trial Court ignoring minor discrepancies which appear in the evidence of P.W.1 came to hold that the prosecution has successfully established the charges under sections 342/364/365/302/201/506/34 of the I.P.C. read with section 4 of the OPWH Act against all the appellants. On the question of sentence, the learned trial Court came to hold that life imprisonment would be inadequate sentence for the convicts and aggravating circumstances are outweighing the mitigating circumstances. The crime was committed with extreme brutality and the collective conscience of the society was shocked and as such the case comes within the category of 'rarest of rare cases' and accordingly, imposed death sentence on all the appellants for the conviction under section 302/34 of the I.P.C. and also imposed different sentences for different offences as already indicated in the first paragraph of this judgment.

**Submission of Parties**:

8. Mr. Himanshu Bhusan Dash, learned counsel appearing for the condemned prisoners in DSREF No.01 of 2021 contended that the conviction of the appellants/condemned prisoners is mainly based on the solitary testimony of the informant (P.W.1) who is not only related to all the three deceased but also an interested witness. She has developed her case from stage to stage and due to such improvement in the story, her evidence is not free from doubt and therefore, it is difficult to accept her as a truthful witness and to place implicit reliance on it. It is argued that P.W.1 was informed by one Damant Sabar about the confinement of the three deceased family members in the cow shed of P.W.2 and the said Damant Sabar also guarded her along with accused Paranta inside the cow shed of P.W.2 when the appellants took away the three deceased from the cow shed and Damant Sabar also threatened her not to disclose the incident before anyone or else to face dire consequence and therefore, there was no reason as to why Damant Sabar was not arrayed as an accused in the case nor he was examined as a witness by the prosecution. According to the learned counsel, the finding of the learned trial Court that the non-examination of Damant Sabar would not cause any prejudice to the appellants is not proper.


With regard to the delay in lodging the F.I.R., it is argued that the same is fatal to the prosecution case as no satisfactory explanation has been offered by P.W.1 for such delay. The threatening stated to have been given by the appellants and the conduct of P.W.1 at the time of alleged occurrence in the cow-shed of P.W.2 so also after the occurrence is very suspicious. Learned counsel further argued that the prosecution has failed to prove as to whether the informant (P.W.1) or any of her relatives were restrained by the appellants with a threat to do away with their lives in case the F.I.R. is lodged. There is no explanation as to why P.W.1 waited till the cremation of the dead bodies of the three deceased persons to lodge the F.I.R., as from 09.09.2016 to 15.09.2016, all the deceased persons were stated to have been put underneath the earth in a ditch. It is argued that the evidence of P.W.1 that she could gather courage only after she heard about cremation of the dead bodies of the deceased persons is very difficult to be believed since it appears that there was no restriction on the movement of P.W.1 and she was staying in the house of Darsing Sabar (P.W.5) from 10.09.2016 to 15.09.2016 and on 16.09.2016, she accompanied Lugu Sabar (P.W.7) to the police station to lodge the F.I.R. Learned counsel further argued that Janathan Lima, the scribe of the F.I.R. having not been

examined by the prosecution, the lodging of F.I.R. becomes a suspicious feature.

Learned counsel urged that the whole evidence of P.W.1 except the statement that she was informed by Damant Sabar that her parents and sister were being tied in the cow-shed and all the appellants were assaulting to the deceased persons by lathi, stick and crowbar till they lost their consciousness, were confronted to her and the same are proved through the I.O. (P.W.11) as contradictions. Learned counsel further argued that there are no material on record to corroborate the evidence of P.W.1 rather all the prosecution witnesses except P.W.1 have categorically stated that the deceased persons died due to cholera, which fact has also been proved through evidence that some of the other villagers have also died due to cholera during the said period.

Learned counsel further submitted that during the trial of child in conflict with law Jamsu Sabar in JCL No.8 of 2017, the informant (P.W.1) has not stated in her deposition on the following aspects:

(i) that she cried seeing her parents and sister tied;

(ii) that the deceased persons were assaulted by crowbar;

(iii) that the appellants were accusing that her parents and sister practised witchcraft on the co-villagers as a result of which co-villagers Biranti and Jamjam died;

(iv) that the assault to the deceased persons were made till they lost their consciousness;

(v) that the appellant No.2 Dasanta Sabar brought pesticides used for cotton crops in a bucket and administered to her deceased sister by syringe on her body parts for which she cried loudly;

(vi) that hearing her cry, appellant no.7 Bubuna Sabar came and threatened her on the point of knife;

(vii) that the appellant no.3 Aajanta Sabar came with the gold necklace of her sister and after giving to her, left the spot;

(viii) that Damanta (not arrayed as an accused) and appellant No.4 Padhantu Sabar threatened her;

(ix) that she slept in the house of the appellant no.7 Bubuna Sabar;

(x) that the appellants came with cooked food to throw into water;

(xi) that the appellant no.9 Iru Sabar and appellant no.2 Dasanta Sabar came and called her to the meeting place;

(xii) that the appellants confessed in the meeting about killing of the deceased due to witchcraft and that on 16.09.2016 she came to know that the accused persons brought out the dead bodies from the ditch and set fire by pouring kerosene.

Learned counsel further argued that in view of such serious contradictions in the deposition of P.W.1 as given in this case vis-à-vis as given in the trial of child in conflict with law Jamsu Sabar in JCL No.8 of 2017, she cannot be said to be a reliable and truthful witness on whom implicit reliance can be placed. He further argued that since there is lack of cogent


evidence as to what happened to the three deceased after they were taken out of the cowshed, the overt act committed by the appellants may at best attract the ingredients of offence under section 325 of I.P.C. and not under section 302 of I.P.C. He argued that it is not proved to be a rarest of rare case and moreover in view of the mitigating circumstances, the death sentence should be commuted to imprisonment for life. In support of such submission, he has placed reliance on the decisions of the Hon'ble Supreme Court reported in **Sangeet and another -Vrs.- State of Haryana reported in (2013) 2 Supreme Court Cases 452 and State of Maharashtra -Vrs.- Damu reported in (2000) 6 Supreme Court Cases 269**.

9. Mr. Manas Kumar Chand, learned counsel appearing for all the appellants in CRLA No.750 of 2021 contended that the presence of P.W.1 Dengun Sabar in the cowshed of P.W.2 at the time of first occurrence is a doubtful feature. According to him, the so-called threatening given by the appellants to P.W.1 which was the reason shown for delayed lodging of the F.I.R., has not been satisfactorily proved by adducing clinching evidence. According to Mr. Chand, the extra judicial confession of the appellants on the next day of the occurrence in the hill top is also doubtful. The leading to discovery of a lathi at the instance of

appellant no.1 from the place of hiding is not acceptable so also collection of bones, suspected blood stained saya, ashes etc. by P.W.11 as per confessional statement of appellant no.1. The version of P.W.1 in the F.I.R. and that given in Court during trial are highly discrepant and therefore, it would too risky to accept the solitary testimony of P.W.1 to hold the appellants guilty. Learned counsel further argued that it appears from the F.I.R. (Ext.1) that one Janardan Lima scribed the F.I.R., however he has not been examined during trial. No stumps and robes were seized from the cowshed by the I.O. where the three deceased persons so also P.W.1 was stated to have been tied. One Damant Sabar who stated to be present at the time of occurrence has not been examined. According to P.W.1, P.W.7 accompanied her to the police station at the time of lodging of the F.I.R., but P.W.7 has not supported the prosecution case. P.W.1 stated to have informed her brothers about the occurrence but they have not been examined. It is argued that no pesticide or injection was seized from the spot at the time of spot visit by the I.O. and even the shopkeeper from whom the pesticide was purchased has not been examined. The corpus delicti was not found, the bones recovered from the cremation ground were not proved to be human bones and the C.E. report is also silent. There was previous enmity between the parties and therefore, at a belated


stage, P.W.1 presenting a concocted version of the occurrence before police to take revenge upon the appellants cannot be completely ruled out and as such, it would not be proper to accept the solitary evidence of P.W.1 to be truthful and reliable to convict the nine appellants and that too passing death sentence on them. It is argued that the prosecution has utterly failed to prove the ingredients of the offence under section 4 of the OPWH Act, 2013 and therefore, benefit of doubt should be extended in favour of the appellants. Though on the date of closing of argument, Mr. Chand took one week time to file the written note of argument but he has not filed the same.

10. Mr. Arupananda Das, learned Addl. Government Advocate on the other hand supported the impugned judgment and argued that it was a small village as there were only twenty five houses and there was hostile atmosphere against the family of the informant (P.W.1) as everyone was under impression that the parents of the informant were practising witchcraft for which some co-villagers were suffering from different ailments and some of them died. P.W.1 is a lady and she was tied in the cowshed and forced to see the brutal assault on her parents and elder sister by the appellants whereafter they were taken out of the cowshed one after another and she was threatened with dire

consequences even to the extent of commission of murder of her another sister and two brothers in case she disclosed the incident before anyone and after some time she was also told about the murder of all the three deceased and therefore, she must be in a state of panic and under constant vigil by the appellants and in such a scenario, it was not expected of her to be courageous enough to go and immediately report the matter before the police station. He argued that while appreciating the delay in lodging the F.I.R., these aspects cannot be totally ignored and therefore, the explanation offered by the prosecution in that regard is quite satisfactory. He placed reliance in the case of **Munshi Prasad and others -Vrs.- State of Bihar reported in (2002) 1 Supreme Court Cases 351** and **Shanmugam -Vrs.- State reported in (2013) 12 Supreme Court Cases 765**. He further argued that the evidence of extra judicial confession which has been made on the next day of the occurrence before P.W.1 and others by the appellants on the hill top is quite convincing and the same cannot be brushed aside on the ground that there is no corroboration to the evidence of P.W.1 on this aspect and that the F.I.R. is silent about it. According to him, the first information report not being the encyclopedia or be all and end all of the prosecution case, extra judicial confession part being found mentioned in the 164 Cr.P.C. statement of P.W.1


which was recorded three days after the lodging of the first information report, the evidence of P.W.1 in the Court on that score has been rightly accepted by the learned trial Court. Learned counsel for the State submitted that there is no bar in acting upon the sole testimony of the witness if his evidence appears to be clinching, trustworthy, reliable and aboveboard and merely because she was related to the three deceased, the same cannot be a ground to disbelieve her testimony. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Namdeo -Vrs.- State of Maharashtra reported in (2007) 14 Supreme Court Cases 150** and **Anil Phukan -Vrs.-State of Assam reported in (1993) 3 Supreme Court Cases 282**. According to Mr. Das, when the appellants carried away the three deceased persons from the cowshed and returned after sometime and informed P.W.1 to have killed the deceased persons and thereafter the deceased persons were not seen alive, even though there is no direct evidence to the second phase of occurrence, since the appellants have failed to explain as to what happened to the deceased persons after they were taken out of the cowshed and when they parted with the company of the three deceased and the proximity of time between the carrying of three deceased from the cowshed and return of the appellants to the cowshed, in view section 106 of


the Evidence Act, it can be said that the appellants are the authors of the crime. Reliance has been placed on the decisions of the Hon'ble Supreme Court in the case of **Soma Sundaram -Vrs.- State reported in (2020) 7 Supreme Court Cases 722**. The learned counsel argued that even though there are contradictions in the evidence of P.W.1 in her F.I.R. version and 161 Cr.P.C. version vis-a-vis the statement recorded under section 164 Cr.P.C. and the evidence given in Court during trial, but the contradictions are not of such a magnitude that it go to the root of the matter and completely destroy the evidence of P.W.1. Keeping in view the trauma that might have been faced by P.W.1 after the occurrence which might have been reduced to a great extent and she must be feeling secured when she came to give her statement in Court before the Magistrate under section 164 Cr.P.C. as by that time, all the appellants had already been arrested and forwarded to the Court and as such, no importance can be attached to the contradictions. He argued that non-examination of the scribe of the F.I.R. is not fatal to the prosecution case nor the non-examination of Damant Sabar so also non-supporting of the case by P.W.7 Lugu Sabar. It is argued that since the F.I.R. was lodged about a week after the date of occurrence and the appellants were taking all the steps in causing disappearance of evidence even to the extent of


cremating the dead body, therefore, it was not expected of the Investigating Officer to find any incriminating articles in the cowshed of P.W.2 where the occurrence took place. Merely because the corpus delicti was not found, the same cannot be a ground to disbelieve the prosecution case. Reliance has been placed in the case of **Sevaka Perumal -Vrs.- State of Tamil Nadu reported in (1991) 3 Supreme Court Case 471** and **Ram Gulam Chaudhury and others -Vrs.- State of Bihar reported in (2001) 8 Supreme Court Cases 311**. It is argued that the manner in which the deceased persons were taken to the cowshed and tied, assaulted and then taken to a place where they were first buried and then the bodies were exhumed and cremated shows that it was done in a pre-planned way and diabolically and cruelly executed and there was motive behind the commission of murder as the appellants were suspecting the parents of the deceased to be practising witchcraft and therefore, the learned trial Court is quite justified in holding that it was a rarest of rare case and any other sentence than the death sentence would be inappropriate. Reliance has been placed on the decisions of the Hon'ble Supreme Court in the Case of **Bachan Singh -Vrs.- State of Punjab reported in (1980) 2 Supreme Court Cases 684** and **Machhi Singh -Vrs.- State of Punjab reported in (1983) 3 Supreme Court Cases 470**.


While concluding his argument, Mr. Das submitted that even though certain mitigating circumstances have been brought on record in view of the reports received from the Senior Superintendent of Circle Jail, Koraput, but it is a fit case where death sentence should be confirmed.

**Whether the solitary evidence of P.W.1 can be acted upon**:

11. There is no dispute that the star witness on behalf of the prosecution is P.W.1 Melita Sabar, the informant of the case, who is the daughter of the deceased Asina Sabar and Amabaya Sabar and younger sister of deceased Ashamani Sabar.

P.W.1 deposed that on the date of occurrence, she had been to the house of co-villager Anito to deliver corn and on her return after half an hour, she found no one was present in her house. She looked for her family members. Her co-villager Damanta Sabar informed her that her parents and sister were being tied up in the stump inside the cow shed of Girjana (P.W.2). She rushed to that spot and found her family members were tied up by the accused persons, who were all present there, for which she started crying. She stated that the accused persons tied up her also in another stump by means of rope and all of them were assaulting the deceased persons by means of lathi, stick and crowbar alleging that due to their witchcraft activities, the co-

villagers Biranti and JamJam died. The accused persons continued to assault the three deceased till they lost consciousness. At that time, appellant Dasunta (A-2) brought pesticide meant for cotton crops in a bucket and administered the same by means of an injection syringe on different parts of her sister Ashamani's body i.e. eye, nose, mouth, chest and breast. When she cried loudly, appellant Bubuna (A-7) came near her and threatened her with knife point saying that if she would continue to cry, she would meet similar consequence. Saying so, appellant Bubuna (A-7) pointed injection syringe and touched it on the neck of P.W.1. Then, the appellant Dasunta (A-2), after completing administration of injection on deceased Ashamani, dealt lathi blows on the three deceased. Appellant Dasunta (A-2) then unfastened the rope by means of which her sister (deceased Ashamani) was tied up and then they took her to some other location. Half an hour thereafter, rest of accused persons took her mother (deceased Amabaya Sabar) away and after ten to fifteen minutes, they took away her father (deceased Asina Sabar). Then they instructed Damanta and Paranta to guard her and not to allow her to leave till their return. She further stated that then the appellant Aajanta (A-3) came with the gold necklace of her sister and handed over to her. Both Damanta and Paranta threatened her asking not to disclose the


incident before anyone otherwise they would kill her and rest of her siblings i.e. her another sister and two brothers. They also threatened to bring back her brothers from the school on the pretext of sickness of her parents due to fever, kill them on the way and would produce the knife with blood stain before her. Ten to fifteen minutes thereafter, the rest of the accused persons returned back and called her to accompany them to take bath in the spring as after killing human beings, they were not supposed to go straight to their houses without taking bath. They insisted and forced P.W.1 to take bath, but she did not agree to take bath. After the accused persons took bath, they returned back to their village and it was night time, they asked P.W.1 not to return back home and to take shelter in the house of any of them. P.W.1 then slept in the house of appellant Bubuna (A-7).

P.W.1 further stated that about half an hour of her stay in the house of appellant Bubuna (A-7), Paranta, Bubuna (A-7), Dengu and Aajanta (A-3) came to her with cooked food of their houses meant for the dinner and asked her to accompany them to destroy the same by throwing into water from a bridge as they apprehended that not taking of dinner in the night might go to the notice of their family members. Then they decided to convey a meeting on the next day. They returned back and P.W.1 slept in the house of appellant Bubuna (A-7) in that night.

P.W.1 further stated that in the morning, accused Iru (A-9) and Dasunta (A-2) came and called her to go to a meeting convened urgently as they apprehended that villagers might get up early and notice about the occurrence. At that time, her paternal uncle Ghana came to her and she cried by holding him but as the accused persons insisted them to join and to go to the hill top where meeting was to be organized, she along with her paternal uncle Ghana accompanied them. On the hilltop, the ward member Lugu Sabar (P.W.7), husband of Samiti member Darsing Sabar and other co-villagers were present before whom the accused persons confessed that they had killed the parents and sister of P.W.1 as due to their witchcraft activities, two of their co-villagers had already died and three others were not getting cured from fever for so many days. They threatened P.W.1 in the meeting that if she would submit any report to the police or give evidence in the Court, it would not take second for them to kill her and if they would be kept in jail, other villagers would not spare her and her family. She stated that because of such threat, considering danger to her life, she stayed in the house of P.W.5 from the day of meeting held on 10.9.2016 till 15.9.2016. She further stated that on 16.9.2016, she came to know that accused persons exhumed the dead bodies of her parents and sister from the place of burial and then cremated


the bodies by setting fire by pouring kerosene on it on the preceding day. Hearing about such incident, she came to the police station and reported the matter which was scribed by one Janardana Lima as per her dictation. She proved the F.I.R. (Ext.1) and also her 164 Cr.P.C. statement recorded by the learned J.M.F.C., Gunupur on 19th September 2016 vide Ext.2.

Learned counsel for the State urged that conviction of accused can be based on the solitary testimony of an eye witness. In support of such contention, he has relied upon the decision of the Hon'ble Supreme Court in **Namdeo** *(supra),* wherein it has been held that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134, Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that


no conviction can be recorded in case of a solitary eye witness, was held to have no force and negatived.

In the case of **Anil Phukan** *(supra)*, the Hon'ble Supreme Court observed as follows:

> "3.....Indeed, conviction can be based on the testimony of a single eyewitness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is a wholly reliable witness, the Courts have no difficulty in basing conviction on his testimony alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the Courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect."

Thus, no particular number of witnesses is required for proving a certain fact. The time honoured principle is that it is the quality and not the quantity of the witnesses that matters.

Evidence is weighed and not counted. Evidence of even a single eye witness, cogent, credible, wholly reliable, truthful, consistent and inspiring confidence is sufficient for maintaining conviction. In other words, there is no legal impediment in convicting a person on the testimony of a single witness. This is the logic behind section 134 of the Indian Evidence Act, 1872 (section 139 of Bharatiya Sakshya Adhiniyam). If there are doubts about his testimony, the Courts shall insist for corroboration.

**Whether evidence of P.W.1 to be discarded on the ground of her relationship with three deceased**:

12. The evidence of P.W.1 was attacked, firstly on the ground that she being related to all the three deceased is a highly interested witness. We are not inclined to accept such submission as 'related' is not equivalent to 'interested'. The witness may be called 'interested' only when he or she has derived some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished. A witness, who is a natural one and is the only possible eye witness in the circumstances of a case, cannot be said to be `interested'. (Ref: **State of U.P. -Vrs.- Kishanpal and Ors. : (2008) 16 Supreme Court Cases 73**). In the case of **Raju and Ors. -Vrs.- State of Tamil Nadu reported in (2012) 12**

**Supreme Court Cases 701**, it is held that a Court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness.

Therefore, relationship of P.W.1 with the three deceased cannot be the sole ground to discard her version.

**Scribe of F.I.R. not examined**:

13. Evidence of P.W.1 was attacked on the ground that as the scribe was not examined, the lodging of F.I.R. by P.W.1 becomes a suspicious feature and it is fatal to the prosecution.

The F.I.R. indicates that Janardana Lima was the scribe of the F.I.R. P.W.1 has stated in her examination in-chief that one Janardana Lima scribed the report to her dictation and she had submitted the same with her signature. She proved the written report as Ext.1 and her signature on it as Ext.1/1. She further stated that she had given her signature as Ext.1/2 beneath the endorsement of the scribe which was scribed to her dictation. Of course in the cross-examination, she has stated that she did not know the scribe earlier and she had also not seen his residence, but if the scribe was available to P.W.1 when she decided to lodge the F.I.R., there is nothing to doubt regarding


the conduct of P.W.1 in securing his help to scribe the F.I.R. Though the defence has suggested to P.W.1 that the scribe wrote the F.I.R. as per the dictation of I.I.C., Puttasing police station and that she had signed on it, she specifically denied such suggestion. Thus, the defence has not disputed that the F.I.R. was scribed by Janardana Lima.

The role of the scribe of F.I.R. is very limited; he has to write it as per the version of the informant and to read over and explain the contents to the informant whereafter the informant has to put his signature/L.T.I. finding it to be correct. The name of the scribe is ordinarily mentioned in the F.I.R. at the end. It is not necessary that the informant should have prior acquaintance with the scribe or one should not try to take the help of an unknown person to scribe the F.I.R. If P.W.1 who had read upto class 7$^{th}$ being panic-stricken had taken the help of an unknown person like Janardana Lima to scribe the F.I.R. and the said scribe of the F.I.R. is not examined during trial, in our considered opinion, the same cannot be a ground to doubt that the lodging of F.I.R. is a suspicious feature and it is not that fatal to doubt the prosecution story or the evidence of P.W.1. It can at best be treated as a mere irregularity which can be cured if it is otherwise proved. Since P.W.1 has duly proved the F.I.R., non-

examination of scribe becomes inconsequential. Of course, it is the duty of the I.O. to examine the scribe during investigation to verify whether the correct version of the informant had been noted down in the written report presented or the scribe on his own added something or deleted some material information. It is also the choice of the Public Prosecutor to examine the scribe.

We are of the view that if there are laches either on the part of the I.O. in not examining the scribe during investigation or that of the Public Prosecutor in not examining the scribe during trial, the evidence of the informant cannot be doubted or disbelieved on that score, if it is otherwise believable.

**Delay in lodging the F.I.R.**:

14. Delay in lodging the F.I.R. was also attacked as one of the grounds to disbelieve the evidence of P.W.1.

Learned counsel for the appellants urged that as per the prosecution case, the occurrence in question took place on 09.09.2016 in the evening hours and the F.I.R. was lodged in the evening hours on 16.09.2016 i.e. seven days after the occurrence, even though the place of occurrence is just 7 Kms. away from Puttasing police station which would be evident from the formal F.I.R. According to the learned counsel for the appellants, the only explanation that has been given by the


prosecution is that P.W.1 was threatened by the appellants not to disclose before anyone not only on the date of occurrence, but also on the next day in the place of meeting. It is the contention of the learned counsel for the appellants that though P.W.1 stated that she stayed in the house of P.W.5, who was the husband of the panchayat samiti member from 10.09.2016 to 15.09.2016, but P.W.5 has not supported the prosecution case and he was declared hostile. Moreover, there is no evidence on record that any of the appellants was keeping close watch on the movement of P.W.1 or there was any kind of restraint on her for movement. If fearing the threat of the appellants given on the date of occurrence so also on the next day, she decided not go to the police station on 10$^{th}$ September 2016, then after coming to know that the appellants have exhumed the dead bodies from its buried place and set fire to those bodies, the fear factor must have gone up. If she was apprehensive about the safety of her other family members including her two school going brothers and another sister whom the appellants had threatened to kill in the event she would disclose before anyone, then how she overcame such fear and got the courage to report the matter in the police station. According to the learned counsel for the appellants, it appears that at a belated stage, P.W.1 cocked up a story regarding the involvement of the appellants in the killing of

her parents and elder sister and accordingly, lodged a false F.I.R. and gave false statement not only before police but also before the Magistrate.

Learned Additional Government Advocate appearing for the State of Odisha, on the other hand, contended that mere delay in lodging of F.I.R., cannot be fatal to the prosecution case, if there is a plausible explanation. He argued that the evidence of P.W.1 does not suffer from any infirmity and when a lady like her who belonged to a tribal community and came from a poor family, was forced to see as to how in a brutal manner, her parents and elder sister were assaulted by the appellants in the cowshed of P.W.2 and were taken one after another from the cowshed and subsequently, she was informed about their murder and was also threatened by the appellants not to disclose before anyone and not to lodge report before police, it could not be expected from her to gather courage immediately to go to the police station and lodge the report there. She must have been quite conscious about the safety of her rest of the family members including her school going minor brothers who were threatened to be killed by the appellants. It is argued that when on 16.09.2016 she came to know that after exhuming the dead bodies from its burial place, the appellants cremated the bodies by setting it on fire by pouring kerosene, she might have

gathered courage to report the matter before the police. Therefore, there was nothing unusual in the conduct of P.W.1 in reporting the matter at a belated stage in view of the situation in which she was placed and her state of mind after three of her family members were brutally killed. It is submitted by the learned counsel for the State that it was a small village consisting of 25 houses and therefore, it would have been very easy on the part of the appellants to keep an watch on the movement of P.W.1 after the date of occurrence even though there is no direct evidence to that effect and therefore, the prosecution has successfully established the reason for delay in lodging of the F.I.R.

Learned counsel for the appellants placed reliance in the case of **Satpal Singh -Vrs.-State of Haryana reported in (2010) 8 Supreme Court Cases 714**, wherein the Hon'ble Supreme Court observed as follows:

> "14. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the


> incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety."

Learned counsel for the State on the other hand placed reliance on the decision of the Hon'ble Supreme Court in the case of **Munshi Prasad** *(supra)* wherein it was held as follows:

> "7. Fabricated and delayed F.I.R. as a matter of fact has been the basic submission in support of the appeal. It is now, however, well settled and we need not dilate on this score over again that mere delay cannot be said to be fatal to a criminal prosecution. First Information Report cannot but be termed to be the starting point and thus sets in motion of a criminal investigation.

In the case of **Shanmugam** (supra), it is held that delay in the lodging of the F.I.R. is not by itself fatal to the case of the prosecution nor can delay itself create any suspicion about the truthfulness of the version given by the informant just as a


prompt lodging of the report may be no guarantee about its being wholly truthful. So long as there is cogent and acceptable explanation offered for the delay, it loses its significance. Whether or not the explanation is acceptable will depend upon the facts of each case. There is no cut and dried formula for determining whether the explanation is or is not acceptable. Having said that, Courts need to bear in mind that delay in lodging of the F.I.R. deprives it of spontaneity and brings in chances of embellishments like exaggerations and distortions in the story which if narrated at the earliest point of time may have had different contours than what is eventually recorded in a delayed report about the occurrence. On the flipside, a prompt lodging of the report may not carry a presumption of truth with it. Human minds are much too versatile and innovative to be subject to any such strait-jacket inferences. Embellishments, distortions, and false implication of innocence may come not only out of deliberation which the victim party may hold among themselves or with their well-wishers and supporters, but also on account of quick thinking especially when all that it takes to do so is to name all those whom the informant or his advisors perceive to be guilty or inimical towards them.

Adverting to the contentions raised by the learned counsel for the parties, we find that in the first information report (Ext.1), it is mentioned that the place of occurrence is situated seven kilometers away from Puttasing police station. The I.O. (P.W.11) has also stated that distance between the spot and the P.S. is six kilometers. He further stated that on the date of occurrence i.e. 09.09.2016 in the evening hours, BSNL Network was available within one to two kilometers radius of Puttasing area. He further stated that village Kitung is surrounded by small hills and concrete road is available between Kitung and the police station and by walk, the distance can be covered within an hour or so and further stated that the F.I.R. was lodged almost seven days after the alleged occurrence. These questions have been put to the I.O. by the learned defence counsel to show that if the police station was so close to the informant's village, why the first information report was not lodged earlier by P.W.1 and therefore, the delay in lodging the F.I.R. is fatal to the prosecution case.

There is no dispute about the proposition of law that in case of extraordinary delay in lodging the F.I.R. and failure of the prosecution to explain the delay, the F.I.R. should be viewed with suspicion as delay sometimes affords opportunity to the informant to make deliberation, embellishment and fabrications

and the Court in such case looks for satisfactory explanation, in absence of which the delay is treated as fatal to the prosecution case.

The question that now crops up for consideration is whether there is satisfactory explanation in delay in lodging of the F.I.R. P.W.1 has stated as to how she was threatened by the appellants after committing the crime for which she could not report the matter earlier due to fear. She further stated that when she came to know that the dead bodies were cremated after exhuming from the buried place, she could gather courage and came to the police station on 16.09.2016 in the evening hours secretly and lodged the F.I.R. P.W.1 has stated in the cross-examination that there were about 25 houses in the village. When the learned defence counsel put a pertinent question regarding specific overt act committed by each of the appellants during the occurrence, she stated that she was frightened and crying for which she could not recollect the specific acts of the appellants. According to us, it is very natural on the part of P.W.1 not to recollect specific overt act of each appellant as to who assaulted on which part of the body of the deceased and by which weapon, as there were ten accused who were stated to be participating in the assault which was made on the three deceased. The defence has not disputed that P.W.1 has

a sister and two school going minor brothers and therefore, when the appellants threatened her on the date of occurrence not to disclose the incident before anyone otherwise they would kill her and the rest of her siblings and that they threatened her to bring back her brothers from the school on the pretext of sickness of her parents due to fever and kill them on the way and produce the blood stained knife before her, the state of mind of a girl like P.W.1 could easily be visualized. On the one hand, she was forced to see the brutal attack on her parents and elder sister and was informed by the appellants that they had been killed, on the other hand she was threatened on the date of occurrence as well as on the next day in a meeting in presence of the ward member (P.W.7) and Samiti member and other co-villagers not to report the matter to the police. Merely because P.W.5 in whose house she was staying from 10.09.2016 to 15.09.2016 did not corroborate her evidence in that respect and was declared hostile, the same cannot be a ground to doubt that she was staying in the house of P.W.5, who was none else than the Samiti member. It is pertinent to mention here that even though in the presence of P.W.5, the meeting was convened on the next day of occurrence on the hill top, where the appellants confessed their guilt, but P.W.5 could not venture to go to the police station and report the matter. Therefore, without getting


any support from any source, it was but natural on the part of P.W.1 not to immediately report the matter before the police station being under the pressure of threat and also security to her siblings. As rightly submitted by the learned counsel for the State, since it was a small village consisting of only 25 houses and she was staying in the house of the Samiti member, she can be said to be under the close watch of not only the appellants but also the Samiti member who appears to have closeness with the appellants. She specifically stated that after coming to know that the appellants exhumed the dead bodies from the burial place and set those bodies on fire by pouring kerosene, she came to the police station.

In the case of **Apren Joseph @ Current Kunjukunju & others -Vrs.- The State of Kerala reported in (1973) 3 Supreme Court Cases 114**, the Hon'ble Supreme Court observed thus:

> "11.....First information report under section 154 is not even considered a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in Court. But this information when recorded is the basis of the case set up by the informant. It is very useful if recorded before there is time and opportunity to embellish or before the

> informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, inevitably gives rise to suspicion which puts the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. In our opinion, no duration of time in the abstract can be fixed as reasonable for giving information of a crime to the police, the question of reasonable time being a matter for determination by the Court in each case. Mere delay in lodging the first information report with the police is, therefore, not necessarily, as a matter of law, fatal to the prosecution. The effect of delay in doing so in the light of the plausibility of the explanation forthcoming for such delay accordingly must fall for consideration on all the facts and circumstances of a given case."

We are of the view that the explanation furnished by P.W.1 regarding delay in lodging the F.I.R. is quite satisfactory and plausible and therefore, the learned trial Court has rightly not placed any importance on this aspect.

**Whether P.W.1 has developed her case from stage to stage**:

15. It is argued by the learned counsel for the appellants that P.W.1 has developed her case from stage to stage and due


to such improvement, her evidence is not free from doubt and therefore, it is difficult to act upon it.

No doubt, in the statement of P.W.1 recorded under section 164 Cr.P.C., there are detailed elaboration of the occurrence than what she had narrated in the F.I.R. and also stated before police in her statement recorded under section 161 Cr.P.C., however there are no such discrepancies in the 164 Cr.P.C. statement vis-à-vis the evidence given during trial. It seems F.I.R. was lodged containing a cryptic narration of events. In a state of panic and disturbed mind, escaping from the village in the evening hours, P.W.1 lodged the F.I.R. on 16.09.2016 and on the same day, her statement was recorded under section 161 Cr.P.C. by the I.O. (P.W.11). In such a state of mind, it was not expected of her to give all the details of the occurrence and what happened afterwards. By passage of time, she must have regained her composure and when she came before the Magistrate to give her statement, her fear must have been reduced and that might be the reason as to why she gave the 164 Cr.P.C. statement in a comprehensive manner. Moreover, the Hon'ble Supreme Court in the case of **R. Shaji -Vrs.- State of Kerala reported in (2013) 14 Supreme Court Cases 266** has held that in a case where the Magistrate has to perform the

duty of recording a statement under section 164 of Cr.P.C., he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under section 164 of Cr.P.C. Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case. Therefore, if in case of P.W.1, while recording her 164 Cr.P.C. statement on 19.09.2016, the learned Magistrate elicited all the information from her relating to the occurrence finding the witness to be an illiterate and rustic villager, the same cannot be a ground to doubt her testimony on the ground that she had developed her case from stage to stage.

It is the settled law that first information report is not the encyclopedia or be all and end all of the prosecution case. It is not a verbatim summary of the prosecution case. The principal object of the first information report is to set the criminal law into motion. Non-mentioning of some facts or details or meticulous particulars is not a ground to reject the prosecution case. Every improvement in the statement of a witness is not fatal to the prosecution case. In cases, where an improvement


creates a serious doubt about the truthfulness or credibility of a witness, the defence may take advantage of the same.

Learned counsel for the appellants argued that during the trial of Jamsu Sabar in JCL No.8 of 2017, P.W.1 has not stated that she cried seeing her parents and sister tied, that the deceased persons were assaulted by crowbar, that the appellants were accusing that her parents and sister practised witchcraft on the co-villagers as a result of which co-villagers Biranti and Jamjam died, that the assault to the deceased persons were made till they lost their consciousness, that the appellant No.2 Dasanta Sabar brought pesticides used for cotton crops in a bucket and administered to her deceased sister by syringe on her body parts for which she cried loudly, that hearing her cry, appellant Bubuna Sabar (A-7) came and threatened her on the point of knife, that the appellant Aajanta Sabar (A-3) came with the gold necklace of her sister and after giving to her, left the spot, that Damanta (not arrayed as an accused) and appellant Padhantu Sabar (A-4) threatened her, that she slept in the house of the appellant Bubuna Sabar (A-7), that the appellants came with cooked food to throw into water, that the appellant Iru Sabar (A-9) and appellant Dasunta Sabar (A-2) came and called her to the meeting place and that the appellants confessed in the

meeting about killing of the deceased due to witchcraft and that on 16.09.2016 she came to know that the accused persons brought out the dead bodies from the ditch and set fire by pouring kerosene.

On 03.05.2024 learned counsel for the appellants filed an application under section 391 of Cr.P.C. vide I.A. No.1036 of 2024 in CRLA No.750 of 2021 for recording additional evidence of P.W.1 by way of further cross-examination and allowing the questions mentioned in the questionnaire to be put to P.W.1. The main ground taken is that the evidence which P.W.1 adduced before the J.J.B. was completely contrary to her evidence in the trial of the appellants. This Court vide order dated 03.05.2024 has been pleased to allow the I.A. and permitted the defence counsel to put only the questions which were mentioned in the questionnaire to P.W.1 and liberty was also granted to the prosecution to re-examine P.W.1, if necessary and accordingly P.W.1 was cross-examined further in the trial Court on 15.05.2024. When the learned defence counsel put the questionnaire to P.W.1 with reference to her statement made in the trial of Jamsu Sabar in JCL No.8 of 2017, she stated that in JCL No.8 of 2017, only Jamsu Sabar was facing trial and

she was under the impression to depose against his culpability only and she was not asked about any other accused persons.

In view of the explanation offered by P.W.1 in the further cross-examination dated 15.05.2024, we are of the view that no importance can be attached to such contradictions or basing on such contradictions, it cannot be said that she has developed her case from stage to stage and therefore, she is an unreliable witness.

**Whether extra-judicial confession evidence is acceptable**:

16. P.W.1 has stated that on the next day of the occurrence in the morning, appellant Iru (A-9) and Dasunta (A-2) came and called her to go to the meeting place urgently and she along with her paternal uncle Ghana and others came to the hill top where the meeting was organized. She further stated that the Ward Member Lugu Sabar (P.W.7), husband of Samiti Member Darsinga Sabar and other co-villagers were present there. The appellants confessed before them that they had killed the three deceased as on account of their witchcraft activities, two of the co-villagers had already expired and three others were not recovering from fever for a number of days. Appellant Dasunta Sabar (A-2) stated that he brought pesticide from a

shop about a week back after he expressed his desire to the shop keeper to purchase poison in order to kill pigs.

P.W.7 Lugu Sabar has not supported the prosecution case regarding extra-judicial confession of the appellants for which he was declared hostile by the prosecution and cross-examined. He stated that the three deceased died of cholera in the same night of the relevant day and after their death, the bodies were kept unattended in their house for which he along with other co-villagers took those dead bodies and buried it in the village near a hill. No other witness has stated about the extra-judicial confession of the appellants.

The learned counsel for the appellants contended that when numbers of persons were present in the meeting place before whom extra-judicial confession was made by the appellants, except P.W.1, no other witness has been examined to prove this aspect and therefore, it would not be proper to act upon the evidence of P.W.1 on this aspect.

In the case of **Jagroop Singh -Vrs.- State of Punjab reported in (2012) 11 Supreme Court Cases 768**, it has been held that if the extra-judicial confession is true and voluntary, the same can be relied upon by the Court to convict the accused for the commission of the crime alleged. Despite


inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and his evidence is credible. The evidence in the form of extra-judicial confession made by the accused before the witness cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the Court believes the witness before whom the confession is made and is satisfied that it was true and voluntarily made, then the conviction can be found on such evidence. The aspects which have to be taken care of are the nature of circumstances, the time when the confession was made and the credibility of the witnesses who speak for such a confession. That apart, before relying on the confession, the Court has to be satisfied that it is voluntary and it is not the result of inducement, threat or promise as envisaged under section 24 of the Evidence Act.

There is no evidence that the appellants made the extra-judicial confession under any kind of threat, inducement or promise. A meeting was convened and P.W.1 was taken to the meeting where not only the confession was made but she was also threatened there with dire consequences in case she reported to the police or gave evidence in Court. It seems that

other persons present in the meeting were either supporting the appellants or they were in a fear state to raise any kind of protest as the appellants had already killed three persons of their village. The meeting was so arranged by the appellants to show their power and to justify their misdeeds and also to create a fear psychosis in the minds of the persons attending the meeting not to divulge it before anyone or to face serious consequences. Nothing has been brought out in the cross-examination to disbelieve the extra-judicial confession, even it has not been suggested to P.W.1 that there was no such meeting held on the hill top on the next day of the occurrence in the morning and that no such confession has been made by the appellants. The confession appears to be voluntary and the evidence of P.W.1 on this score is acceptable and therefore, the contentions raised by the learned counsel for the appellants that it would be unsafe to act upon the extra-judicial confession is not acceptable.

**Corpus Delicti not found**:

17. The learned counsel for the appellants submitted that P.W.1 had seen only the assault part inside the cowshed of P.W.2, but there is no evidence as to what happened to the three deceased after they were taken out of the cowshed. The death of the deceased persons has not been proved and the bodies of the

deceased persons were not found and the report submitted by the State F.S.L., Rasulgarh after examining the burnt bone pieces no way helps the prosecution to establish the homicidal death of the deceased persons.

The learned counsel for the State, on the other hand, argued that after the deceased persons were carried away by the appellants from the cowshed one after another, not only it was informed to P.W.1 that the deceased persons were killed but thereafter nobody has seen the deceased persons alive. Even though there is no direct evidence to the second phase of occurrence but in absence of any explanation offered by the appellants as to what happened to the deceased persons after they were taken from the cowshed and when they parted with the company of the three deceased, the proximity of time between the carrying of three deceased from the cowshed and return of the appellants to the cowshed, even if the corpus delicti is not found, in view of 106 of the Evidence Act, it can be said that the prosecution has established that the appellants were the authors of the crime.

In the case of **Ramachandra and Ram Bharosey -Vrs.- State of Uttar Pradesh reported in A.I.R. 1956 Supreme Court 381**, it was held that in law, a conviction for an


offence did not necessarily depend upon the corpus delicti i.e. the dead body, is being found. However, there must be reliable evidence, direct or circumstantial, of commission of murder, though corpus delicti is not traceable.

In the case of **Mani Kumar Thappa -Vrs.- State of Sikkim reported in (2002) 7 Supreme Court Cases 157**, it was held that in a trial for murder, it is neither an absolute necessity nor an essential ingredient to establish corpus delicti, but the factum of death of the deceased concerned must be established like any other fact. In some cases, it would not be possible to trace or recover corpus delicti owing to a number of possibilities such as dead body might have been disposed of without trace. If the recovery of the dead body is held to be mandatory to convict an accused, in many cases, the accused would manage to see that the dead body is destroyed which would afford the accused a complete immunity from being held guilty or from being punished. What is required in law to base a conviction for an offence of murder is that there should be reliable and plausible evidence, like any other fact, that death was committed and it could be proved by direct or circumstantial evidence albeit the dead body could not be traced.

In the case of **Prithipal Singh and others -Vrs.- State of Punjab and others reported in (2012) 1 Supreme Court Cases 10**, it has been held that in a murder case, it is not necessary that dead body of the victim should be found and identified, i.e. conviction for offence of murder does not necessarily depend upon corpus delicti being found. The corpus delicti in a murder case has two components - death as result, and criminal agency of another as the means. Where there is a direct proof of one, the other may be established by circumstantial evidence.

In the case of **Ram Gulam Chaudhury** (supra), it has been held that it is not at all necessary for a conviction for murder that the corpus delicti be found. Undoubtedly, in the absence of corpus delicti, there must be direct or circumstantial evidence leading to the inescapable conclusion that the person had died and that the accused are the persons who had committed the murder.

In the case of **Rishi Pal -Vrs.- State of Uttarakhand reported in (2013) 12 Supreme Court Cases 551**, it is held that in the absence of corpus delicti, what the Court looks for, is the clinching evidence that proves that the victim has been done to death. If the prosecution is successful in

providing cogent and satisfactory proof of the victim having met a homicidal death, absence of corpus delicti will not by itself be fatal to the charge of murder. Failure of the prosecution to assemble such evidence will, however result in failure of the most essential requirement in a case involving a charge of murder.

In view of the principles laid down in the aforesaid decisions of the Hon'ble Supreme Court, we are of the humble view that a conviction for an offence does not necessarily depend upon the corpus delicti being found. In the absence of the corpus delicti, there must be direct or circumstantial evidence leading to the inescapable conclusion that the person has died and that the accused are the persons who had committed the murder. If the prosecution is successful in providing clinching evidence and cogent and satisfactory proof of the victim having met a homicidal death, absence of corpus delicti will not by itself be fatal to a charge of murder. Where a homicidal death is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the conclusion that the victim had met with a homicidal death. When the body of the person said to have been murdered is not forthcoming, the prosecution is required to

adduce strongest possible evidence as to the fact of the murder. If it is established clearly that a particular person was intentionally killed, in absence of discovery or production of the body of the murdered person, a conviction can be sustained. Therefore, before convicting a person of the charge of murder, the Court must be satisfied that the person alleged to have been murdered is actually dead.

In the case in hand, there is no direct evidence that the deceased persons were killed after being taken from the cowshed of P.W.2 and buried and thereafter, their dead bodies were exhumed and cremated and the learned trial Court has rightly held that so far as the second scene of occurrence and the incident which took place at the second scene of occurrence is based upon circumstantial evidence.

The I.O. (P.W.11) has stated that the scientific team and Executive Magistrate and the police proceeded to the spot and appellant Dengun Sabar (A-1) showed the cremation ground which was visited by the scientific team for collection of evidence. The spot visit report of the scientific team was produced before the I.O. which has been marked as Ext.19. He further stated that on the basis of confession of Dengun Sabar (A-1), recovery and seizure of charred bone and ashes from the

spot where those three bodies were cremated, scientific team collected the same and analyzed and handed over to him after making necessary packing and sealing. He further stated that he collected 35 bones from the spot and seized and the scientific officers collected 8 bones which were also seized as per seizure list Ext.4/2. The report of the State F.S.L. indicates that 25 nos. of sealed packets containing 25 burnt bone pieces of three deceased persons marked as Exts.F1 to F25 were received but the D.N.A. profile could not be generated from the burnt bone pieces and D.N.A. profile was not possible to be generated from the Exhibits as the bones were burnt completely and required quantity of D.N.A. could not be extracted from the Exhibits marked as F2, F4, F11, F12 and F25.

Evidence of P.W.1 indicates that after the assault on the deceased persons were over, appellant Dasunta Sabar (A-2) and Iru Sabar (A-9) unfastened the rope by which her sister (deceased Ashamani Sabar) was tied up and they took her to some other location. Half an hour thereafter, rest of the appellants took away her mother (deceased Amabaya Sabar) and ten to fifteen minutes after, they took away her father (deceased Asina Sabar). She further stated that some of the appellants returned back and called her to accompany them to

take bath in the spring and returned back home as after killing human beings, they were not supposed to go straight to their homes without taking bath.

Thus, apart from the extra-judicial confession which was made by the appellants in the meeting to have killed the parents and sister of P.W.1, the conduct of the appellants on the date of occurrence in taking the three deceased from the cowshed one after another and returning within a short time and also what they stated before P.W.1 also proves that they had killed the three deceased persons.

The deceased persons in the moribund condition were taken out of the cowshed of P.W.2 one after another by the appellants and thereafter no one had seen any of the deceased alive. Specific questions in that respect have also been put to the appellants in their accused statements, however they have simply stated that it was false. In other words, the appellants have not explained as to when they parted with the company of the three deceased persons whom they took from the cowshed and what happened to the deceased persons.

In the case of **Somasundaram @ Somu** (supra), the Hon'ble Supreme Court held that the abduction followed by murder in appropriate cases can enable a Court to presume that


the abductor is the murderer. The principle is that after abduction, the abductor would be in a position to explain what happened to the victim and if he failed to do so, it is only natural and logical that an irresistible inference might be drawn that he has done away with the hapless victim. Section 106 of the Evidence Act would come to the assistance of the prosecution.

Section 106 of the Evidence Act states that when any fact is especially within the knowledge of any person, the burden of proving such fact is upon him. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible.

In the case of **Sucha Singh -Vrs.- State of Punjab reported in A.I.R. 2001 Supreme Court 1436**, the Hon'ble Supreme Court while dealing with burden of proof under section 106 of the Evidence Act held as follows:

> "20. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the Section would apply to cases where the


> prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference."

In the case of **State of Rajasthan -Vrs.- Kashi Ram reported in (2006) 12 Supreme Court Cases 254**, it has been held whether an inference ought to be drawn under section 106 of Evidence Act is a question which must be determined by reference to the facts proved. It is ultimately a matter of appreciation of evidence and therefore, each case must rest on its own facts. If a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by section 106 of the Evidence Act. In a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 of


the Evidence Act, however, does not shift the burden of proof in a criminal trial, which is always upon the prosecution.

In the case in hand, we are of the view that when the three deceased persons were last seen alive in the company of the appellants being carried in a moribund condition from the cowshed of P.W.2 in the evening hours on 09.09.2016 and thereafter no one has seen any of the deceased alive and the appellants have failed to explain as to how and when they parted with the company of the deceased persons rather taken a plea of denial, it can be said that the appellants have failed to discharge the burden cast upon them by section 106 of the Evidence Act and apart from the clinching evidence of P.W.1 relating to their participation in the assault of the three deceased inside the cowshed, this lack of explanation would provide an additional link in the chain of circumstances proved against them.

**Conduct of the appellants on the date of occurrence**:

18. Another important aspect which cannot be lost sight of by this Court is that after the appellants took the three deceased from the cowshed of P.W.2 one after another, appellant Aajanta Sabar (A-3) came with the gold neck chain of deceased Ashamani Sabar and gave it to P.W.1 and then P.W.1 was threatened by two of the accused persons not to disclose

about the incident before anyone. Then some of the appellants came and called P.W.1 to accompany them to take bath in the spring and thereafter to return back home as after killing human beings, they were not supposed to go straight to their houses without taking bath. Though the appellants forced P.W.1 to take bath but she did not agree for which they took bath and retuned back to their village and when she stayed in the house of appellant Bubuna Sabar (A-7), the appellants Dengun (A-1), Aajanta (A-3), Padhantu (A-4) and Bubuna (A-7) came to her with cooked food of their houses meant to be taken in dinner and asked her to accompany them to destroy the same by throwing into the water from a bridge.

Section 8 of the Evidence Act is very appropriate to be discussed here as it makes the conduct of an accused relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either previous or subsequent conduct. The conduct in order to be admissible must be such that it has close nexus with a fact in issue or relevant fact.

In the case in hand, the conduct of the appellants is not only relevant under section 8 of the Evidence Act but is also one of the major circumstances to arrive at a conclusion of their guilt in view of other evidence available on record.

**Whether place of occurrence is doubtful**:

19. The contention of the learned counsel for the appellants is that since no stumps and ropes were seized from the cowshed of P.W.2 by the I.O. (P.W.11) where the three deceased persons so also P.W.1 were stated to have been tied, no pesticide or injection was seized from the cowshed at the time of spot visit by the I.O. and even P.W.2 has not stated that any occurrence took place inside his cowshed, the place of occurrence becomes a doubtful feature.

We are not at all impressed by such submissions inasmuch as P.W.2 has not supported the prosecution case for which he has been declared hostile. The I.O. (P.W.11) has stated that from the cattle shed, he had seized a petty coat suspected to be containing blood stain as it was hanging from the roof. No injection syringe, bucket, pesticide, cotton, crowbar, kati (large knife) or blood stained soil were found from the spot. He further stated that he had not seized the stumps in which P.W.1 and three deceased were tied up as those were fixed on the floor. He further stated that he had not removed those stumps and seized those as he did not feel it proper to do so. When the F.I.R. was lodged seven days after the occurrence and in the meantime, the appellants had taken steps to cremate the dead bodies, it was


not expected that they would have left some incriminating materials at the spot of crime to be noticed by others and there was every possibility of causing disappearance of the evidence on their part from the spot.

In view of the evidence of P.W.1, we are not inclined to accept the contentions raised by the learned counsel for the appellants that the place of occurrence is a doubtful feature.

20. In the case in hand, we find that the solitary evidence of P.W.1 Melita Sabar, the informant of the case is wholly reliable, truthful and inspiring confidence. Neither her evidence can be discarded on the ground of her relationship with the three deceased nor can the lodging of the first information report by her be doubted merely because the scribe of the F.I.R. was not examined. She has given satisfactory explanation regarding the delay in lodging the first information report and we are convinced with such explanation. Her evidence in Court is consistent with her statement recorded under section 164 Cr.P.C. and the defence has failed to bring any contradictions between the two. Of course, there are some improvements in her version when she gave her 164 Cr.P.C. statement than what she mentioned in the F.I.R. or stated before police in her 161 Cr.P.C. statement, but as rightly argued by the learned counsel


for the State that after the lodging of the F.I.R. and giving her 161 Cr.P.C. statement before the I.O. in a state of panic, when she came to Court after three days to give her statement on 19.09.2016 which was recorded by none else than the Judicial Magistrate First Class, she must be feeling secured as by that time the appellants had already been arrested and forwarded to the Court and therefore, she elaborately narrated the incident before the Magistrate. Her evidence is getting corroboration from the extra-judicial confession of the appellants made in the hill top on the next day of occurrence. The conduct of the appellants after the occurrence is another relevant feature in this case which also lays support to the evidence of P.W.1.

Even though P.Ws. 2 to 7 have not supported the prosecution case and they have been declared hostile and the evidence of P.W.8 and P.W.9 are in no way helpful to the prosecution case and the remaining two witnesses i.e. P.Ws.10 and 11 are official witnesses, but in our humble view P.W.1 is a wholly reliable witness and therefore, her evidence can be safely acted upon to come to the irresistible conclusion that the appellants are the authors of the crime and they have committed the murder of the three deceased, namely, Asina Sabar, Amabaya Sabar and Ashamani Sabar.

**Non-examination of Damant Sabar as a witness/non-proceeding against him as an accused :**

21. The contentions raised by the learned counsel for the appellants/condemned prisoners that Daman Sabar should have been arrayed as an accused or he should have at least been examined as a witness and in absence of his evidence, the evidence of P.W.1 should not be accepted as gospel truth to convict the appellants, is not acceptable.

P.W.1 has stated that she was informed by the co-villager Daman Sabar that her parents and sister were being tied up in the stump inside the cow shed of P.W.2. She has further stated that when the appellants took away the three deceased, they instructed Damanta Sabar and Paranta to guard her and not to allow her to leave till their return. She further stated that both Damant Sabar and Paranta threatened her not to disclose the incident before anyone or else they would kill her and rest of her siblings. She stated that Damanta Sabar is not an accused in the case.

The best person to say as to why Damanta Sabar was not arrayed as an accused is P.W.11, the Investigating Officer. Strangely, not a single question has been put to the I.O. by the learned defence counsel in the cross-examination in that


respect. The learned trial Court has put a question to the I.O. (P.W.11) and accordingly, it has been elicited that Damant Sabar has been shown as a witness for the prosecution. The I.O. has also stated the address of Damanta Sabar as per case records. Of course, the prosecution has not taken any step to examine Damanta Sabar as a witness during trial and no step has also been taken under section 319 of Cr.P.C. to proceed against him but in our humble view, the same cannot be a ground not to act upon the evidence of P.W.1 or doubt her evidence or to hold that the non-examination of Damanta Sabar has caused prejudice to the appellants. Therefore, the learned trial Court has rightly not placed any importance on such submission.

**Discussions of evidence on record offence-wise :**

22. At this stage, it would be profitable to discuss the evidence on record offence-wise.

**(i) Section 342/34 of I.P.C.** :

Learned trial Court has found the appellants guilty under section 342 read with section 34 of the I.P.C.

Charge has been framed against the appellants that they in furtherance of their common intention wrongfully confined P.W.1 and the three deceased in the cattle shed of P.W.2 on 09.09.2016 evening at about 8.00 p.m.

Section 342 of the I.P.C. deals with punishment for 'wrongful confinement', which has been defined under section 340 of I.P.C. and it states that whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said 'wrongfully to confine' that person. Thus, this section requires two essentials i.e. wrongful restraint of a person and such restraint must prevent that person from proceeding beyond certain circumscribing limits. Wrongful confinement keeps a person within limits out of which he/she cannot go.

In the case in hand, P.W.1 has specifically stated when she came inside the cow shed of P.W.2, she found her parents and elder sister were tied up by the appellants who were also present there. She was also tied in another stump by means of a rope. After the deceased persons were assaulted, the ropes were unfastened and they were taken by the appellants one after another to some other location. The evidence of P.W.1 on this aspect is consistent throughout and it has not been shattered in the cross-examination. Therefore, the prosecution has successfully established the charge under section 342 read with section 34 of the I.P.C. against the appellants.


**(ii) <u>Section 364/34 of I.P.C.</u>** :

Learned trial Court has found the appellants guilty under section 364 read with section 34 of I.P.C.

Charge has been framed against the appellants that in furtherance of their common intention, they abducted P.W.1 and the three deceased and tied them in rope in the cattle shed of P.W.2 and again removed the three deceased from the cattle shed to one unknown place in order that those three deceased be put in danger of being murdered and that P.W.1 was also threatened in order that she might be murdered.

Section 364 of I.P.C. deals with offence of kidnapping or abducting in order to murder. It states that whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered shall be punished with this offence.

'Kidnapping' is of two kinds i.e. kidnapping from India and kidnapping from lawful guardianship as per section 359 of I.P.C. 'Kidnapping from lawful guardianship' has been defined under section 361 of I.P.C. Taking or enticing away a minor under the age of sixteen years, if a male or under eighteen years of age, if a female or a person of unsound mind so as to keep


such person of the lawful guardianship and that too without the consent of such guardian attracts the ingredients of the offence.

In view of the age of P.W.1 at the time of occurrence, which was twenty-two years as well as the age of her parents and elder sister (three deceased persons), offence of kidnapping from lawful guardianship would not be attracted.

So far as abduction is concerned, the same is defined under section 362 of I.P.C. The ingredients of the offence of abduction are (i) forcible compulsion or inducement by deceitful means and (ii) the object of such compulsion or inducement must be the going of a person from any place.

P.W.1 has stated as to how the appellants had tied up her parents and elder sister in the stump inside the cow shed of P.W.2 and how they also tied her up. She has further stated that after assaulting the three deceased persons, the appellants unfastened the rope and took away the deceased persons one by one to some other location. The deceased persons were not found alive thereafter and in view of the evidence on record, it is apparent that the appellants committed murder of the three deceased. Therefore, the ingredients of the offence under section 364 read with section 34 of the I.P.C. are satisfied.


**(iii) <u>Section 365/34 of I.P.C.</u>** :

Learned trial Court has found the appellants guilty under section 365 read with section 34 of the I.P.C.

Charge has been framed against the appellants that in furtherance of their common intention, they abducted P.W.1 and the three deceased with intent to cause them to be secretly and wrongfully confined.

Section 365 of I.P.C. deals with offence of kidnapping or abducting with intent secretly and wrongfully to confine person. It states that whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with this offence. The prosecution has to prove that the accused kidnaped or abducted a person and thereby intended that such person should be kept in wrongful or secret confinement.

The evidence of P.W.1 as has already been discussed clearly proves wrongful confinement so also abduction of the three deceased persons. P.W.1 has also stated as to how when she returned back to her house, she found no one was there and when she was looking for her family members, she was informed by Damanta Sabar about the three deceased persons being tied up in the stump inside the cow shed of P.W.2. Therefore, there


are materials on record that the appellants abducted the three deceased persons and wrongfully confined them inside the cow shed of P.W.2 and thereafter assaulted them and took them to some unknown location whereafter they were not found alive. Therefore, the ingredients of the offence under section 365 read with section 34 of the I.P.C. are satisfied.

**(iv) <u>Section 201/34 of I.P.C.</u>** :

Learned trial Court has found the appellants guilty under section 201 read with section 34 of the I.P.C.

Charge has been framed against the appellants that in furtherance of their common intention, knowing or having reason to believe that the offence of murder of three deceased persons has been committed, they cremated the dead bodies of the three deceased to disappear evidence with an intention to screen themselves and other offenders from legal punishment of such murder.

Section 201 of I.P.C. deals with causing disappearance of evidence of offence, or giving false information to screen the offender. At this stage, it is apposite for us to reproduce the provision which reads as follows:

> "Whoever, knowing or having reason to believe that an offence has been committed, causes any


> evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false."

To bring home an offence under section 201 of the I.P.C., the prosecution is required to establish the following ingredients:

> (i) an offence has been committed;
>
> (ii) person charged with the offence under section 201 of the I.P.C. must have the knowledge or reason to believe that an offence has been committed;
>
> (iii) person charged with the said offence should have caused disappearance of evidence; and
>
> (iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false.

It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home the charge under section 201 of the I.P.C., a mere suspicion is not sufficient. There must be on record cogent


evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown.

In the case of **Sukhram -Vrs.- State of Maharashtra reported in (2007) 7 Supreme Court Cases 502**, the Hon'ble Supreme Court has elaborately discussed the necessary ingredients of offence under section 201 of the I.P.C in the following words:

> "The first paragraph of the section contains the postulates for constituting the offence while the remaining three paragraphs prescribe three different tiers of punishments depending upon the degree of offence in each situation. To bring home an offence under Section 201 IPC, the ingredients to be established are: (i) committal of an offence; (ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed; (iii) person charged with the said offence should have caused disappearance of evidence; and (iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he

knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under Section 201 IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown."

In the case of **Hanuman and Ors. -Vrs.- State of Rajasthan reported in (1994) 2 Supp. Supreme Court Cases 39**, the Hon'ble Supreme Court held that the mere fact that the deceased allegedly died an unnatural death could not be sufficient to bring home a charge under section 201 of the I.P.C.. Unless the prosecution was able to establish that the caused person knew or had reason to believe that an offence has been committed and had done something causing the offence of commission of evidence to disappear, he cannot be convicted.

The evidence of P.W.1 makes it clear that after assaulting the three deceased persons inside the cow shed of P.W.2, the appellants took them to some unknown place one by one whereafter the deceased persons were not found alive. The


evidence on record indicates about burying the dead bodies, exhuming the dead bodies after some days and cremating the same. The appellants have not offered any explanation in their accused statements as to what they did with the three deceased persons after they were taken out of the cow shed of P.W.2. Thus, the act of the appellants squarely attracts the ingredients of the offence under section 201 read with section 34 of the I.P.C. and the learned trial Court is quite justified in convicting the appellants under such offence.

**(v) <u>Section 506/34 of I.P.C.</u>** :

Learned trial Court has found the appellants guilty under section 506 of I.P.C. read with section 34 of the I.P.C.

Charge has been framed against the appellants that in furtherance of their common intention, they committed criminal intimidation by threatening P.W.1 with injury to her person, reputation and property with intent to cause alarm to her.

Section 506 of I.P.C. deals with punishment for criminal intimidation, which has been defined under section 503 of the I.P.C. The offence is attracted when threat is given to a person with an injury to him, to his reputation or to his property or to the person or reputation of any one in whom that person is


interested. Similarly, threatening a person with an injury to cause alarm to that person or to cause the person to do any act which is not legally bound to do as the means of avoiding the execution of such threat or to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat, also attracts the ingredients of the offence.

P.W.1 has stated as to how the appellants threatened her with the knife point when she started crying, how the appellants threatened her not to disclose the incident before any one otherwise they would kill her and rest of the siblings i.e. her sister and two brothers, how she was threatened at the meeting place not to submit the report to the police or to give evidence in Court, otherwise, they would kill her. The evidence of P.W.1 clearly makes out the ingredients of the offence under section 506 read with section 34 of the I.P.C. and thus, we find no fault with the trial Court in convicting the appellants for such offence.

**(vi) <u>Section 4 of O.P.W.H. Act, 2013</u>** :

Learned trial Court has found the appellants guilty under section 4 of the O.P.W.H. Act, 2013.

Charge has been framed against the appellants that they along with others committed witch-haunting by killing the three deceased claiming them to be practising witchcraft.

Section 4 of the O.P.W.H. Act, 2013 deals with penalties for 'witch-haunting'. Sub-section (1) of section 4 of the O.P.W.H. Act, 2013 states that whosoever, except as provided in sub-section (2) commits witch-haunting or abets or provokes for witch haunting, shall be punished for this offence. Similarly, sub-section (2) of section 4 of the O.P.W.H. Act, 2013 states that if any one forces any woman, branding her as witch, to drink or eat any inedible substance or any other obnoxious substance or parade her with her painted face or body or commits any similar acts, which is derogatory to human dignity or displaces from her house can be punished for witch-haunting.

On the face of the evidence of P.W.1, there is no such material to attract the ingredients of sub-section (2) of section 4 of the O.P.W.H. Act, 2013 as neither the two lady deceased nor the informant (P.W.1) were forced by the appellants, branding them as witches, to drink or eat any inedible substance or any other obnoxious substance or were paraded with painted face or body or any such similar acts were

committed, which were derogatory to human dignity or they were displaced from their house .

So far as witch-haunting is concerned, the same has been defined under section 2(d), which means, any act of omission, commission or conduct on the part of any person (i) identifying, accusing or defaming a woman as a witch, or (ii) harassing, harming or injuring such woman whether mentally or physically or damaging her property.

P.W.1 has stated in her evidence that the villagers castigated alleging witchcraft activities by her father (deceased Asina Sabar) for which she had to discontinue her study in the year 2009 after passing 7$^{th}$ class examination. She further stated that on many occasions in the preceding years, ever since the grandmother of the appellant Dasunta (A-2) had fallen sick, allegations were made against her father by the grandmother of the appellant Dasunta that she had dreamt of witch crafting by deceased Asina Sabar that caused her sick. She stated that the villagers had tortured them and imposed penalty in terms of money on her father. She further stated that it might be okay for the villagers to take revenge against her father, but there was no point in killing her mother and sister, who were also innocent people in the eyes of the villagers. In the cross-examination, she

has stated that in respect of previous incident, no report was lodged at the police station though they were planning to intimate the police.

Therefore, there is no evidence on record that the appellants committed any act of omission or commission in identifying, accusing or defaming the two lady deceased, namely, Amabaya Sabar and Ashamani Sabar as witch or harassed or harmed or caused injury to the two lady deceased whether mentally or physically or damaging the property in that connection.

Learned trial Court has given emphasis on the statement made by P.W.1 in the examination in chief that while assaulting the three deceased by means of lathi, stick and crow bar, the appellants were alleging that the deceased persons witch-crafted the co-villagers as a consequence Biranti and Jamjam of their village died. The definition of 'witch-craft' as per section 2(b) of O.P.W.H. Act, 2013 is different than the definition of witch-haunting in section 2(d) of the said Act and section 4 of the O.P.W.H. Act, 2013 as already stated deals with penalty for 'witch-haunting' not for 'witch-crafting'. Learned trial Court has further relied on what P.W.1 has mentioned in the F.I.R. (Ext.1) or in 164 Cr.P.C. statement in connection with the offences


under the O.P.W.H. Act, 2013, but the same being not a substantive piece of evidence, we cannot accept the same to arrive at a conclusion that the offence under section 4 of the O.P.W.H. Act, 2013 are made out. Thus, the ingredients of the offence under section 4 of the O.P.W.H. Act, 2013 are not attracted.

Accordingly, the appellants are acquitted of the charge under section 4 of the O.P.W.H. Act, 2013.

**(vii) <u>Section 302/34 of I.P.C.</u>** :

Learned trial Court has found the appellants guilty under section 302 of I.P.C. read with section 34 of the I.P.C.

Charge has been framed against the appellants that in furtherance of their common intention, they committed murder of the three deceased intentionally.

As has already been discussed above, in view of the overwhelming evidence of P.W.1, which we found to be truthful, reliable, cogent, trustworthy and above board, the prosecution has successfully established that the appellants are the authors of the crime and they have committed murder of the three deceased, namely, Asina Sabar, Amabaya Sabar and Ashamani Sabar. Thus, the conviction of the appellants under section 302 read with section 34 of the I.P.C. is quite justified.

**Sentences awarded by trial Court under sections 342/34, 364/34, 365/34,201/34, and 506/34 of the I.P.C.**:

23. The duty of every Court is to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice, sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence and sometimes the desirability of keeping him out of circulation and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of


sentences. Anything less than a penalty of greatest severity for any serious crime is unwarranted and unwise. Disproportionate punishment has some very undesirable practical consequences.

In our humble view, the sentences awarded by the learned trial Court to the appellants for commission of offences under sections 342/34, 364/34, 365/34,201/34, and 506/34 of the I.P.C. are quite justified.

**Whether Death Sentence awarded for the offence under section 302/34 of the I.P.C. needs interference?**:

24. The learned trial Court after pronouncing the verdict of guilty against the appellants on 21.10.2021, posted the case on the same day for hearing on the question of sentence and later at 2.00 p.m. after hearing the learned Special Public Prosecutor so also the learned defence counsel, came to hold that the aggravating circumstances are in favour of the prosecution and against the convicts and in the facts and circumstances of the case, there is no alternative punishment left for the convicts than the one which is death sentence. The learned trial Court held that there appears no material on record to justify that there was possibility of reformation of the convicts. It was further held that the conduct of the convicts showed that they had committed the ghastly act by killing three innocent


persons of one family including two females and instead of showing repentance, they gave threats to the informant (P.W.1) to kill her and her brothers. The aggravating circumstances are outweighing the mitigating circumstances. The age of the convicts was around 27 to 41 years and the crime was committed with extreme brutality and the collective conscience of the society was shocked and thus, the case comes within the category of 'rarest of rate cases' and warrants the only deterrent punishment i.e. the capital punishment/death sentence.

It is thus clear that the learned trial Court after convicting the appellants has not given adequate opportunity to them to produce the mitigating circumstances in their favour nor it tried to collect the same nor discussed what the mitigating circumstances are available in favour of the appellants, but merely stated that the aggravating circumstances were outweighing the mitigating circumstances.

In the case of **Allauddin Mian and Others -Vrs.- State of Bihar reported in (1989) 3 Supreme Court Cases 5**, the Hon'ble Supreme Court held that since the choice is between capital punishment and life imprisonment, the legislature has provided a guideline in the form of sub-section (3) of section 354 of Cr.P.C. It is held that as a general rule, the


trial Court should after recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant materials bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender. The Presiding Officer must show a high degree of concern for the statutory right of the accused and should not treat it as a mere formality to be crossed before making the choice of sentence. If the choice is made, without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc., before the Court, the Court's decision on the sentence would be vulnerable. The sentencing Court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before it, it must pronounce the sentence.

A 'mitigating circumstance' is a factor that lessens the severity of an act or culpability of the accused for his action. If the mitigating circumstances outweigh the aggravating


circumstance, the Judge is likely to be less aggressive in the ruling/sentencing.

As per order dated 20th September 2024, after going through the paragraphs on hearing on sentence of the learned trial Court, we feel it just and proper that the appellants should be provided an opportunity to file affidavits for consideration of materials on mitigating circumstances and also to direct the Superintendent of Prison to collect detailed information with reports on the past life, psychological condition and post-conviction conduct of the appellants and such other relevant materials which might be taken cognizance of at the time of final hearing necessarily obtained with the assistance of the concerned officials. Accordingly, this Court allowed the appellants to file affidavits indicating therein the materials as regards the mitigating circumstances and also directed the Superintendent of Prison to submit the reports.

In the case of **Jarnail Singh -Vrs.- State of Punjab reported in (2009) 3 Supreme Court Cases 391**, it is held that the evidence of a single witness may sustain a sentence of death whereas a host of vulnerable witnesses may fail to support a simple charge of hurt.

In the case of **Manoj and others -Vrs.- State of Madhya Pradesh reported in (2023) 2 Supreme Court Cases 353**, the Hon'ble Supreme Court gave emphasis on the practical guidelines to collect mitigating circumstances, which are as follows :

> "248. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.
>
> 249. To do this, the trial Court must elicit information from the accused and the State, both. The State must for an offence carrying capital punishment at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in *Bachan Singh*. Even for the other factors of (3) and (4), an onus placed squarely on the State conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a

baseline for the appellate Courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

250. Next, the State, must in a time-bound manner, collect, additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

(*a*) Age;

(*b*) Early family background (siblings, protection of parents, any history of violence or neglect);

(*c*) Present family background (surviving family members, whether married, has children, etc.);

(*d*) Type and level of education;

(*e*) Socio-economic background (including conditions of poverty or deprivation, if any);

(*f*) Criminal antecedents (details of offence and whether convicted, sentence served, if any);

(*g*) Income and the kind of employment (whether none, or temporary or permanent, etc.);

(*h*) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial Court, at the sentencing stage. The accused too, should be given the same

opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

251. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial Court's conviction, or High Court's confirmation, as the case may be, a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post-conviction mental illness, if any.

252. It is pertinent to point out that this Court in ***Anil -Vs.- State of Maharashtra : (2014) 4 Supreme Court Cases 69*** has in fact directed criminal courts to call for additional material: (SCC p. 86, para 33)

> "33.…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 I.P.C., 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."
>
> We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence."

In the case of **Sundar -Vrs- State by Inspector of Police reported in (2023) 5 SCR 1016**, taking into account the observation made by the Hon'ble Supreme Court in **Anil** (Supra) observed that neither the trial Court nor the appellate Court looked into any factors to conclusively state that the


petitioner cannot be reformed or rehabilitated. The State must place all materials and circumstances on record bearing on the probability of reform. Many such materials and aspects are within the knowledge of the State, which has had the 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 may be utilized to ensure that such material is made available to it to form a just sentencing decision bearing on the probability of reform.

In the case in hand, since in the trial Court no such enquiry was conducted to ascertain the mitigating circumstances as well to foreclose the possibility of reformation and rehabilitation and the gruesome and merciless nature of the act of the appellants was the only factor that was considered while awarding the death penalty, we passed the order on 20th September 2024 as aforesaid.

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. It is for the prosecution and the Court 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. Life imprisonment can be


said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable.

As per the aforesaid order dated 20th September 2024, the learned counsel for the State produced the affidavit of Senior Superintendent of Circle Jail, Koraput which contained social reports of all the appellants, their health reports including mental status and their conduct and behaviour in jail. The appellants though were allowed to file affidavits indicating therein the materials as regards the mitigating circumstances, did not file any affidavit. On the last day of hearing of the case, the appellants appeared through virtual mode to watch the proceeding and when we asked them as to whether they intend to file any affidavit, they declined to file the same.

In the affidavit filed by the Senior Superintendent of Circle Jail, Koraput, it is mentioned that he instructed the Prison Welfare Officer (in-charge District Probation Officer, Koraput), Circle Jail, Koraput to enquire about the past life of the condemned prisoners and submit reports and accordingly, the said Prison Welfare Officer visited the village of the condemned prisoners on 26.09.2024 and after due enquiry about their past lives, submitted the reports.

Similarly, the Senior Superintendent of Circle Jail, Koraput has stated in the affidavit that he intimated

Superintendent, S.L.N. Medical College and Hospital, Koraput and the C.D.M. and P.H.O., Koraput through separate letters to examine the psychological condition of the condemned prisoners by the psychiatric doctors and accordingly, the Superintendent of S.L.N. Medical College and Hospital, Koraput and C.D.M. and P.H.O., Koraput constituted a team of doctors, who examined the condemned prisoners and submitted the reports on 25.09.2024.

The Superintendent of Circle Jail, Koraput also personally conducted enquiry about the conduct of the condemned prisoners inside the jail and interacted with them and filed the detailed reports along with the affidavits.

**Appellant Dengun Sabar (A-1)**:

In the social report of the appellant Dengun Sabar, it is mentioned that he belonged to a very poor tribal family and coming under low income group. He was a daily wage earner at Gunpur local area and was earning Rs.120/- per day. He had lost his parents from his childhood and was brought up by his relatives. He is a married person and his wife, who is aged about 35 years is staying in her in-laws' house. His wife is managing the family by working as a daily wage earner and earning Rs.250/- per day. He is having one daughter and two sons. His only daughter is aged about eighteen years and studying in +2

Arts in a Government College and staying in a hostel so also his elder son, who is aged about sixteen years and studying +2 Arts in Government College and staying in the hostel. His younger son is thirteen years old who is an illiterate and residing in the house. The social background of his family is not conducive and their economic condition is also not good and they are struggling for their livelihood. He is an illiterate person and the family is getting 35 kgs. of rice per month as members of BPL category and he belongs to Soura tribal community of Rayagada district. He was maintaining a peaceful life with his wife and his children and having cordial relationship with his neighbours and other village people. He is having no criminal antecedent and none of his family members are indulged in any criminal activities or having any criminal background. He was showing good conduct and behaviour towards his co-inmates and staffs inside the prison. He was found in a stable condition and there was no symptom of any mental depression of the appellant and there is also no history of post-conviction mental illness during his confinement at Circle Jail, Koraput. In his health report, it is mentioned that as per the records, there is no psychiatric problems noted and on examination, no active psychopathology seen. In the conduct and behaviour report in the jail of the appellant, it is mentioned that his conduct and behaviour inside


the prison is good and his behaviour and attitude towards other co-prisoners as well as to the jail staff is cordial. He is maintaining every discipline of the jail administration and no adverse report is forthcoming against him during his entire period of confinement in prison and no prison offence has been committed by the appellant inside the jail during the period of his imprisonment. He is in regular touch with his family members, relatives and advocate over jail telephone and during interview with his family members, his behaviour was quite normal as reported by the Officer-in-charge of the interview and he is much disciplined, well behaved inside the prison. His conduct and behaviour as well as his post-conviction conduct inside the prison are satisfactory.

**Appellant Dasunta Sabar (A-2)**:

In the social report of appellant Dasunta Sabar, it is mentioned that he belonged to a very poor tribal family and coming under low income group. He was a daily wage earner at Gunpur local area and is earning Rs.120/- per day. He had lost his mother since long and his father is now aged about seventy three years old suffering from paralysis for more than three years. He is an unmarried person and the social background of the family is not conducive and their economic condition is also not good and they were struggling for their livelihood. He had

read up to class-VI and he belonged to below poverty line and of Soura tribal community. He was having a cordial relationship with his neighbours and other village people. He is having no criminal antecedent and none of his family members are indulged in any criminal activities or having any criminal background. He was showing good conduct and behaviour towards his co-inmates and staffs inside the prison. He was found in a stable condition and there was no symptom of any mental depression of the appellant and there is also no history of post-conviction mental illness during his confinement at Circle Jail, Koraput. In his health report, it is mentioned that as per the records, there is no psychiatric problems found and on examination, no active psychopathology noted. In the conduct and behaviour report in the jail of the appellant, it is mentioned that his conduct and behaviour inside the prison is good and his behaviour and attitude towards other co-prisoners as well as to the jail staff is cordial. He is maintaining every discipline of the jail administration and no adverse report is forthcoming against him during his entire period of confinement in prison and no prison offence has been committed by him inside the jail during the period of his imprisonment. He is in regular touch with his family members, relatives and advocate over jail telephone and during interview with his family members, his behaviour was

quite normal as reported by the Officer-in-charge of the interview and the appellant is much disciplined, well behaved inside the prison. His conduct and behaviour as well as his post-conviction conduct inside the prison are satisfactory.

**Appellant Aajanta Sabar (A-3)**:

In the social report of appellant **Aajanta Sabar**, it is mentioned that he belonged to a very poor tribal family and coming under low income group. He was a daily wage earner at Gunpur local area and was earning Rs.120/- per day. His father is aged about seventy five years and mother is aged about sixty five years and they are suffering from old age related diseases and staying with their elder son in their native village. His wife is aged about thirty three years and his only son is aged about eleven years and now studying in Class-VI and staying in hostel. The social background of his family is not conducive and their economic condition is also not good and they are struggling for their livelihood. He is an illiterate person and the family is getting 15 kgs. of rice per month as BPL card holder and he belongs to Soura tribal community of Rayagada district. He was maintaining a peaceful life with his wife and his son and having cordial relationship with his neighbours and other village people. He is having no criminal antecedent and none of his family members are indulged in any criminal activities or having any criminal

background. He was showing good conduct and behaviour towards his co-inmates and staffs inside the prison. He was found in a stable condition and there was no symptom of any mental depression of the appellant and there is also no history of post-conviction mental illness during his confinement at Circle Jail, Koraput. In his health report, it is mentioned that as per the records, there is no psychiatric problems found and on examination, no active psychopathology noted. In the conduct and behaviour report in the jail of the appellant, it is mentioned that his conduct and behaviour inside the prison is good and his behaviour and attitude towards other co-prisoners as well as to the jail staff is cordial. He is maintaining every discipline of the jail administration and no adverse report is forthcoming against him during his entire period of confinement in prison and no prison offence has been committed by him inside the jail during the period of his imprisonment. He is in regular touch with his family members, relatives and advocate over jail telephone and during interview with his family members, his behaviour was quite normal as reported by the Officer-in-charge of the interview and the appellant is much disciplined, well behaved inside the prison. His conduct and behaviour as well as his post-conviction conduct inside the prison are satisfactory.

**Appellant Padhantu Sabar (A-4)**:

In the social report of appellant Padhantu Sabar, it is mentioned that he belonged to a very poor tribal family and coming under low income group. He was a daily wage earner at Gunpur local area and was earning Rs.120/- per day. He had lost his parents from his childhood and he was brought up by his relatives. His wife is aged about thirty years and his elder son is aged about fourteen years and reading in Class-VII in a Government school and staying in the hostel and his younger daughter is aged about eleven years and studying in Class-VI and staying in the hostel. His two brothers are married and living separately from each other along with their family. The social background of his family is not conducive and their economic condition is also not good and they are struggling for their livelihood. The appellant had read up to Class-VIII and the family is getting 35 kgs. of rice per month as BPL card holder and he belongs to Soura tribal community of Rayagada district. He was maintaining a peaceful life with his wife and his children and having cordial relationship with his neighbours and other village people. He is having no criminal antecedent and none of his family members are indulged in any criminal activities or having any criminal background. He was showing good conduct and behaviour towards his co-inmates and staffs inside the prison.

He was found in a stable condition and there was no symptom of any mental depression of the appellant and there is also no history of post-conviction mental illness during his confinement at Circle Jail, Koraput. In his health report, it is mentioned that as per the records, there is no psychiatric problems found and on examination, no active psychopathology noted. In the conduct and behaviour report in the jail of the appellant, it is mentioned that the conduct and behaviour of the appellant inside the prison is good and his behaviour and attitude towards other co-prisoners as well as to the jail staff is cordial. He is maintaining every discipline of the jail administration and no adverse report is forthcoming against him during his entire period of confinement in prison and no prison offence has been committed by the appellant inside the jail during the period of his imprisonment. He is in regular touch with his family members, relatives and advocate over jail telephone and during interview with his family members, his behaviour was quite normal as reported by the Officer-in-charge of the interview and he is much disciplined, well behaved inside the prison. His conduct and behaviour as well as his post-conviction conduct inside the prison are satisfactory.

**Appellant Dalasa Sabar (A-5)**:

In the social report of appellant Dalasa Sabar, it is mentioned that he belonged to a very poor tribal family and coming under low income group. The appellant was a daily wage earner at Gunpur local area and was earning Rs.120/- per day. He had lost his parents from his childhood and he was brought up by his relatives. His wife is aged about thirty years and his elder son is aged about fourteen years and reading in Class-VII in a Government School and staying in the hostel and his younger daughter is aged about eleven years and studying in Class-VI and staying in the hostel. His two brothers are married and living separately from each other along with their family. The social background of his family is not conducive and their economic condition is also not good and they are struggling for their livelihood. He has read up to Class-VIII and his family is getting 35 kgs. of rice per month as BPL card holder and he belongs to Soura tribal community of Rayagada district. He was maintaining a peaceful life with his wife and his children and having cordial relationship with his neighbours and other village people. He is having no criminal antecedent and none of his family members are indulged in any criminal activities or having any criminal background. He was showing good conduct and behaviour towards his co-inmates and staffs inside the prison.

He was found in a stable condition and there was no symptom of any mental depression of the appellant and there is also no history of post-conviction mental illness during his confinement at Circle Jail, Koraput. In his health report, it is mentioned that as per the records, there is no psychiatric problems found and on examination, no active psychopathology noted. In the conduct and behaviour report in the jail of the appellant, it is mentioned that his conduct and behaviour inside the prison is good and his behaviour and attitude towards other co-prisoners as well as to the jail staff is cordial. He is maintaining every discipline of the jail administration and no adverse report is forthcoming against him during his entire period of confinement in prison and no prison offence has been committed by him inside the jail during the period of his imprisonment. He is in regular touch with his family members, relatives and advocate over jail telephone and during interview with his family members, his behaviour was quite normal as reported by the Officer-in-charge of the interview and he is much disciplined, well behaved inside the prison. His conduct and behaviour as well as his post-conviction conduct inside the prison are satisfactory.

**Appellant Malku Sabar (A-6)**:

In the social report of appellant Malku Sabar, it is mentioned that he belonged to a very poor tribal family and

coming under low income group. The appellant was a daily wage earner at Gunpur local area and was earning Rs.120/- per day. He had lost his parents from his childhood and he was brought up by his relatives. His wife is aged about thirty seven years and soon after conviction, his wife married another person and living in her in-laws house. His elder brother is married and staying with his family members. The social background of his family is not conducive and their economic condition is also not good and they are struggling for their livelihood. The appellant is an illiterate person and he belonged to below poverty line and of Soura tribal community. He was maintaining a peaceful life with his wife and his children and having cordial relationship with his neighbours and other village people. He is having no criminal antecedent and none of his family members are indulged in any criminal activities or having any criminal background. The appellant was showing good conduct and behaviour towards his co-inmates and staffs inside the prison. He was found in a stable condition and there was no symptom of any mental depression of the appellant and there is also no history of post-conviction mental illness during his confinement at Circle Jail, Koraput. In his health report, it is mentioned that as per the records, there is no psychiatric problems found and on examination, no active psychopathology noted. In the conduct and behaviour report in


the jail of the appellant, it is mentioned that his conduct and behaviour inside the prison is good and his behaviour and attitude towards other co-prisoners as well as to the jail staff is cordial. He is maintaining every discipline of the jail administration and no adverse report is forthcoming against him during his entire period of confinement in prison and no prison offence has been committed by him inside the jail during the period of his imprisonment. He is in regular touch with his family members, relatives and advocate over jail telephone and during interview with his family members, his behaviour was quite normal as reported by the Officer-in-charge of the interview and he is much disciplined, well behaved inside the prison. His conduct and behaviour as well as his post-conviction conduct inside the prison are satisfactory.

**Appellant Bubuna Sabar (A-7)**:

In the social report of appellant Bubuna Sabar, it is mentioned that he belonged to a very poor tribal family and coming under low income group. The appellant was a daily wage earner at Gunpur local area and was earning Rs.120/- per day. He had lost his parents since long. He is a married person and his wife, who is aged about thirty five years is staying in her in-laws house. His wife is managing the family by working as a daily wage earner and earning Rs.250/- per day. The appellant is

having three daughters and one son. His elder daughter is aged about twenty years and studying in Class-X, his second daughter is aged about fifteen years and studying in Class-VIII in the Government school and both are staying in the hostel, his younger son is aged about ten years and studying in Class-IV and younger daughter, who is aged about eight years is studying in Class-II in the Government school and both are staying in the hostel. His three younger brothers are married and living separately from each other along with their family. The social background of his family is not conducive and their economic condition is also not good and they are struggling for their livelihood. He is an illiterate person and belonged to below poverty line and of Soura tribal community. He was maintaining a peaceful life with his wife and his children and having cordial relationship with his neighbours and other village people. He is having no criminal antecedent and none of his family members are indulged in any criminal activities or having any criminal background. He was showing good conduct and behaviour towards his co-inmates and staffs inside the prison. He was found in a stable condition and there was no symptom of any mental depression of the appellant and there is also no history of post-conviction mental illness during his confinement at Circle Jail, Koraput. In his health report, it is mentioned that as per the


records, there is no psychiatric problems found and on examination, no active psychopathology noted. In the conduct and behaviour report in the jail of the appellant, it is mentioned that his conduct and behaviour inside the prison is good and his behaviour and attitude towards other co-prisoners as well as to the jail staff is cordial. He is maintaining every discipline of the jail administration and no adverse report is forthcoming against him during his entire period of confinement in prison and no prison offence has been committed by him inside the jail during the period of his imprisonment. He is in regular touch with his family members, relatives and advocate over jail telephone and during interview with his family members, his behaviour was quite normal as reported by the Officer-in-charge of the interview and he is much disciplined, well behaved inside the prison. His conduct and behaviour as well as his post-conviction conduct inside the prison are satisfactory.

**Appellant Lakiya Sabar (A-8)**:

In the social report of appellant Lakiya Sabar, it is mentioned that he belonged to a very poor tribal family and coming under low income group. He was a daily wage earner at Gunpur local area and was earning Rs.120/- per day. He had lost his parents since his childhood and he was brought up by his relatives. His wife is aged about thirty five years staying in her


in-laws house. His wife is managing the family by working as a daily wage earner and earning Rs.250/- per day. He is having two sons. His elder son is aged about twelve years and studying in Class-VI and his younger son is aged about nine years and studying in Class-IV in the Government school and both are staying in the hostel. His two elder brothers are married and living separately from each other along with their family. The social background of his family is not conducive and their economic condition is also not good and they are struggling for their livelihood. He is an illiterate person and he belonged to below poverty line and of Soura tribal community. He was maintaining a peaceful life with his wife and his children and having cordial relationship with his neighbours and other village people. He is having no criminal antecedent and none of his family members are indulged in any criminal activities or having any criminal background. He was showing good conduct and behaviour towards his co-inmates and staffs inside the prison. He was found in a stable condition and there was no symptom of any mental depression of the appellant and there is also no history of post-conviction mental illness during his confinement at Circle Jail, Koraput. In his health report, it is mentioned that as per the records, there is no psychiatric problems found and on examination, no active psychopathology noted. In the conduct

and behaviour report in the jail of the appellant, it is mentioned that his conduct and behaviour inside the prison is good and his behaviour and attitude towards other co-prisoners as well as to the jail staff is cordial. He is maintaining every discipline of the jail administration and no adverse report is forthcoming against him during his entire period of confinement in prison and no prison offence has been committed by him inside the jail during the period of his imprisonment. He is in regular touch with his family members, relatives and advocate over jail telephone and during interview with his family members, his behaviour was quite normal as reported by the Officer-in-charge of the interview and the appellant is much disciplined, well behaved inside the prison. His conduct and behaviour as well as his post-conviction conduct inside the prison are satisfactory.

**Appellant Iru Sabar (A-9)**:

In the social report of appellant Iru Sabar, it is mentioned that he belonged to a very poor tribal family and coming under low income group. He was a daily wage earner at Gunpur local area and was earning Rs.120/- per day. He had lost his parents since long. His wife is aged about twenty five years and soon after conviction, his wife married another person and living with her husband. The social background of his family is not conducive and their economic condition is also not good and


they are struggling for their livelihood. He is an illiterate person and he belonged to below poverty line and of Soura tribal community. He was maintaining a peaceful life with his wife and his children and having cordial relationship with his neighbours and other village people. He is having no criminal antecedent and none of his family members are indulged in any criminal activities or having any criminal background. He was showing good conduct and behaviour towards his co-inmates and staffs inside the prison. He was found in a stable condition and there was no symptom of any mental depression of the appellant and there is also no history of post-conviction mental illness during his confinement at Circle Jail, Koraput. In his health report, it is mentioned that as per the records, there is no psychiatric problems found and on examination, no active psychopathology noted. In the conduct and behaviour report in the jail of the appellant, it is mentioned that his conduct and behaviour inside the prison is good and his behaviour and attitude towards other co-prisoners as well as to the jail staff is cordial. He is maintaining every discipline of the jail administration and no adverse report is forthcoming against him during his entire period of confinement in prison and no prison offence has been committed by him inside the jail during the period of his imprisonment. He is in regular touch with his family members,

relatives and advocate over jail telephone and during interview with his family members, his behaviour was quite normal as reported by the Officer-in-charge of the interview and he is much disciplined, well behaved inside the prison. His conduct and behaviour as well as his post-conviction conduct inside the prison are satisfactory.

25. Law is well settled that in order to make out a case for imposition of death sentence, the prosecution undoubtedly has to discharge a very onerous burden by demonstrating the existence of aggravating circumstances and the consequential absence of mitigating circumstances. The case must fall within the category of 'rarest of rare cases' warranting imposition of death sentence. The special reasons as mentioned in section 354(3) of Cr.P.C. has put sufficient safeguard against any kind of arbitrary imposition of the extreme penalty. Unless the Court is of opinion that the nature of crime and circumstances against the offender is such that the sentence of life imprisonment would be wholly inadequate, inappropriate and against all norms of ethics, lesser punishment should ordinarily be imposed.

**Aggravating Circumstances**:

Let us first discuss as to what are the aggravating factors in the case. The commission of three murders out of which two are ladies is no doubt a significant aggravating factor.


According to the principles outlined by the Constitution Bench of the Hon'ble Supreme Court in the case of **Bachan Singh** (supra), the enormity of the crime and the number of victims are critical factors in determining the severity of the sentence. When the culpability assumes the proportion of extreme depravity that 'special reason' can legitimately be said to exist.

The brutal manner in which the murders were committed, dead bodies were buried and then exhumed and cremated is another aggravating factor. The use of violence not only reflects a high degree of culpability but also underscores the severity of the crimes.

The emotional and psychological impacts on the families of the deceased persons also constitute an aggravating factor. The three murders must have caused immense suffering to the families of deceased including P.W.1 and her sister and minor school going brothers and they were left orphaned. This is highlighted in **Machhi Singh** (supra), where the Hon'ble Supreme Court considered the impact of occurrence on the victims' families as a critical aspect of the sentencing process.

As noted in the case of **State of Rajasthan -Vrs.- Kheraj Ram reported in (2003) 8 Supreme Court Cases 224**, the heinous nature of the act and the brutality involved are


significant considerations in determining the appropriate sentence, which is as follows:-

> "35. A convict hovers between life and death when the question of gravity of the offence and award of adequate sentence comes up for consideration. Mankind has shifted from the state of nature towards a civilized society and it is no longer the physical opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment following conviction at a trial in a system wedded to the rule of law is the outcome of cool deliberation in the court room after adequate hearing is afforded to the parties, accusations are brought against the accused, the prosecuted is given an opportunity of meeting the accusations by establishing his innocence. It is the outcome of cool deliberation and the screening of the material by the informed man i.e. the Judge that leads to determination of the lis.
>
> 36. The principle of proportion between crime and punishment is a principle of just deserts that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice, it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement


that punishment not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt.

37. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably, to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the traffic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

38. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of


> punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now a single grave infraction that is thought to call for uniformly drastic measures. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences."

Learned counsel for the State submitted that an organized crime or mass murders of innocent three persons would call for imposition of death sentence as deterrence. In support of such submission, he has placed reliance on the decision of the Supreme Court in the case of **Sevaka Perumal** (supra), wherein it has been held as follows:

> "9. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new

challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of order should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that, "State of criminal law continues to be - as it should be - a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation of sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep seated personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence.

In the case of **Mahesh -Vrs.- State of M.P. reported in (1987) 3 Supreme Court Cases 80**, the Hon'ble Supreme Court while refusing to reduce the death sentence observed thus:

> "It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

In the case of **Bachan Singh** (supra), it has held as follows:

> **"**199. Pre-planned, calculated, cold-blooded murder has always been regarded as one of an aggravated kind. In **Jagmohan : (1973) 1 SCC 20**, it was reiterated by the Hon'ble Supreme Court that if a murder is "diabolically conceived and cruelly executed", it would justify the imposition of the death penalty on the murderer..."

In the said case, the Hon'ble Supreme Court has laid down the following propositions while imposing death sentence:


"(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 require 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, 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.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

**Mitigating Circumstances**:

The Hon'ble Supreme Court in the case of **Bachan Singh** *(supra)*, while discussing the suggestions of Dr. Chitale relating to the mitigating factors, wherein it is observed that if there is a probability that the accused can be reformed and rehabilitated, the same can be considered as mitigating circumstance and the State shall by evidence prove that the accused does not satisfy this condition, observed that this circumstance along with other circumstances as given in the suggestions of Dr. Chitale, are undoubtedly relevant circumstances and must be given great weight in the determination of sentence. It is further held 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) of Cr.P.C. Judges should never be bloodthirsty. Hanging of murderers has never been good for them. The Hon'ble Court further held that it is imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated, 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.

As per the reports submitted by the Senior Superintendent of Circle Jail, Koraput, there are certain common features in case of all the appellants i.e. they come from very poor tribal families and low income groups. They were daily wage earners and having families. The social background of their respective family is not conducive and economic condition is also not good. Their families belong to BPL category and are struggling for their livelihood. They are illiterate persons, but maintaining peaceful lives with their families and they are having cordial relationship with their neighbours and other villagers. The appellants are having no criminal antecedents and their family members are also having no criminal background. Inside jail, the appellants are showing good conduct and behaviour towards co-inmates and jail staff. They are found mentally stable and having no mental depression and there are no history of post-conviction mental illness in jail. No psychiatric problem was noted in any of the appellants and they are maintaining every discipline in jail administration. No adverse report was found in the entire period of confinement. The appellants are much disciplined and well


behaved and they are having regular touch with their families and relatives over jail telephone.

The Supreme Court in the case of **Santosh Kumar Satishbhushan Bariyar -Vrs.- State of Maharashtra reported in (2009) 6 Supreme Court Cases 498** highlighted that the possibility of reform and rehabilitation should be a pivotal consideration, stressing that the death penalty should not be imposed if the convict shows potential for reformation.

In the case of **Rajendra Prasad -Vrs.- State of Uttar Pradesh reported in A.I.R. 1979. S.C. 916**, it is held that it is a mechanistic art which counts the cadavers to sharpen the sentence oblivious of other crucial criteria shaping a dynamic, realistic policy of punishment. Three deaths are regrettable, indeed, terrible, but it is no social solution to add one more life lost to the list. It is further held that a family feud, an altercation, a sudden passion, although attended with extraordinary cruelty, young and malleable age, reasonable prospect of reformation and absence of any conclusive circumstance that the assailant is a habitual murderer or given to chronic violence are the catena of circumstances tearing on the offender call for the lesser sentence.

In the case of **A. Devendran -Vrs.- State of T.N. reported in (1997) 11 Supreme Court Cases 720**, which was


a case of triple murder, it is held that the number of persons died in the incident is not the determinative factor for deciding whether the extreme penalty of death could be awarded or not.

In the case of **Manoj** (supra), in a case of triple murder, the Hon'ble Supreme Court on the sentencing of the accused held as follows:-

> "253. This Court is of the opinion, that there can be no doubt that the crime committed by the three accused was brutal, and grotesque. The three defenceless victims were women of different age groups (22, 46, 76 years) who were caught off-guard and severely physically assaulted, resulting in their death, in the safety and comfort of their own home. To have killed three generations of women from the family of P.W.1, is without a doubt, grotesque. The manner of the offence was also vicious and pitiless - Ashlesha and Rohini, were stabbed repeatedly to their death, while Megha was shot point blank in the face. The post-mortem (Ex. P-44) reflects that the stab wounds were extensive-ranging across the bodies of the victim. The extensive bleeding at the crime scene further reflects cruel and inhumane manner of attack, against the three women. The crime in itself, could no doubt be characterised as "extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse


intense and extreme indignation of the community" as defined in ***Machhi Singh***. These are the aggravating circumstances."

The Hon'ble Court however took into account the mitigating circumstances and considered the Psychological Evaluation Report, Probation Officer's Report and Prison Report including material on the conduct of each accused produced by the State and work done so also material placed by each accused before the Court and held as follows:-

"262. The reports received from the Superintendent of Jail reflect that each of the three accused, have a record of overall good conduct in prison and display inclination to reform. It is evident that they have already, while in prison, taken steps towards bettering their lives and of those around them, which coupled with their young age unequivocally demonstrates that there is in fact, a probability of reform. On consideration of all the circumstances overall, we find that the option of life imprisonment is certainly not foreclosed.

263. While there is no doubt that this case captured the attention and indignation of the society in Indore, and perhaps the State of Madhya Pradesh, as a cruel crime that raised alarm regarding safety within the community - it must be remembered that public opinion has


> categorically been held to be neither an objective circumstance relating to crime, nor the criminal, and the courts must exercise judicial restraint and play a balancing role.
>
> 264. In view of the totality of facts and circumstances, and for the above stated reasons, this Court finds that imposition of death sentence would be unwarranted in the present case. It would be appropriate and in the overall interests of justice to commute the death sentence of all three accused, to life imprisonment for a minimum term of 25 years."

In the case of **Mofil Khan and another -Vrs.- State of Jharkhand reported in (2021) 20 Supreme Court Cases 162**, while dealing with the earlier judgment in which the petitioners were sentenced to death for commission of offence under section 302 read with section 34 of I.P.C., the Hon'ble Supreme Court held as follows:-

> "13. Taking note of the petitioners' culpability in the gruesome murders which assumed "the proportion of extreme depravity", the High Court refused to interfere with the death sentence imposed by the trial court. This Court dismissed the criminal appeal taking note of the manner in which the offence was committed against the helpless children and others and concluded that the petitioners would be a menace and threat to

harmony in the society. Putting an end to the lives of innocent minors and a physically infirm child, apart from other members of the family, in a pre-planned attack, was taken note of by this Court to hold that the case falls under the category of "rarest of the rare" cases.

xx xx xx xx xx

16. It is well-settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death. There is a bounden duty cast on the Courts to elicit information of all the relevant factors and consider those regarding the possibility of reformation, even if the accused remains silent. A scrutiny of the judgments of the trial court, the High Court and this Court would indicate that the sentence of death is imposed by taking into account the brutality of the crime. There is no reference to the possibility of reformation of the petitioners, nor has the State procured any evidence to prove that there is no such possibility with respect to the petitioners.

17. We have examined the socio-economic background of the petitioners, the absence of any criminal antecedents, affidavits filed by their family and community members with whom they continue to share emotional ties and the certificate issued by the Jail Superintendent on


their conduct during their long incarceration of 14 years. Considering all of the above, it cannot be said that there is no possibility of reformation of the petitioners, foreclosing the alternative option of a lesser sentence and making the imposition of death sentence imperative. Therefore, we convert the sentence imposed on the petitioners from death to life. However, keeping in mind the gruesome murder of the entire family of their sibling in a pre-planned manner without provocation due to a property dispute, we are of the opinion that the petitioners deserve a sentence of a period of 30 years."

In the case of **Bhagchandra -Vrs.- State of Madhya Pradesh reported in (2021) 18 Supreme Court Cases 274**, the Hon'ble Supreme Court held as follows:-

"47. In view of the settled legal position, it is our bounden duty to take into consideration the probability of the accused being reformed and rehabilitated. It is also our duty to take into consideration not only the crime but also the criminal, his state of mind and his socio-economic conditions. The deceased as well as the appellant are rustic villagers. In a property dispute, the appellant has got done away with two of his siblings and a nephew. The State has not placed on record any evidence to show that

there is no possibility with respect to reformation or rehabilitation of the convict. The appellant has placed on record the affidavits of Prahalad Patel, son of appellant and Rajendra Patel, nephew of appellant and also the report of the Jail Superintendent, Central Jail, Jabalpur. The appellant comes from a rural and economically poor background. There are no criminal antecedents. The appellant cannot be said to be a hardened criminal. This is the first offence committed by the appellant, no doubt, a heinous one. The certificate issued by the Jail Superintendent shows that the conduct of the appellant during incarceration has been satisfactory. It cannot therefore be said that there is no possibility of the appellant being reformed and rehabilitated foreclosing the alternative option of a lesser sentence and making imposition of death sentence imperative.

48. We are therefore inclined to convert the sentence imposed on the appellant from death to life. However, taking into consideration the gruesome murder of two of his siblings and one nephew, we are of the view that the appellant deserves rigorous imprisonment of 30 years."

In the case of **Anshad -Vrs.- State of Karnataka reported in (1994) 4 Supreme Court Cases 381**, the Hon'ble Supreme Court held that the number of persons murdered is a

consideration but that is not the only consideration for imposing death penalty unless the case falls in the category of "rarest of rare cases". The Courts must keep in view the nature of crime, the brutality with which it was executed, the antecedents of the criminal, the weapon used etc. It is neither possible nor desirable to catalogue all such factors and they depend upon case to case.ws potential for reformation.

In the case of **Sangeet** (supra), it has been held as follows:

> "81. Given these conclusions, we are of the opinion that in cases such as the present, there is considerable uncertainty on the punishment to be awarded in capital offences-whether it should be life imprisonment or death sentence. In our opinion, due to this uncertainty, awarding a sentence of life imprisonment, in cases such as the present is not unquestionably foreclosed. More so when, in this case, there is no evidence (contrary to the conclusion of the High Court) that Seema's body was burnt by Sandeep from below the waist with a view to destroy evidence of her having been subjected to sexual harassment and rape. There is also no evidence (again contrary to the conclusion of the High Court) that Narender was a professional killer."

In the case of **Damu** (supra), the Hon'ble Supreme Court held as follows:

> "49.....The question is whether this case can be regarded as rarest of rare cases in which the lesser alternative is unquestionably foreclosed. Looking at the horrendous acts committed by the accused, it can doubtlessly be said that this is an extremely rare case. Nonetheless, a factor which looms large in this case is that the accused genuinely believed that a hidden treasure trove could be winched to the surface by infantile sacrifice ceremoniously performed. It is germane to note that none of the children were abducted or killed for ransom or for vengeance or for committing robbery. It was due to utter ignorance that these accused became so gullible to such superstitious thinking. Of course, such thinking was also motivated by greed for gold. Even so, we persuade ourselves to choose the normal punishment prescribed for murder as for these accused. Accordingly, while restoring the sentence passed by the trial court in respect of other counts of offences, we order that the accused shall undergo imprisonment for life for the offence under Section 302 read with Section 34 of the I.P.C."

In the case of **Sundar @ Sundarrajan** (supra), the Hon'ble Supreme Court while commuting the death sentence to a life imprisonment, has held as follows:


> "89.....the 'rarest of rare' doctrine requires that the death sentence not be imposed only by taking into account the grave nature of crime but only if there is no possibility of reformation in a criminal."

In the case of **Mohinder Singh -Vrs.- State of Punjab reported in (2013) 3 Supreme Court Cases 294**, the Hon'ble Supreme Court observed thus:

> "25. It is well-settled law that awarding of life sentence is a rule and death is an exception. The application of the "rarest of rare" cases principle is dependent upon and differs from case to case. However, the principles laid down and reiterated in various decisions of this Court show that in a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman conduct in a ghastly manner, touching the conscience of everyone and thereby disturbing the moral fibre of the society, would call for imposition of the capital punishment in order to ensure that it acts as a deterrent. While we are convinced that the case of the prosecution based on the evidence adduced confirms the commission of offence by the appellant, however, we are of the considered opinion that still the case does not fall within the four corners of the "rarest of rare" cases."


As we have already observed that in the impugned judgment of the learned trial Court, there is no reference to the discussions on mitigating circumstances and possibility of reformation and rehabilitation of the appellants. In fact, there was no endeavour on the part of the learned trial Court to find out mitigating circumstances, if any in respect of appellants. On the other hand the learned trial Court observed that the learned defence counsel was not in a position to point out any mitigating circumstance. Failure on the part of the learned trial Court to consider such vital aspects before imposing death sentence, added to our duty and responsibility to carefully collect such materials, to elicit information of all the relevant factors and to take into consideration not only the crime but also the criminal, the state of mind and the socio-economic conditions of the appellants keeping in view the golden principle that life imprisonment is the rule and death sentence is an exception. It reveals from the impugned judgment that at 2.00 p.m. on the date of pronouncing the verdict of guilty against the appellants, the learned trial Court started hearing on the question of sentence. Not a single decision was cited either by the learned Special Public Prosecutor or by the learned defence counsel. However, the learned trial Court discussed the ratio laid down by


the Hon'ble Supreme Court in 11 decisions and wrote 22 pages on awarding death sentence.

We are of the view that public opinion or the society's expectation may be to confirm the death sentence awarded to the appellants since it is a case of triple murder and two of the deceased were ladies, but it must be remembered that such opinion or expectation is neither an objective circumstance relating to crime, nor the criminal, and therefore, this Court must exercise judicial restraint and play a balancing role. The appellants come from very poor tribal families and low income groups and they were daily wage earners and having families. The social background of their respective family is not conducive and economic condition is also not good. Their families belong to BPL category and are struggling for their livelihood. They are illiterate persons, but maintaining peaceful lives with their families and they are having cordial relationship with their neighbours and other villagers. The appellants are having no criminal antecedents and their family members are also having no criminal background. This is the first offence committed by the appellant, no doubt, a heinous one. The State has not placed on record any evidence to show that there is no possibility with respect to reformation or rehabilitation of the appellants rather the reports furnished by Jail Superintendent in which the


appellants have been lodged for more than eight years show that the conduct of the appellants during incarceration has been satisfactory. They are much disciplined and well behaved and maintaining every discipline in jail administration and showing good conduct and behaviour towards co-inmates and jail staff and no adverse report was found in the entire period of confinement. They are found to be mentally stable and having no mental depression and having no history of post-conviction mental illness in jail. No psychiatric problem was noted in any of the appellants. They are having regular touch with their respective families and relatives over jail telephone.

The observation of the learned trial Court that there appeared no material on record to consider the possibility of reformation of the convicts is totally misconceived. When the Court made no endeavour to find out the mitigating circumstances, regarding possibility of reformation, such observation ought not to have been given. We are of the humble view that it cannot be said that there is no possibility of the appellants being reformed and rehabilitated foreclosing the alternative option of a lesser sentence and making imposition of death sentence imperative or in other words, life imprisonment would be completely inadequate and would not meet the ends of justice.


In view of the foregoing discussions and giving our anxious consideration to the facts and circumstances of the case and striking a balance between the aggravating and mitigating circumstances in the case, we are of the humble view that death penalty would be disproportionate, unwarranted and life imprisonment would be a more appropriate sentence.

26. Accordingly, we commute the death sentence imposed on the appellants for the offence punishable under section 302/34 of I.P.C. to life imprisonment. The appellants are sentenced to life imprisonment for each of the three murders committed by them and the sentences so awarded are directed to run concurrently in view of the ratio laid down in the five-Judge Bench decision of the Hon'ble Supreme Court in case of **Muthuramalingam and others -Vrs.- State reported in (2016) 8 Supreme Court Cases 313** and it is made clear that life imprisonment awarded shall mean the remainder of his natural life, without remission/commutation under sections 432 and 433 of Code of Criminal Procedure.

**Victim Compensation**:

27. The learned trial Court while imposing fine for different offences with default sentences, has directed that in the event the fine amount is realized, the same is to be paid to the

informant (P.W.1) and her two brothers equally. No recommendation of victim compensation was made as it was found that the DLSA, Rayagada had already awarded the same.

The State Govt. of Odisha in exercise of powers conferred by the provision of section 357-A of Cr.P.C. has formulated the Odisha Victim Compensation Schemes, 2017 (hereafter '2017 schemes') which was amended by virtue of Odisha Victim Compensation (Amendment) Scheme, 2018 and it came into force with effect from 02.10.2018. Schedule-II of the Scheme, which was inserted as per the amended scheme of 2018, inter alia, deals with compensation for the survivors in case of crime in which death/loss of life takes place. The minimum limit of compensation payable is Rs.5,00,000/- (rupees five lakhs) and the maximum limit of compensation payable is Rs.10,00,000/- (rupees ten lakhs) in such cases. In the factual scenario and particularly taking into account the young age of P.W.1 and her sister and brothers and their future liabilities, the maximum compensation amount i.e. Rs.10,00,000/- (rupees ten lakhs), for each of the death as provided under Schedule-II is awarded i.e. in total Rs.30,00,000/- (rupees thirty lakhs) which is to be paid to P.W.1, her sister and her brothers in equal proportion. The D.L.S.A., Rayagada shall take immediate steps


for payment of the balance amount of compensation within four weeks from today.

**Conclusion**:

28. In view of the foregoing discussions, the appellants are acquitted of the charge under section 4 of the O.P.W.H. Act, 2013. The conviction and sentences awarded by the learned trial Court to the appellants for commission of offences under sections 342/34, 364/34, 365/34, 201/34 and 506/34 of the I.P.C. are upheld. The conviction of the appellants for commission of offence under section 302/34 of the I.P.C. is also upheld, however, the death sentence awarded to them is commuted to life imprisonment. All the appellants are sentenced to life imprisonment for each of the three murders committed by them and the sentences so awarded shall run concurrently. It is made clear that such life imprisonment shall mean the remainder of their natural lives, without remission/commutation under sections 432 and 433 of Code of Criminal Procedure. The fine amount imposed by the learned trial Court on the appellants for commission of offences under sections 342/34, 364/34, 365/34, 201/34 and 506/34 of the I.P.C. and the default sentence passed thereunder stands confirmed.

Accordingly, the death sentence reference is answered in negative.

Before parting with this case, we would like to put on record our deep appreciation to Mr. Himansu Bhusan Dash and Mr. Manas Kumar Chand, learned counsel for the appellants for the preparation and presentation of the case and assisting the Court in arriving at the decision above mentioned. This Court also appreciates the able assistance provided by Mr. Arupananda Das, Addl. Govt. Advocate.

The trial Court records along with a copy of the judgment be sent forthwith to the Court concerned and a copy of the judgment be communicated to the D.L.S.A., Rayagada for compliance.

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**S.K. Sahoo, J.**

**R.K. Pattnaik, J.** I agree.

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**R.K. Pattnaik, J.**

Orissa High Court, Cuttack
The 15th January 2025/PKSahoo/RKMishra/Sipun