
Before Adarsh Kumar Goel and H.S. Bhalla, JJ

STATE OF PUNJAB,—Appellant

versus

GURCHARAN SINGH @ HAPPY,—Respondent

**Murder Reference No. 11 of 2005 and
Criminal Appeal No. 794/DB of 2005**

1st February, 2007

Indian Penal Code, 1860—S. 302—Conviction of appellant for murder of his wife and daughter aged 5 months only—High Court already upholding conviction of accused for committing murder of a person on the same day who allegedly had illicit relations with his wife—Delay in lodging FIR—Motive behind murder fully established—Mere delay in lodging FIR is not enough to throw out prosecution case—Ghastly crime of committing three murders including murder of a small child of five months—Whether case falls in category of rarest of rare cases—Held, no—Sentence of death set aside, conviction of appellant affirmed while awarding sentence to imprisonment for life.

Held, that delay in lodging FIR has not resulted in any false story being concocted as involvement of the appellant-accused is corroborated by independent circumstances. Delay in lodging FIR only puts the Court to caution to see that there is no concocted version put forward. Where version put forward is not concocted but truthful, mere delay in lodging FIR is not enough to throw out the prosecution case. The presence of any other person in the house cannot be presumed or otherwise such a person would have come forward to inform the police or others about the incident.

(Para 23)

Further held, that on account of fear as well as on account of weather conditions, the witnesses did not come out of the house to lodge the FIR, this cannot, thus, be accepted as a reason for rejecting the eye-witnesses' account. Similarly, their not going out to inform others, can also not be accepted as a ground to disbelieve their presence. There is nothing to disbelieve their version that telephone was not

working. Non-examination of servants whose presence was disputed by PW3 and PW4 stands explained.

(Para 24)

M.S. Sidhu, Senior Deputy Advocate General Punjab.

R.S. Ghai, Senior Advocate with Vinod Ghai, Advocate for appellant Gurcharan Singh in Crl. Appeal No. 794-DB of 2005

A.P.S. Deol, Advocate for complainant.

H.S. BHALLA, J

(1) Murder Reference No. 11 of 2005 was sent to this Court under Section 366 of the Code of Criminal Procedure for confirming of death sentence awarded to appellant Gurcharan Singh @ Happy by the learned Session Judge, Faridkot.

(2) Appellant Gurcharan Singh @ Happy has also filed Criminal Appeal No. 794-DB of 2005. We shall be deciding both Murder Reference No. 11 of 2005 and Criminal Appeal No. 794-DB of 2005 together by a common judgment as they arise out of the same impugned judgment/order dated 18th/19th October, 2005 passed by the learned Sessions Judge, Faridkot.

(3) The learned Sessions Judge, Faridkot,—*vide* his judgment/order dated 18th/19th October, 2005 had convicted appellant Gurcharan Singh @ Happy under Section 302 of the Indian Penal Code and sentenced him to death subject to confirmation by the Hon'ble High Court as per provisions laid down in Section 366 of the Code of Criminal Procedure.

(4) The case of the prosecution is unfolded by complainant Parminder Singh son of Bachan Singh, who got his statement Ex. P-9 recorded before Mukhtiar Singh, Sub Inspector/Station House Officer in the Police Station Sadar Faridkot stating therein that he is the resident of village Badhni Jai Mal Singh Wali and is an ex-Sarpanch and does the work of cultivation. he has two sons and one daughter, namely, Satnam Kaur. Gurcharan Singh @ Happy son of Swaranjit Singh got married to Satnam Kaur about 2-2-1/2 years ago and out of their wed lock, a female child, namely, Ramandeep, aged

05 months was born. On 9th January, 2002 at about 5.00 P.M., he along with his son Sukhjot Singh had come to village Chugewala in order to give some festive articles on the 'Lohri' festival. His son-in-law Gurcharan Singh @ Happy and his parents were not present at their house. His daughter disclosed him that they had gone to Ferozpur since morning.

(5) At about 8.00 P.M. his son-in-law Gurcharan Singh @ Happy along with his mother Mandeep Kaur and father Sawaranjit Singh came there in a car, make 'Zen', which he had given them in the marriage of his daughter. He (complainant) and his son Sukhjot Singh came in the courtyard to see them. His daughter was doing work in the kitchen while taking Ramandeep Kaur in her lap. The light of the kitchen as well as other lights of the house were on. Since they were just meeting Swaranjit Singh and Mandeep Kaur, his son-in-law Gurcharan Singh @ Happy rushed into the kitchen having a Kirch (dagger) in his hand, bolted the door from inside and within his sight, he threw his daughter and his grand daughter on the ground and inflicted three blows of 'Kirch' to his daughter Satnam Kaur and also gave its 5-6 blows to his grand daughter near her neck. He inflicted one blow at the neck of his daughter and two blows on the left side of her breast, whereupon, his daughter raised an alarm saying "Marta-Marta" (Killed-Killed). Thereafter he and his son rushed ahead and Gurcharan Singh @ Happy, after opening the door leading from the kitchen to the bath room, came outside through the bath room and sat in the car together with 'Kirch' and started the car. At this, Swaranjit Singh and Mandeep Kaur also rushed to the car and sat in it and he drove away the car rashly from there. When he and his son entered the kitchen through the bath room, found that his daughter and grand-daughter had succumbed to their injuries within their sight.

(6) It is further disclosed by the complainant that on account of heavy fog on that night and out of fear as well, he and his son Sukhjot Singh remained sitting beside the dead bodies of his daughter and grand daughter in the kitchen. With the dawn of the day, he and his son reported the matter to the police station after leaving Chowkidar Jawala at the spot. On the basis of this statement, a formal FIR Ex. P-9/1, under Sections 302/120-B of the Indian Penal Code was registered in the Police Station Sadar Faridkot against the accused.

(7) The investigation of the case was conducted by Sub-Inspector Mukhtiar Singh. He along with other police officials accompanied the complainant and his son Sukhjit Singh to the place of occurrence and prepared inquest reports of the dead bodies of Satnam Kaur and Ramandeep Kaur, a female child, Ex. P-2 and Ex. P-5 respectively on the identification of complainant Parminder Singh and Harinder Singh. Thereafter, he despatched the dead bodies of both the deceased to the GGS Medical College/Hospital, Faridkot for post mortem examination, where Dr. S.S. Sandhu conducted autopsy on the dead bodies of both the deceased. The Investigating Officer inspected the spot and prepared rough site plan Ex. P-11 with correct Marginal notes. He also lifted blood from the floor of the kitchen, put the same in a container, prepared a parcel thereof and sealed the parcel with his seal bearing impression "MS" and the parcel was taken into possession,—*vide* recovery memo Ex. P-12.

(8) On 26th January, 2002, Sub Inspector Mukhtiar Singh along with Assistant Sub Inspector Jagdish Lal and other police officials were holding a "naqa" on the bridge of the drain situated on Mehmuana-Miduman road under the instructions of Deputy Superintendent of Police, Faridkot. At about 7.00 P.M. a white 'Zen' Car was seen coming from the side of village Mehmuana, which was signalled to stop with the help of torch light. On being enquired, the driver of the car disclosed his name as 'Gurcharan Singh *alias* Happy, the present appellant. On search being conducted, two number plates were recovered from the car. On the search of the appellant, one pistol 32 bore was recovered from his right "dab". On being unloaded, four live cartridges of the same bore were recovered from the magazine of the pistol. The pistol, magazine and cartridges were converted into a parcel, which was sealed with the seal bearing impression "MS" and was taken into possession along with the car and the number plates,—*vide* recovery memo Ex. PC attested by ASI Jagdish Lal and HC Jagjit Singh in a separate case under the Arms Act. A separate case under Section 25 of the Arms Act was also registered against the appellant Gurcharan Singh,—*vide* FIR No. 9 dated 26th January, 2002. The Statements of the witnesses were recorded under section 161 of the Code of Criminal Procedure. Appellant Gurcharan Singh was arrested on 26th January, 2002. He was produced before the illaqa Magistrate, who remanded him to the police custody.

(9) After the completion of necessary investigation and on receipt of the reports of the Forensic Science Laboratory, challan against the present appellant was presented before the court.

(10) It is worth mentioning that accused Swaranjit Singh and Mandeep Kaur, parents of appellant Gurcharan Singh, were not challaned by the police and their names were shown in column No. 2 of the police report under Section 173 of the Code of Criminal Procedure. Swaranjit Singh and Mandeep Kaur were also ordered to be summoned to face trial along with the present appellant,—*vide* order dated 13th June, 2002. Swaranjit Singh and Mandeep Kaur moved a petition under Section 482 of the Code of Criminal Procedure before this Court. *Vide* order dated 19th August, 2003 passed by this Court in Criminal Misc. No. 53434-M of 2002, the summoning order and the framing of charge-sheet against Swaranjit Singh and Mandeep Kaur were quashed.

(11) Appellant Gurcharan Singh @ Happy was charge-sheeted under Section 302 of the Indian Penal Code, to which he did not plead guilty and claimed a trial.

(12) The prosecution, to prove its case, examined as many as 11 witnesses, namely Dr. Sarabjit Singh Sandhu (PW-1), Ravinder Kumar, Junior Engineer (PW-2), Gurbachan Singh, Draftsman (wrongly numbered as PW-2), Parminder Singh, complainant (PW-3), Sukhjot Singh, brother of deceased Satnam Kaur, Eye witness (PW-4), Head Constable Joginder Singh (PW-5), Dr. J.S.. Dalal (PW-6), Inspector Mukhtiar Singh (PW-7) Head Constable Gurmail (PW-8), Head Constable Jaswant Singh (PW-9), Assistant Sub-Inspector Jagdish Lal, Incharge (PW-10), Constable Sarabjit Singh (PW-11).

(13) In his statement recorded under Section 313 of the Code of Criminal Procedure, the accused denied all the prosecution allegations levelled against him and pleaded that he has been falsely involved in this case on misguided suspicion. The witnesses have been introduced falsely. He is innocent. In fact, it was a blind murder. A phone was received from P.S. Ferozepur after reaching village Chugewala and then the police proceeded to the spot and after summoning the complainant and his son, this false story was concocted. His grand mother and two servants, namely, Raju Bhaiya and Kaku reside in this house.

(14) The trial Court after considering the evidence on record, convicted the appellant under Section 302 IPC and awarded sentence of death, subject to confirmation by this Court. Following findings have been recorded :—

- (i) Presence of PW-3 Parminder Singh and PW-4 Sukhjot Singh at the scene of occurrence, was established ; their not intervening by stopping the accused did not create any doubt about their presence ;
- (ii) Delay in lodging FIR was duly explained by PW-3 Parminder Singh and PW-4 Sukhjot Singh ; there was huge fog on the fateful night and they were under fear;
- (iii) Reports of Forensic Science Laboratory (Exh. 20 and Exh. 21) proved that blood lifted from the place of occurrence and on the weapon of offence, was human blood ;
- (iv) Motive on the part of the accused Gurcharan Singh was duly proved by PW-3 Parminder Singh and PW-4 Sukhjot Singh that the accused had suspicion that his wife had illicit relations with Yadwinder Singh of Ferozepur. The accused stood convicted for murder of Yadwinder Singh, caused on the same day as the present occurrence, vide judgment of the trial Court, Exh. P-24 (Appeal of Gurcharan Singh, appellant against judgment Exh. P-24 has been dismissed by this Court on 25th January, 2007, being Criminal Appeal No. 871-DB of 2003) ;
- (v) Even if testimony of PW-3 Parminder Singh and PW-4 Sukhjot Singh is excluded as eyewitnesses' account, guilt of the accused was proved ;
- (vi) His conviction for murder of Yadwinder Singh supported the allegation of his motive on account of his suspicion that the deceased Satnam Kaur had illicit relations with deceased Yadwinder Singh ;
- (vii) PW-3 Parminder Singh and PW-4 Sukhjot Singh could not be disbelieved merely for their being related to the deceased.

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- (viii) Conduct of PW-3 Parminder Singh and PW-4 Sukhjot Singh in not making a telephone call and there not having given any information to Jaswinder Singh and Rajinder Singh, whose house adjoins the house of the accused, was duly explained by the witnesses. The telephone was out of order and Jaswinder Singh and Rajinder Singh were not available. The witnesses were frightened on account of heinous crime committed by the accused and they did not dare to come out and inform the police or other villagers.
- (ix) Non-examination of servants Raju Bhaiya and Kaku, did not create any doubt. The witnesses explained that the servants were not present at the time of occurrence. They were also bound to depose in favour of the accused. Since eyewitnesses were otherwise available, non-examination of more witnesses was unnecessary.
- (x) Recovery of weapon by PW-7 Inspector Mukhtiar Singh at the instance of the accused who was arrested on 26th January, 2002, was established. As per report of the Forensic Science Laboratory, the weapon was stained with human blood. The said weapon could have been used for causing injuries found, as per the opinion of the Dr. Sarabjit Singh Sandhu, PW-1.
- (xi) According to PW-2 Ravinder Kumar, J.E., P.S.E.B., electricity remained interrupted in Village Joke Hari Har on 9th January, 2002 from 7 P.M. to 10 P.M.

(15) We have heard the learned counsel for the appellant and the learned Counsel appearing for the State of Punjab assisted by Mr. A.P.S. Deol, Advocate appearing for the complainant and have also gone through the record of the case minutely.

(16) Learned counsel appearing for the appellant has assailed the impugned judgment of conviction and order of death sentence dated 18th/19th October, 2005 passed by the learned Sessions Judge, Faridkot on a number of grounds, namely, (i) that there is an inordinate delay of more than 11 hours in lodging the First Information Report to the police. The alleged occurrence took place on 9th January, 2002 at 8.00 P.M., whereas the matter was reported to the Police Station Sadar, Faridkot by complainant Parminder Singh, father of the

deceased on 10th January, 2002 at 7.15 A.M. and the First Information, Ex. P-9/1 was concluded at 8.35 A.M. the same day. This delay was utilized for summoning complainant Parminder Singh and his son Sukhjit Singh from their village and showing them as eye witnesses; (ii) that the presence of these two witnesses Parminder Singh (PW-3) and Sukhjit Singh (PW-4) at the scene of the occurrence is highly doubtful. Their conduct also shows that they were not present at the time of the occurrence ; (iii) that it is not believable as to why these two witnesses, who are father and son of the deceased, did not intervene to save the life of the deceased ; (iv) that it is also not believable that they would allow the accused to escape after committing the murder. Moreover, they did not raise alarm in order to collect the neighbourers. They would not have kept mum till morning sitting in the house of the accused ; (v) Jaswinder Singh and Rajinder Singh, brothers-in-law of Darshan Singh, who is the nephew of complainant Parminder Singh (PW-3) reside in adjacent house of the appellant, but still they were not even informed by the complainant. Learned counsel has vehemently argued that all the aforementioned facts show that Parminder Singh (PW-3) and Sukhjit Singh (PW-4) were not present at the time of occurrence. They were later on summoned in the morning and were made witnesses to the occurrence. Learned counsel has lastly contended that Raju Bhaiya and Kaku, both domestic servants, were found present in the house when police reached there, but they have not been examined by the prosecution. The learned trial Judge should have drawn an adverse inference and given the benefit of doubt of the same to the appellant.

(17) Learned counsel for the State and the complainant supported the conviction and sentence of the appellant, for the reasons recorded by the trial Court.

(18) Questions for consideration can briefly be formulated as under :—

- (i) Whether the version of prosecution can be held to have been proved on the basis of eyewitnesses' account of PW-3 Parminder Singh and PW-4 Sukhjit Singh and the same is not liable to be rejected by not believing their presence or on account of delay in lodging FIR or on account of their not intervening in the occurrence or their

not immediately informing others or for non-examination of servants ?

- (ii) Whether the case of the prosecution was proved, even if PW-3 Parminder Singh and PW-4 Sukhjit Singh were not accepted as being eyewitnesses, on account of motive and murder of Yadwinder Singh by the accused, for which, the appellant stood convicted,—*vide* judgment Exh. P-24 (which has been affirmed by this Court), recovery of weapon at the place of occurrence, which was the house of the appellant and conduct of the appellant as an additional link in the chain.

Re : Question No. (i) :

(19) We are of the view that the evidence of eyewitnesses could not be rejected by doubting their presence at the place of occurrence. It is customary for the parents of a married girl to give presents on or just before Lohri festival, which falls on 13th January every year. The date of occurrence was 9th January, 2002. They had no reason to falsely implicate the accused. It can be seen from Exh. P-24 that the accused had committed murder of Yadwinder Singh two hours before the present occurrence. Yadwinder Singh is the same person with whom, according to the prosecution, the accused suspected his wife, deceased Satnam Kaur had illicit relations. In such a state of mind, when the accused was having a weapon and he also bolted the door of the kitchen, eyewitnesses' account could not be rejected, merely on the ground that they did not prevent the accused from assaulting the deceased. Having seen such a ghastly murder of two human lives, the witnesses could certainly be frightened, so as to be dissuaded from going outside the house on account of fear. It has been established that there was electricity failure on that day and it was an extreme winter night. No doubt could be raised about their truthfulness for their not having immediately contacted anyone else late in the night, in the village, in the given circumstances. They left for lodging the FIR early in the morning and lodged the FIR on 10th January, 2002 at 7.15 A.M.

(20) It is well-settled that mere delay in lodging the FIR cannot be held to be fatal to the case of the prosecution. Delay may put the Court on guard to clearly weigh the reliability of the evidence.

(21) In **Tara Singh and others versus The State of Punjab** (1), it was observed :—

“4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay.....”

(22) In **Mehraj Singh versus State of U.P.** (2), it was observed :—

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual

(1) AIR 1991 S.C. 63

(2) (1994)5 S.C.C. 188

culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story....”

(23) Delay in lodging FIR has not resulted in any false story being concocted, as involvement of the appellant-accused is corroborated by independent circumstances. Delay in lodging FIR only puts the Court to caution to see that there is no concocted version put forward. Where version put forward is not concocted but truthful, mere delay in lodging FIR, is not enough to throw out the prosecution case. As already observed, the presence of any other person in the house, cannot be presumed, or otherwise, such a person would have come forward to inform the police or others about the incident.

(24) Applying the above principles to the present case and having regard to the circumstances explained by the witnesses, that on account of fear as well as on account of weather conditions, the witnesses did not come out of the house to lodge the FIR, this cannot, thus, be accepted as a reason for rejecting the eyewitnesses' account. Similarly, their not going out to inform others, can also not be accepted as a ground to disbelieve their presence. There is nothing to disbelieve their version that telephone was not working. Non-examination of servants whose presence was disputed by PW-3 Parminder Singh and PW-4 Sukhjit Singh, stands explained.

(25) Version given by PW-3 Parminder Singh and PW-4 Sukhjit Singh is straightforward and truthful and is corroborated by circumstances. Their evidence cannot be rejected merely because they were closely related to the deceased. They were also closely related to the accused and had no reason to falsely implicate the accused.

(26) We may also refer to the approach to be adopted with regard to benefit of doubt. In **Shivaji Sahabrao Bobade versus State of Maharashtra**, (3) the Hon'ble Supreme Court observed :—

6.....The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the

soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand special emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned Author (Glanville Williams) has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted persons and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless.

(27) In **Kali Ram versus State of H.P.** (4), the Hon'ble Supreme Court observed :—

“25.....Of course, the doubt regarding the guilt of the accused should be reasonable ; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of **State of Punjab versus Jagir Singh**, CrI. Appeal No. 7 of 1972, Dt- 6-8-1973 = (reported in AIR 1973 SC 2407) a criminal trial is not like a fairy tale wherein

one is free to give flight to ones imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is *ex facie* trustworthy on grounds which are fanciful or in the nature of conjectures."

(28) We are thus of the view that eyewitnesses' account is not liable to be rejected on any ground.

Re : Question No. (ii) :—

(29) We are of the view that even if eyewitnesses' account is excluded, case against the accused stands fully established by the following circumstances, clearly proved and forming a chain which excludes all reasonable possibilities of the accused being innocent :—

- (i) The accused committed murder of Yadwinder Singh on the same day at 6 P.M., who allegedly had illicit relations with the deceased Satnam Kaur. He has been convicted by the trial Court,—*vide* judgment Exh. P-24., which has been upheld by this Court. Motive of the accused to cause death of Satnam Kaur for the same reason, is fully established ;
- (ii) Dead-bodies of both the deceased persons were found in the house of the accused ; bloodstains at the place of occurrence have been established by the Forensic Science Laboratory, two murders having taken place in the house of the accused, no steps whatsoever were taken by the accused to report the matter to the police or to anyone else.
- (iii) Recovery of weapon of offence on statement of the accused; weapon of offence has been proved to be having human

blood ; delay in recovery of the weapon could not be fatal as accused had been arrested only on 26th January, 2002.

(iv) Version of blind murders was clearly unacceptable.

(30) The above circumstances taken collectively, point clearly towards guilt of the accused.

(31) In **State of U.P. versus Ramesh Prasad Misra and another** (5), the wife of the accused was killed and the accused was convicted by the trial Court, but acquitted by the High Court on the plea of blind murder and his absence from the house. Disapproving the said view, it was observed that falsity of defence version should have been appreciated by the High Court. Relevant observations are :—

“8.....He did not exhibit normal human conduct of an innocent man, i.e., he should have been shocked to hear the news of the death of his young wife, married just five months back and an expectant mother of his child, in his absence. He should have rushed home to find out the cause for the death and search out whether the crime was for gain etc. and immediately swing into action and make the police investigate into the crime. On the other hand, although he had the news at 11 a.m. he went to the police station at 2.10 p.m. after finding no escape from further delaying the reporting to the police of the crime. This conduct is inconsistent and incompatible with normal human behaviour of an innocent man but seems to be one of a clever demeanour.....”

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“11..... The learned Judges have also failed to consider the moot question whether the defence version that the murder of Urmila was committed by some unknown person in the bedroom of the deceased on that fateful night, was at all probable and acceptable. This part of the case has been totally left out of

consideration by the learned Judges. If all the circumstances are read together, the only inevitable conclusion that could be reached is that the first respondent alone has committed the offence of the murder of his wife and screened the offence of murder so as to escape from the clutches of law.....”

(32) In **State of Andhara Pradesh versus Gangula Satya Murthy** (6), it was observed :—

“21. The fact that the body of (Satya Vani) was found on the cot inside the house of the respondent is a very telling circumstance against him. The respondent owed a duty to explain as to how a dead body which was resultant of a homicide happened to be in his house. In the absence of any such explanation from him the implication of the said circumstance is definitely adverse to the respondent.”

(33) In **State of Maharashtra versus Suresh** (7), it was observed :—

“A Female child of tender years was raped and murdered. Case against the accused rested on circumstantial evidence. The accused when arrested was found to have injuries on his person and blood and semen on the underclothes. There were several other incriminating circumstances pointing to the guilt of the accused and this one, mentioned just before, termed by this Court in its judgment as most formidable incriminating circumstance was put to the accused but he could not give any explanation whatsoever and instead chose to deny the existence thereof. This Court held that a false answer offered by the accused on his attention being drawn to such circumstance renders the circumstance capable of inculpating him. The Court went on to say that in a situation like this such a false answer can also be counted as providing a missing link for completing the chain of circumstantial evidence.”

(6) AIR 1997 S.C. 1588

(7) (2000)1 S.C.C. 471

(34) In **Ganesh Lal versus State of Rajasthan** (8), it was observed :—

19.The availability of the abovesaid pieces of incriminating circumstantial evidence and their having remained totally unexplained forge a complete chain of incriminating circumstantial evidence so as to fasten guilt upon the accused beyond any reasonable doubt. The silence of the accused supplies the missing link, if any, as held by this Court in the case of *State of Maharashtra versus Suresh.....*”

(35) In view of above, we do not find any ground to interfere with the conviction of the appellant. The same is affirmed.

(36) Coming to the question of sentence, we are of the view that it is not rarest of rare case where death sentence may be called for. Undoubtedly, the appellant-accused has committed a ghastly crime of committing three murders, including the murder of a small child of five months, but even then, in such circumstances, in our view, will not fall in rarest of rare cases.

(37) We have kept in mind the principles laid down by the Hon'ble Supreme Court in **Bachan Singh versus State of Punjab** (9), laying down that the sentence of death could be awarded only in rarest of rare cases, after taking into account aggravated and mitigating circumstances. No doubt, each case has to be examined on its own facts.

(38) Relevant observations in **Bachan Singh's** (*supra*) are :—

“One thing however stands clear that for making the choice of punishment or for ascertaining the existence or absence of special reasons in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a

(8) 2002(1) SCC 731

(9) (1980)2 SCC 684

separate treatment to each of them. This is so because style is the man. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. (SCC pp. 748-49, para 201).

(39) In the said judgment the Hon'ble Supreme Court also laid down circumstances which could be considered as aggravating circumstances *viz.* (SCC p. 749, para 202)

- “(a) if the murder has been committed after previous planning and involves extreme brutality ; or
- (b) if the murder involves exceptional depravity ; or
- (c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed
 - (i) while such member or public servant was on duty ; or
 - (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member of public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant ; or
- (d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.”

(40) Similarly, the following circumstances were regarded as mitigating circumstances : (SCC p. 750, para 206)

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

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- (2) The age of the accused. if, the accused is young or old, he shall not be sentenced to death.
 - (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
 - (4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the Conditions (3) and (4) above.

- (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
- (6) That the accused acted under the duress or domination of another person.
- (7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”

(41) The above principles have been followed, *inter-alia*, in **Ram Pal versus State of U. P.** (10), **Bachittar Singh versus State of Punjab** (11) and **State of Punjab versus Gurmej Singh** (12).

(42) In view of above principles, we are unable to hold that the present case falls in the category of rarest of rare cases.

(43) For the above reasons, while upholding the conviction of the appellant, we set-aside the sentence of death and instead sentence the appellant Gurcharan Singh @ Happy to imprisonment for life.

(44) Murder reference and appeal stand disposed of accordingly.

R.N.R.

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- (10) AIR 2003 S.C. 4168
 - (11) AIR 2002 S.C. 3473
 - (12) AIR 2002 S.C. 2811