In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Uday Kumar

D.R. No. 5 of 2024
With
CRA (DB) 10 of 2025
With
CRA (DB) 20 of 2025

Aftab Alam
Vs.
The State of West Bengal

For the appellant	:	Dr. Arjun Chowdhury, Ms. Pratusha Dutta Chowdhury, Ms. Sunayana Parveen, Mr. Mantu Manda, Mr. Bappaditya Roy
For the State	:	Mr. Nilay Chakraborty, Ld. APP., Mr. Sourav Ganguly
Heard on	:	23.07.2025, 24.07.2025, 25.07.2025 and 28.07.2025
Reserved on	:	28.07.2025
Judgment on	:	01.08.2025

Sabyasachi Bhattacharyya, J.:-

1. The Death Reference has come up before this Court for confirmation of a death sentence awarded to the appellant by a judgment dated September 21, 2024, whereby the appellant was convicted under Sections 396, 397 and 398 of the Indian Penal Code (IPC) and sentenced to death for commission of offence punishable under Section

396 of the IPC as well as to rigorous imprisonment for seven years and fine of Rs. 5,000/-, in default to suffer further rigorous imprisonment for one year for the offence punishable under Section 397 of the IPC. The appellant was further sentenced to rigorous imprisonment for seven years and fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for one year, for the offence punishable under Section 398 of the IPC.

2. The appeal has been preferred by the convict against the self-same judgment and sentence.

3. The prosecution case, in a nutshell, is that around 1:00 am on July 28, 2023, the appellant, along with five other co-accused persons, came to the house of the victims Mehtab and his wife Moumita.

4. Moumita was asleep in an adjacent room to that in which the deceased Mehtab was sleeping along with his two sons – Ayan and Rehan. Moumita suddenly woke up and found that the appellant and one other male co-accused was looming over her. They inflicted several stab wounds with knives on her, upon which she feigned death. The said accused persons, taking her to be dead, left her and went to the next room where all the assailants grabbed Mehtab and threatened his sons that they would meet the same fate if they created any trouble. Ultimately, the accused persons stabbed Mehtab several times and killed him. Moumita escaped through a window in her room and hid behind an adjacent wall.

5. After some time, a 'Dhalai' party, which was returning from Jaigaon in a pickup truck, passed by, when Moumita called them. At about 2:00

am, the Dhalai party found Moumita severely injured and bleeding and took her to one Ashok Roy, a neighbour, who then called one Nirod, who drove Moumita along with Abul Hussain, who was a part of the Dhalai party and the owner of the Maruti van in which Moumita was taken to the nearby Dhupguri Rural Hospital. Other local people also accompanied them. The neighbours, including Rafique, allegedly also a member of the Dhalai party, visited the place of occurrence and found Mehtab dead and his sons missing. Ultimately, it was found out that the two sons of Moumita and Mehtab had taken shelter in the house of one Ashwini Roy, another neighbour.

6. While returning from the hospital after getting Moumita admitted there, the passengers of the Maruti van stopped at a tea stall at Deomali, under Police Station-Dhupguri, when they noticed the accused persons coming barefoot in muddy apparel, their hands blood-stained and covered with handkerchiefs. Being suspicious, the passengers of the Maruti van apprehended the accused persons and detained them at the Murgi Hotel, Deomali. The police was intimated and soon came to the spot and arrested the accused persons, taking them to the Police Station.

7. Subsequently, the accused persons were identified by Moumita, who adduced evidence as P.W.1, and her two sons, namely Ayan (P.W.2) and Rehan (P.W.3).

8. Subsequently, on August 8, 2023, allegedly on the basis of leading information supplied by the appellant to the effect that he would cooperate in recovery of the weapons, the police visited a spot in the

Sonakhali forest, where at around 4:30 pm, the weapons were recovered as per the information supplied by the appellant. It is the prosecution case that Rafique and Abul, respectively P.W.8 and P.W.9, were passing by and acted as seizure witnesses in respect of the said weapons and an amount of Rs. 3,500/- was also recovered from that spot, alongwith some clothes and a bag. Since the other co-accused persons were juveniles, they were sent to the Juvenile Justice Board and tried accordingly, some of them being subsequently tried as adults.

9. The appellant, being the only major among the accused persons, was tried separately and was ultimately convicted on all counts and sentenced to death.

10. Learned counsel for the appellant contends that there are several discrepancies in the prosecution case. Moumita (P.W.1) stated in her cross-examination that Aftab, the appellant, had put a knife to her throat and she had bitten his finger. However, in her statement under Section 164 of the Criminal Procedure Code (Cr.P.C.), she did not name the appellant.

11. Secondly, in their evidence, the elder son of the victims, Rehan (P.W.3) and their younger son Ayan (P.W.2) stated that they had fled to Ashwini Roy's house. However, Ashwini Roy was not cited as a witness.

12. That apart, learned counsel argues that the said two sons of the deceased, being respectively aged 9 and 13 years, were susceptible to being tutored and, as such, their evidence ought not to have been the basis of the conviction.

13. It is next argued that the P.Ws. 1 to 3 identified the appellant in the Test Identification (TI) Parade. However, the identity of the accused had been compromised by then, since P.Ws. 2 and 3 admitted that the incident was widely reported in the media, including electronic media. Thus, no credence ought to have been lent to the identification in the TI Parade.

14. Learned counsel for the appellant further contends that Ranendra Nath Chakraborty (Gopal), P.W.4, stated in his deposition that he had seen all the accused persons, although he never went to Deomali or saw the accused persons near the place of occurrence.

15. Further, P.W.4 stated that he heard about the incident from local people, indicating that he was all along near the place of occurrence, which casts doubt on his credibility, since he claimed simultaneously that he had seen all the accused persons.

16. Learned counsel appearing for the appellant next submits that P.W.6, Raju Islam, a neighbour, who lives admittedly 500 meters away from the place of occurrence, heard screams from such a long distance, which itself is not credible. He also stated in his deposition that he saw Moumita lying injured when he came to the place of occurrence, which is contrary to the prosecution case that Moumita had escaped and was taken to the hospital and could not have been lying in the place of occurrence when Raju visited the spot.

17. It is next argued by the appellant that Rafique Ali, P.W.8, contradicts himself in his deposition by stating that he took Moumita to the hospital but immediately went to the place of occurrence. He also

stated that he heard about the apprehension of the accused persons over phone from P.W.9, Abul Hussain and the rest of the passengers of the Maruti Van saw and apprehended the accused persons near Deomali. It is impossible that P.W.8, Rafique, was present physically in both places, at the place of occurrence, where he received intimation over phone from Abul about the apprehension, and simultaneously in Deomali, while returning from the hospital, where the accused persons were apprehended. Thus, the credibility of P.W.8 as a witness is also shaken.

18. P.W.9, Abul Hussain, it is argued, stated in his deposition that he went with Moumita to the hospital and went to the place of occurrence as well. This, itself is contradictory.

19. Again, Abul Hussain and Rafique were present on August 8, 2023, that is, eleven days after the incident, at the exact time when the police had arrived at the Sonakhali forest on the information received from the appellant to recover the weapons of offence. Such chance presence of P.W.8 and P.W.9, it is submitted is too much of a coincidence. Learned counsel alleges that P.W.8 and P.W.9, being present throughout the investigation at all stages, are obviously witnesses planted by the police and their evidence ought to be disbelieved altogether.

20. Furthermore, Abul Hussain stated in his evidence that he had gone to the place of recovery with his friend Pintu, whereas Rafique said that he and Abul were present. In fact, Rafique and Abul signed as seizure witnesses, without the name of Pintu featuring either in the list of

seizure witnesses or as a witness in the trial. Thus, the recovery itself is squarely vitiated.

21. Learned counsel appearing for the appellant next argues that the process of recovery itself was in contravention of Section 27 of the Evidence Act. Placing reliance on *Babu Sahebagouda Rudragoudar and others v. State of Karnataka*, reported at *(2024) 8 SCC 149*, *Bijender alias Mandar v. State of Haryana*, reported at *(2022) 1 SCC 92* and *Shahaja alias Shahajan Ismail Mohd. Shaikh v. State of Maharashtra*, reported at *(2023) 12 SCC 558*, it is argued by the appellant, that in order to comply with Section 27 of the Indian Evidence Act, the IO had to clearly disclose the exact words used in the leading statement by the accused. Moreover, in terms of the law laid down in the said reports, a clear written statement had to be taken in the Police Station at the time when the accused was making the leading statement/confessional statement, signed by at least two witnesses, for it to be of relevance in respect of the recovery. Thus, since the provisions of Section 27 were not complied with in proper manner, the recovery itself, which is one of the plinths of the prosecution case, is also vitiated.

22. Learned counsel argues that P.W.10, Patan Roy, stated in his evidence that Moumita disclosed about her 'Bhagina' (nephew) but did not name him, whereas Moumita stated that she had named the appellant at the relevant point of time.

23. Again, in his cross-examination, P.W.10 Patan Roy, states that P.W.8 and P.W.9 were not with him when they were returning from Jaigaon, thus excluding P.W.8 and P.W.9 from the Dhalai party. This, it is

submitted, is patently contradictory to the consistent deposition of P.W.8 and P.W.9 that they were a part of the Dhalai party.

24. Thus, it is argued on behalf of the appellant that the entire storyline of the prosecution is full of lacunae.

25. Learned counsel for the appellant contends that P.W.13 Nirod Roy, the alleged driver of the Maruti van which took Moumita to the hospital, did not mention anything about the apprehension of the accused persons on the way back from hospital but stated in his evidence that they returned home from the hospital.

26. Again, in his cross-examination, P.W.13 stated that he had "heard" that the accused persons were apprehended from Police from Deomali Jungle while returning home, which news reached the said witness after one hour of the apprehension. Again, he states that the apprehension took place at the Sonakhali forest. However, P.W.13 claims in his cross-examination that he was present at the spot with Abul Hussain when the apprehension took place. It is an impossible thing that P.W.13, the driver of the Maruti van which took Moumita to the hospital, *inter alia* along with Abul Hussain, did not see the apprehension of the accused persons but learnt about the same one hour after, which case runs diametrically contrary to that made out by P.W.8 and P.W.9 and Rafique and Abul respectively with regard to the apprehension of the accused at the time of return from the hospital. If Nirod Roy was the driver of the Maruti van which took Moumita to the hospital and nabbed the accused persons while returning, it is completely unexplained as to how he did not witness the apprehension

of the accused, but learnt about the same from Abul Hussain. Such contradictions taint the prosecution thoroughly, it is contended.

27. Learned counsel next argues that P.W.14, the Investigating Officer (I/O), as per his own deposition, arrested the accused persons from Murgi Hotel ad Deomali but simultaneously, was present at the place of occurrence. This, it is argued, is an impossibility, which also vitiates the prosecution case.

28. Learned counsel for the appellant highlights the non-seizure of the wearing apparel of the accused, which could have been a vital piece of evidence since all the witness alleged that those were blood-stained. It is not at all explained by the prosecution as to why the apparel, which would be clinching evidence of the crime, was not seized or produced during trial.

29. Learned counsel cites *Jose alias Pappachan v. Sub-Inspector of Police, Koyilandy and another*, reported at *(2016) 10 SCC 519*, for the proposition that if two views are possible on the evidence, the one favouring the accused should be adopted by the courts, following the yardstick of proof beyond reasonable doubt adopted in criminal cases.

30. While addressing the death sentence awarded to the appellant, learned counsel argues that there was no evidence to show that the alleged murder was pre-planned or cold-blooded or to conclude that the same fell under the category of “rarest of the rare” cases. The learned Trial Judge, it is submitted, did not consider the possibility of reformation at all.

31. In order to highlight the tests and principles of grant of death sentence in rarest of the rare cases, learned counsel appearing for the appellant cites the following judgments:

a) *Bachan Singh v. State of Punjab, reported at (1980) 2 SCC 684;*

b) *Sundar @ Sundarrajan v. State by Inspector of Police, reported at 2023 SCC OnLine SC 310;*

c) *Rajendra Pralhadrao Wasnik v. State of Maharashtra, reported at (2019) 12 SCC 460;*

d) *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, reported at (2009) 6 SCC 498;*

e) *Anil v. State of Maharashtra, reported at (2014) 4 SCC 69;*

f) *Surjey Bhujel v. State of West Bengal, reported at 2023 SCC OnLine Cal 1877;*

g) *Manoj & Ors. v. State of Madhya Pradesh, reported at (2023) 2 SCC 353; and*

h) *Padam Subba v. State of West Bengal, reported at 2024 SCC OnLine Cal 5402.*

32. The learned Additional Public Prosecutor (APP), appearing for the State, contends that while minor variations may exist between the dying declaration, the statement recorded under Section 164, Cr.P.C. and the deposition of P.W.1, the core narrative remains unwavering. The cardinal facts of Moumita being attacked inside her home during a

dacoity and the murder of her husband, *inter alia*, by the present appellant, were proof beyond reasonable doubt.

33. Some amount of discrepancy in her dying declaration recorded by P.W.12, Dr. Santosh Kumar Ghaley, was normal since at that point of time she was thought to be on the verge of death, being seriously injured and suffering from multiple bleeding wounds, traumatized and in a vulnerable state. Minor omissions and general discrepancies in such a state are understandable.

34. It is contended that the fact that in her statement under Section 164, Cr.P.C., Moumita stated that she had bitten the finger of one of the persons which was before her mouth but named the appellant later on as the person bitten by her, does not amount to a material contradiction.

35. It is argued that P.Ws. 1 to 3, all of whom were eye-witnesses, clearly identified the appellant. Moreover, the appellant, being a nephew and admittedly having resided for some years in the shelter of the deceased Mehtab, was well-known by all of the said witnesses. It is contended that since Moumita (P.W. 1) was not just an eye-witness but a direct victim of the brutal attack, the evidentiary weight her testimony is enhanced. It is has been held by different courts repeatedly that injured eye-witnesses stand on a higher pedestal in terms of reliability, especially where there is no suggestion of animosity or false implication.

36. Although the appellant has tried to indicate that the TI Parade lost probative value due to media coverage, such claim is unfounded since

the Parade was conducted in accordance with proper procedure. Moreover, identification of the appellant, who was a close relative of the victim's family, being the nephew of the deceased Mehtab, was natural and immediate for P.Ws. 1 to 3.

37. Learned APP cites *Goverdhan and another v. State of Chhattisgarh (Criminal Appeal No. 116 of 2011)*, for the proposition that minor omissions in a sketch map of the locale cannot be used to negate credible and consistent witness accounts. In any event, the omission to mention the window through which Moumita escaped in the sketch map prepared by the IO was immaterial. The argument that there was grille in the window is also misplaced, since it is the prosecution case has borne out by evidence that the grille was installed only after the incident.

38. Learned APP next submits that under Section 118 of the Evidence Act, even a child is competent to testify if the court is satisfied that he understands the obligation to speak the truth. The Supreme Court, it is argued, upheld the evidentiary value of child witnesses where their testimony was found to be voluntary, cogent and truthful. In support of such contention, learned APP cites, *Dattu Ramarao Sakhare v. State of Maharashtra*, reported at *(1997) 5 SCC 341* and *Panchhi and others v. State of Uttar Pradesh*, reported at *(1998) 7 SCC 177*.

39. The failure of the defence to cross-examine P.W. 4 on the point of where exactly he saw the accused persons, which is not even clear in the examination-in-chief, amounts to implied acceptance of the witness'

version, as per the legal principle laid down in *Kali Ram v. State of Himachal Pradesh*, reported at *(1973) 2 SCC 808*.

40. It is argued that the overall effect of the prosecution witness is that the case against the appellant was clearly established beyond reasonable doubt. Minor inconsistencies between two prosecution witnesses on a collateral detail, it is argued, do not go to the root of the matter.

41. Non-seizure of clothes or blood-stained apparel is not fatal to the prosecution, especially when the injured eye-witness's material evidence and recovery of the weapon are there in the case, as held in *Ramesh v. State of Haryana*, reported at *(2022) 4 SCC 645*.

42. Learned APP next argues that the manner in which the appellant sought to furnish a new explanation upon hearing the entire evidence, to the effect that there was a matrimonial discord between Mehtab and Moumita, and the attempt on the part of the appellant to introduce two unknown individuals who were allegedly present at the spot when he visited the same, when the appellants gave his statement under Section 313 of the Cr.P.C., was rightly relied on by the Trial Court to assess his consciousness of guilt and degree of criminal maturity and planning.

43. As to Section 27 of the Indian Evidence Act, it is argued that only that part of the statement which distinctly relates to the fact discovered is admissible and technical irregularities in the process do not nullify the evidentiary value if the recovery is independently established.

44. In support of such statement, learned APP cites *Anter Singh v. State of Rajasthan*, reported at (2004) 10 SCC 657, *Bantu v. State of Uttar*

Pradesh, reported at *2008 SCC OnLine SC 1122*, *Machhi Singh and others v. State of Punjab*, reported at *1982 SCC OnLine SC 160* and *State of Maharashtra v. Suresh*, reported at *1999 SCC OnLine SC 1306*.

45. Thus, it is argued that absence of a formal disclosure memo or *panchnama* does not invalidate a recovery under Section 27, if the fact discovered is new and material. Thus, the recovery is valid and admissible if the IO's testimony is otherwise reliable and the recovered item is unknown prior to the information supplied by the accused.

46. Learned APP submits that in the circumstances of the case, the death sentence was rightly handed out to the appellant.

47. On the question of conviction, some germane issues are required to be discussed, which are dealt with as follows:

Discrepancies

48. The first major question raised by the appellant is that there are several discrepancies in the deposition of the prosecution witnesses, thus opening up chinks in the chain of events leading to the alleged offence. However, a comprehensive reading of the entire deposition indicates that the discrepancies were mostly on collateral factors, not hitting at the root of the prosecution case. Even in instances where there are certain discrepancies, either they are minor in nature or the fact sought to be proved by such discrepant portions of the deposition is heavily corroborated by the other witnesses and evidence.

49. The chain of events is established as follows:

50. As per the evidence of PWs 1 to 3, respectively Moumita (the wife of the deceased Mehtab and a co-victim) and the two sons of the victims, they woke up at around 1:00-1:30 am in the wee hours of July 28, 2023. As per PW1, she woke up and found the appellant and one other male assailant gagging her mouth and putting a knife to her throat. She stated that she bit the finger of one of the assailants. Although initially, in her statement under Section 164 of the Cr.P.C., she did not name of the particular assailant, later on in her evidence, she stated that it was the appellant whose finger she had bitten. Such subtle difference does not amount to any discrepancy at all, since PW 1, Moumita, while giving her first statement (captioned as 'dying declaration' since at that juncture it was apprehended that she might succumb to her injuries), PW1 was severely injured and traumatized and could not have been in a normal frame of mind to give the exact vivid details of the attack.

51. As per PW 1, she was stabbed several times and, upon pretending to have died, the assailants left her unattended, on the misconception that she had met her demise, and went to the next room, where her husband Mehtab, the victim, and their two sons had already woken up from slumber. Upon coming to the door between the two rooms, she saw all six accused persons assaulting Mehtab repeatedly with knives. Upon seeing so, she escaped through the window of her room and hid behind an adjacent boundary wall.

52. According to the evidence of PW 1, which version was corroborated by PWs 8, 9 and 10, after about 20-30 minutes, she saw a 'Dhalai' party

coming from Jaigaon in a pickup van and stopped them. As per PW 8 (Rafique Ali) and PW 9 (Abul Hussain), who were part of the Dhalai party, Moumita was found in such condition by them at around 2:00 am.

53. They immediately took Moumita to Ashok Roy, a neighbour who adduced evidence to corroborate such case as PW 15, and upon being requested by Moumita to do so, went to the Place of Occurrence (hereinafter referred to as "the PO") first and found Mehtab lying apparently dead in a pool of blood. Both as per PW 1 and PW 9, Moumita was then taken to the nearby Dhupguri Rural Hospital.

54. PW 15, Ashok Roy, in his evidence, stated that PW 1 Moumita was sent to hospital around 2:00-2:30 am.

55. PW 9, Abul Hussain and PW 6, Raju Islam, concurred in their deposition as to Moumita being then taken to the hospital in a Maruti van belonging to PW 9, driven by one Nirod Roy (PW 13). While coming back from the hospital, between 3:00-4:00 am they stopped before a tea stall in Deomali under the Dhupguri Police Station. There, they found the accused persons coming barefoot in blood stained clothes and, with the help of other local villagers, who gathered upon hearing their shouts, the six accused persons were apprehended and detained in Murgi Hotel at Deomali.

56. PW 8, Rafique, in his examination-in-chief, corroborated the version of PW 9, up to finding Moumita, taking her to Ashok Roy, and thereafter arranging the Maruti van to send Moumita to the hospital. Thereafter, PW 8 came to the PO and found Mehtab dead. Upon searching for the

two sons of Mehtab, they were found, according to PW 8, in the house of another neighbour Ashwini Roy.

57. The appellant argues that the said Ashwini Roy was not produced as a prosecution witness. However, such non-production does not materially affect the otherwise corroborative body of evidence supporting the prosecution case.

58. As per PW 8, the body of Mehtab was taken by the Police, who arrived soon thereafter, upon being informed, at around 2:45 am. At around 3:00 am, according to PW 8, he received a phone call from PW 9 informing him about the apprehension of the six accused persons. Thereafter PW 8 Rafique reached Deomali and saw the accused persons.

59. Ranjit Tigga (PW 11) corroborated that he was a part of the Dhalai party and was also instrumental in arranging a four-wheeler for taking Moumita to the Dhupguri Rural Hospital. The said witness stated that PW 9, Abul Hussain, accompanied PW 1 with two others to the hospital, while PW 11 himself remained at the PO.

60. Much stress has been laid by learned counsel for the appellant on the expression used by Rafique to the effect that he “took her” to the hospital, arguing that Rafique could not have been present simultaneously in two places, at the hospital and the PO, where he received a phone call from PW 9 Abul and learnt about the nabbing of the accused persons. However, even Ranjit Tigga, in his deposition as PW 11, used the same expression “took her” in respect of Moumita being sent to the hospital but also states in the same breath that it was

Abul and two others who accompanied Moumita to the hospital while he remained at the PO. Thus, the said expression "took her" was used both by PWs 8 and 11 to mean that they had arranged for sending Moumita to the hospital but had stayed back at the PO. The over-reliance of the appellant on the expression "took her" is misplaced, since it is common experience that the exact purport of the expression used by witnesses in their vernacular is often lost in translation. It is evident from the tenor of the rest of the evidence of PWs 8 and 11 that they had arranged for sending Moumita to the hospital but themselves had stayed back at the PO. "Took her" is an expression which was used by the translator while transcribing the evidence and cannot be taken literally in the context of the rest of the evidence of the PWs 8 and 11, being a stray expression which, if taken literally, goes against the grain of the rest of the evidence of the said witnesses. Thus, mere use of the expression in the translation of the deposition cannot be given too high a place so as to demolish the entire evidence of the said two otherwise sound witnesses.

61. Another "discrepancy" sought to be pointed out by the appellant is in the evidence of Patan Roy, who, as PW 10, stated that he was also a part of the Dhalai party, found Moumita and send her to the hospital as well as went to the PO with Ranjit and informed the local police. However, in his cross-examination, Patan said that PWs 8 and 9 were not with him when returning from Jaigaon.

62. The appellant argues that such admission demolishes the case of the PWs 8 and 9 that they were a part of the Dhalai party. However, such

stray sentence in the cross-examination of Patan Roy is not mutually exclusive with the evidence of PWs 8 and 9. Nothing has been elicited in the cross-examination of either PW 8, PW 9 or PW 10 as to whether they knew each other well. Thus, while simultaneously being part of the same Dhalai party, it might very well have been that Patan Roy was not aware of the names of the other persons who formed a part of the team. Even otherwise, such collateral discrepancy does not hit at the root of the prosecution case, since several witnesses corroborated the chain of events up to sending Moumita to the hospital and subsequently discovering the accused.

63. Another discrepancy pointed out by the appellant is that Nirod Roy, PW 13, stated in his chief that after dropping Moumita at the hospital, they "returned home". In his cross-examination, he also said that he had "heard" that the accused had been apprehended by police from a jungle near Deomali, 3-4 kms away from the PO, and got the news while returning from the hospital about one hour after.

64. There may be several reasons for such discrepancy. The memory of PW 13 Nirod Roy is not exactly of sterling quality, since he did not recollect in his evidence as to the exact time of reaching the hospital with Moumita. Moreover, he adduced evidence on August 23, 2024, almost exactly one year after the date of the fateful incident. As such, the chronology of events might very well have been mixed up in his mind to the extent that he did not recollect the exact manner and time when he learnt about the apprehension of the accused and the correct chronology of events after lapse of a year. After all, all are not endowed

with excellent memory and it is trite law that some amount of discrepancy and variation among the versions of different witnesses is but only natural and authenticates, rather than demolishes, the prosecution case.

65. Moreover, it is not clear from the evidence or the cross-examination of PW 13 as to whether he stayed back in the car when Abul and the others in the Maruti van went to the tea stall and thereafter went ahead further to get to see the accused persons and, with the help of local people, to apprehend them. Such lapse of memory does not vitiate the entire evidence of PWs 8, 9, 10 and the other neighbours who consistently state that Moumita was taken in Abul's Maruti van which was driven by Nirod to the hospital and that Abul and others had accompanied her.

66. The next crucial evidence is of the I/O, PW 17. The appellant argues that the I/O could not have been simultaneously at the PO and at the Murgi Hotel in Deomali where the accused persons were arrested. However, nowhere in his evidence does the I/O state that he had gone to arrest the accused persons from Deomali. It is clearly evident that two sets of police parties were formed – one went to apprehend the accused persons from Murgi Hotel at Deomali while the other, led by the I/O, went to the PO.

67. As per the evidence of the I/O, the information about the murder and the apprehension of the accused persons reached the police station at around 3:00 am, which fully tallies with the deposition of PW 9, in

respect of the time of such apprehension. On such information, the first GD Entry, bearing no. 1614, was lodged at 3:05 am.

68. As per PW 17, the I/O, he went thereafter to the PO, arranged for the body of Mehtab to be sent to the hospital, had the PO cordoned off, and thereafter went to the hospital where the concerned Doctor informed his that Mehtab was declared to have been brought dead.

69. After arranging everything, the second GD Entry bearing No. 1625 was lodged, as per the I/O, at around 8:15 am in the concerned Police Station.

70. PW 4, one Ranendranath Chakraborty, the de facto complainant, stated in his evidence that he was called by the local people, from whom he heard about the incident. He also stated that he saw all the accused persons. PW 4 stated that he had lodged a complaint at the Police Station at around 10:00-10:30 am.

71. The appellant argues that PW 4 could not have seen the accused persons if he was all along at the PO. However, such argument is misdirected, since PW 4 never stated when he saw the accused person. As per the version of PW 4, he lodged a complaint ar the Police Station at around 10:00-10:30 am, by which time the accused persons had been arrested and brought to the Police Station. Therefore, he might very well have seen the accused persons there.

72. Coming back to the deposition of PW 17, the I/O, he stated that a written complaint was lodged by PW 4 at 10:15 am, pursuant to which an FIR was registered. Thus, the time of filing the complaint at the

Police Station by PW 4, the de facto complainant, is corroborated *inter se* PW 4 and PW 17. As per PW 17, the Inspector-in-Charge of the Police Station assigned the case to him at around 10:25 am, which perfectly fits with the prosecution case.

73. The timelines which are thus elicited from the evidence of the prosecution witnesses are, thus, as follows:

	1-1:30 am	→	Assailants came to PO
		→	Murder + Dacoity
	2 am	→	Moumita found by Dhalai party (P.W.8, P.W.9, P.W.10, P.W.11 etc.)
		→	P.W.8 (Rafique), P.W.10 (Patan Roy), P.W.9 (Abdul) etc. went to PO
	2-2.30 am	→	P.W.9 (Abul – owner of Maruti), P.W.13 (Nirod Roy), P.W.6 (Raju Islam) etc. took Moumita to Dhupguri Rural Hospital
P.S. record info (P.W.17 – I/O) -	3 am	→	Stopped (while returning from Hospital) @ tea stall, Deomali – nabbed accused (at least P.W.9, P.W.6 and locals)
GDE 1614 -	3:05 am	→	Abul (P.W.9) called Rafique (P.W.8), who came to Deomali & found accused detained
		→	Police came in few moments and arrested the accused
⇩			
P.W. 17 came to P.O. – sent body - cordoned off – sent to Hospital – learnt from Dr. that Mehtab declared brought dead			
⇩			
GD entry 1625	8.15 am		
P.W.4 Ranendranath lodged complaint – FIR registered	10:15 am		
I/C assigned case to P.W.17 as I/O	10:25 am		

74. Hence, we do not find any deviation or major discrepancy in the prosecution case.

75. In this context, the unreported judgment of the Supreme Court in the matter of *Goverdhan (supra)*[1], cited by the State, acquires relevance. Several judgments of the Supreme Court governing the field were considered in the said case. The Supreme Court highlighted that law does not contemplate stitching the pieces of evidence in a watertight manner, for the standard of proof in a criminal case is not proof beyond "all doubts", but only beyond "reasonable doubt". In other words, the Supreme Court elaborated, if a clear picture emerges on piecing together all evidence which indicates beyond reasonable doubt the role played by the accused in the perpetration of the crime, the court holds the accused criminally liable and punishes them under the provisions of the IPC, in contradistinction to the requirement of proof based on the preponderance of probabilities as in the case of civil proceedings.

76. By "reasonable doubt", what is meant is that such doubt must be free from suppositional speculation. It must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. The concept of 'reasonable doubt', it was held, has to be also understood in the Indian context, keeping in mind the social reality and this principle cannot be stretched beyond a reasonable limit to avoid generating a cynical view of law.

---

1. Goverdhan and another v. State of Chhattisgarh (Criminal Appeal No. 116 of 2011)

77. Lord Denning was quoted in the judgment of the Supreme Court for the proposition that the degree in such cases is well-settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the court of justice.

78. Borrowing the said proposition, we do not find any major deviation displacing the prosecution case.

Substantive corroboration of prosecution case

79. What has to be seen here is whether the prosecution case against the accused persons, including the appellant, was established beyond reasonable doubt.

80. PW 1, being an eyewitness who was a victim of the offence herself, categorically identified the accused persons and narrated the entire event which took place. PWs 2 and 3, the two sons of the victims were also eyewitnesses and fully corroborated the evidence of PW 1 in that regard. The said children were respectively aged 9 years and 13 years, thus, being sufficient intelligent to coherently describe the relevant incidents in their depositions.

81. Several arguments have been advanced by the appellant as to the evidentiary value of child witnesses. In this context, it would be fruitful to refer to *Dattu Ramarao Sakhare (supra)*[2] and *Panchhi (supra)*[3], in

2. Dattu Ramarao Sakhare v. State of Maharashtra, reported at (1997) 5 SCC 341

3. Panchhi and others v. State of Uttar Pradesh, reported at (1998) 7 SCC 177

both of which the scope of taking into consideration the evidence of child witnesses was elaborately discussed. The crux of the proposition laid down in the said reports is that the evidence of a child witness, if he or she is found competent to depose, and if on evaluation is found to be reliable, can form the basis of conviction.

82. In the impugned judgment, the learned Trial Judge categorically came to the finding that although the PWs. 2 and 3 were minors, they tested for rationality and their evidence was found by the learned Trial Judge to be vivid and convincing. It is the trial Judge who is in a position to ascertain the demeanour of the witnesses and, sitting in appeal or in a Death Reference, this Court ought not normally to intermeddle with the assessment of the witnesses' demeanour by the learned Trial Judge. Thus, we do not find any reason to discard the otherwise solid and coherent evidence of PWs 2 and 3, whose version was independently corroborated by PW 1, all three being eyewitnesses to the offence.

83. Another angle has been sought to be brought in by the appellant – that the PWs 2 and 3 were influenced by the news item regarding the incident which were doing their rounds in the media, including electronic media. However, we do not find any reason as to why PWs 2 and 3 would be influenced by media reports with regard to identification of the accused persons in the TI Parade. In any event, the appellant admitted in his statements that he is the nephew of the deceased Mehtab and had stayed 3-4 years in the house of Mehtab previously. Thus, the family of the victims knew the appellant by face and, as such, no media influence was required for PWs 2 and 3 to

identify him at the spot of occurrence, at the TI Parade as well as during trial.

Compliance of Section 27, Indian Evidence Act and other lacunae

84. The appellant has argued that the recovery of the weapons of the offence from a nearby jungle at Sonakhali forest on August 8, 2023 at about 4:30 pm was on the basis of the leading statement/confessional statement made in that regard by the appellant. However, it is argued that the exact words of the appellant while making such statement in the police station were not recorded in any statement signed by two independent witnesses, which is a requirement of the law as per the appellant. In support of such argument, learned counsel for the appellant places reliance on *Babu Sahebagouda Rudragoudar (supra)*[4].

85. On the other hand, the prosecution relies on *Anter Singh (supra)*[5]

86. For a proper appreciation of the governing propositions of law in this regard, the language of Section 27 of the Evidence Act is to be looked into first. The said Section provides that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a Police Officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

---

4. Babu Sahebagouda Rudragoudar and others v. State of Karnataka, reported at (2024) 8 SCC 149

5. Anter Singh v. State of Rajasthan, reported at (2004) 10 SCC 657

2025:CHC-JP:149-DB

87. Thus, the necessary ingredient would be that the accused person must be in custody of a police officer and the discovery of the fact-in-question has to be directly related to the information received from the accused.

88. The law, *per se*, does not impose any requirement of any *panchnama* being drawn up or independent witnesses being present while such information is received, although such requirement has been discussed in *Babu Sahebagouda Rudragoudar (supra)*[4].

89. The context of the said judgment ought to be looked at to elicit the correct perspective of the ratio laid down therein. The I/O in the said case was found to have given no description at all of the conversation which had transpired between himself and the accused which was recorded in the disclosure statements. Further, the I/O nowhere stated in his deposition that the disclosure statement of the accused resulted into the discovery of weapons pursuant to being pointed out by the accused. Further, the claim by the I/O that he arrested the particular accused, recorded his voluntary statement, and seized the offending weapons were held not to be material as neither the so-called voluntary statement nor the seizure memo were proved by the I/O in his evidence.

90. However, in the present case, clear evidence has come forth from the testimony of the I/O on all the above aspects. In his examination-in-chief, the I/O (PW 17) categorically stated that on August 6, 2023 he had made a prayer for police remand of the accused person and on August 7, 2023 police remand for three days was allowed. During such period, the accused persons gave statement “to the effect that they

would help to recover the weapon from the place where it was concealed". As per such leading statement, the I/O went to the Sonakhali forest at 16.25 hrs on August 8, 2023 and recovered certain articles, including the offending weapon, a backpack, including a yellow coloured Nylon rope, one sharp edged knife, one partially torn black coloured scarf, one sky coloured printed vest and cash of Rs. 3,500/-, as shown and identified by the accused.

91. PW 17 further stated in his deposition that prior to recovery of the above articles, the accused persons gave their statements to him "to the effect that they kept concealed one bag containing knife, stolen money, rope, vest, partially torn scarf at Sonakhali forest and they would help me to recover the same". This is the statement given by the appellant, according to PW17, which led to the recovery. Thus, the exact statement made by the appellant was categorically stated in the deposition of the I/O. Furthermore, the statement of the accused *only in respect of the recovery of the offending weapon* was marked as Exhibit 30, although with objection. Thus, the requirements of Section 27 of the Evidence Act were substantially satisfied.

92. A label of seized articles was also prepared and chronology marked. The seizure list at the time of recovery was signed by PWs 8 and 9, who were going by at the said juncture.

93. Learned counsel for the appellant seeks to taint the worth of PWs 8 and 9 as seizure witnesses, by arguing that they were present at every stage of the investigation and thus, were witnesses planted by the police.

94. Certain aspects are required to be looked into in this regard. As corroborated by numerous witnesses, both Abul and Rafique are residents of the locality. The Maruti van in which Moumita was taken to the hospital belonged to Abul, PW 9 and he accompanied Moumita to the hospital. The distance between the hospital and the PO is about 15 minutes, as has come out from the evidence of the PWs. Sonakhali forest itself is situated within 4-5 kms from the PO. Thus, the entire relevant events took place within a short radius. It would not be impossible for PWs 8 and 9 to be present at the time when the recovery was being made, when they were passing by, as they are residents of the said locality in any event.

95. The other prong of challenge of the appellant is that PW 9, in his evidence, stated that he had signed on the seizure list on August 8, 2023. In the cross-examination, he stated that at the time of such seizure, his friend Pintu and the accused persons were present at the spot and identified the places where the articles were recovered. PW 8 Rafique Ali states that he was also present in the Sonakhali forest at the time of the seizure, when Abul Hussain was also there. The question raised by the appellant is that Pintu did not signed as a witness to the seizure list whereas PWs 8 and 9 have so signed. Whereas PW 8 says that PW 9 was with him at the time of recovery from the forest, PW 9 says one Pintu was there with him. This is sought to be portrayed as a discrepancy by the appellant.

96. However, such plea is specious. We do not find any evidence as to whether or not Pintu and Rafique are the same person. Secondly, even

if a third person (Pintu) was admitted by PW 9 to have been there at the recovery, it does not vitiate the statement of PW 8 that he was also present at that point of time and no counter suggestion was put to PW9 in his cross-examination that Rafique was not present at the said juncture. On the other hand, Rafique corroborates his own presence and that of PW 9 Abul at the time of seizure and signatures of both of them find place as witnesses in the seizure list. Thus, the presence of a third person Pintu, who did not sign the seizure list, is entirely superfluous and immaterial insofar as the authenticity of the recovery is concerned. Pintu's presence, *per se*, does not negate the presence of Rafique as well, since Abul Hussain (PW9) does not say that *only* he and Pintu and the accused were present.

97. In any case, in the present case, the leading statement was clearly mentioned in the I/O's evidence and such part of the statement comes within the purview of Section 27 of the Evidence Act, having also been exhibited as Exhibit-30.

98. Moreover, the testimony of the I/O was found reliable by the learned Trial Judge. We also do not find anything to shake the coherent and methodical testimony of the I/O.

99. In *Anter Singh (supra)*[6], it was held by the Supreme Court that technical irregularities in the process do not nullify the evidentiary value of a statement made under Section 27 of the Evidence Act if the recovery is independently established. The further proposition is laid down in the said case that absence of a formal disclosure memo or *panchanama*

6. Anter Singh v. State of Rajasthan, reported at (2004) 10 SCC 657

does not invalidate a recovery under Section 27, if the fact discovered is new and material.

100. In Suresh *(supra)*[7], the Supreme Court held that there are three possibilities when an accused points out a place where a dead body and incriminating material was concealed without stating that it was concealed by him. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it, and the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities, the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by him. It was held by the Supreme Court that such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

101. In the present case, the items which were recovered were unknown to the police prior to the information received from the accused, which is also evident from the fact that the recovery was not immediately after the fateful incident but made only on August 8, 2023, during the short period when the accused persons were remanded in police custody and

7. State of Maharashtra v. Suresh, reported at 1999 SCC OnLine SC 1306

were interrogated. Further, the recovery was independently found reliable, in view of PWs 8 and 9 having signed as witnesses to the seizure list and all the accused having identified the weapons at the time of recovery.

102. Thus, we cannot find any discrepancy or violation of the principles embodied in Section 27 of the Evidence Act to doubt on the process of recovery of the offending weapons at all.

103. Another minor lacuna sought to be pointed out by the appellant is that the wearing apparel of the accused persons were not seized. However, such lacuna, even if it be considered to be one at all, was at the worst one of the laches on the part of the investigating team or the team which arrested the accused persons and cannot displace the chain of events supporting the prosecution case as a whole.

104. We cannot lose sight of the fact that we have three eyewitnesses and several neighbours of the locality, including people who were present all along throughout the happening of the incident and immediately thereafter, who have corroborated substantially each other's testimony.

105. Hence, from the above discussion, we do not find any illegality or error of law and/or fact in the conviction of the appellant on all counts, that is, under Sections 396, 397 and 398 of the Indian Penal Code.

106. Now we move on to consider whether the death sentence handed out to the appellant ought to be confirmed or not.

Sentencing

107. Coming to the crucial aspect of the matter, where the death reference and the appeal overlap, we take up the question as to whether the award of death sentence against the appellant was justified. Both sides have cited several judgments in this context.

108. *Machhi Singh (supra)*[8] discusses the concept of penology. The Hon'ble Supreme Court reiterated therein the principles prescribed in *Bachan Singh*'s case, which is landmark judgment with regard to award of death penalty.

109. Before coming to *Bachan Singh*'s[9] case, let us dwell upon the observations made in *Machhi Singh (supra)*[8]. The Supreme Court observed that the reasons for which the community as a whole does not endorse the humanistic approach reflected in "death sentence-in-no case" doctrine are:

1) When a member of the community violates the "reverence of life" principle, on which the very humanistic edifice is constructed, by killing another member, the society may not feel itself bound by the shackles of this doctrine.

2) When ingratitude is shown instead of gratitude by "killing" a member of the community which protects the murderer himself from being killed, or when a community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty.

---

8. Machhi Singh and others v. State of Punjab, reported at 1982 SCC OnLine SC 160

9. Bachan Singh v. State of Punjab, reported at (1980) 2 SCC 684

3) The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. But the community may sanction death penalty in the rarest of the rare cases when its collective conscience is shocked.

110. *Bachan Singh*'s[10] case is the landmark judgment in this regard. The very concept of death penalty and the arguments for and against the same were discussed threadbare by the Constitution Bench of the Supreme Court in the said judgment. Certain portions of the erudite exposition on the law in the said report are to be considered in the present context.

111. In paragraph no. 206 of the judgment, which is quoted below, the mitigating circumstances to be considered while dealing with the death penalty were laid down, whereas paragraph no. 202 of the judgment, which is also set out below, speaks about the aggravating circumstances which may lead to imposition of death penalty.

> *"**206.** Dr Chitale has suggested these mitigating factors:*
>
> *"Mitigating circumstances.—In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:*
>
> *(1) That the offence was committed under the influence of extreme mental or emotional disturbance.*
>
> *(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.*
>
> *(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.*
>
> *(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.*

---

10. Bachan Singh v. State of Punjab, reported at (1980) 2 SCC 684

(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."

---

*"**202.** Drawing upon the penal statutes of the States in U.S.A. framed after Furman v. Georgia [33 L Ed 2d 346 : 408 US 238 (1972)] , in general, and clauses 2 (a), (b), (c) and (d) of the Penal Code, 1860 (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr Chitale has suggested these "aggravating circumstances":*

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

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

(b) if the murder involves exceptional depravity; or

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

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

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

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code."

112. The Supreme Court observed further that stated broadly, there can be no objection to the acceptance of the indicators of aggravating circumstances but the Supreme Court would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other. The Supreme Court, in *Rajendra Prasad*'s case, reported at *(1979) 3 SCC 646*, observed that, it is constitutionally permissible to swing a criminal out of corporeal existence *only* if the security of State

and Society, public order and the interest of the general public compel that course as provided in Article 19(2) to (6).

113. It was further elaborated that the objection was only to the word "only". It was held that while it may be conceded that a murder which directly threatens, or has an extreme potentiality to harm or endanger the security of State and Society, public order and the interests of the general public, may provide "special reasons" to justify the imposition of the extreme penalty on the person convicted of such a heinous murder, it was not possible to agree that imposition of death penalty on murderers who do not fall within the narrow category of constitutionally is impermissible.

114. In paragraph no. 208, the Supreme Court observed that according to some Indian decisions, the post-murder remorse, penitence or repentance by the murderer is not a factor which may induce the court to pass the lesser penalty, but those decisions can no longer be held to be good law in view of the current penological trends and the sentencing policy outlined in Sections 235(2) and 354(3) of the Cr.P.C.

115. The Supreme Court observed that numerous other circumstances justify the passing of the lighter sentence; as there are countervailing circumstances of aggravation. While holding so, it was observed that it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them.

116. Proceeding on the premise of the observations of the majority view in *Bachan Singh*'s[11] case, let us now consider the context of the death sentence given in the case at hand.

117. The judgment in *Bachan Singh (supra)*[11] is not only a landmark judgement but is progressive and prophetic of the changing times. The evolution of society has been towards a reformative approach towards penology, as opposed to a retributive approach. There are three cardinal pillars of punishment – retribution, deterrence and reformation. Whereas deterrence still holds good as a justification, retribution has gradually given way to the reformatory aspect of penalties in modern criminal jurisprudence, both in India and elsewhere.

118. Article 21 of the Constitution of India, it has been judicially recognised, is not the source of the right to life but recognizes such right, which is inherent in any human being. Article 21 is couched in a negative language, to the effect that no person shall be deprived of his life or personal liberty, the exception being "according to procedure established by law". Law, to take away the single-most important fundamental right, that is, the right to life, has to be interpreted liberally, since otherwise the interpretation would go against the very grain of whatever the Constitution stands for. Such aspect was captured in fine language by the Supreme Court in *Bachan Singh*'s[11] case, where it held that it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must

11. Bachan Singh v. State of Punjab, reported at (1980) 2 SCC 684

receive a liberal and expansive construction by the courts in accordance with the sentencing policy writ large in Section 354(3), Cr.P.C. A word of caution was put in to the effect that Judges should never be bloodthirsty and hanging of murderers has never been too good for them.

119. In the context of the above judgment, Section 235(2) Cr.P.C. is required to be looked into. The said provision ensures that an accused is heard on the question of sentence if he or she is convicted. Thus, a separate hearing has been incorporated in the statute on the question of sentencing, over and above the hearing given on the question of conviction.

120. Section 354(3) of the Cr.P.C. goes one step ahead and provides that when the penalty is death/life imprisonment, the judgment shall state reasons for the sentence. An additional requirement has been incorporated in case of death sentence, for which "special reasons" have to be given by the Judge.

121. The alteration of the names of jails from "prisons" to "correctional homes" in recent times is for a reason, reflecting the transition from the basic bloodthirsty instinct of society to take revenge to a more civilised policy of attempting to reform the accused, on the principle that one should hate the offence and not the offender.

122. There has been a debate throughout the world as to the retention of death sentence as a punishment, however heinous and grave the offence may be. The anti-death penalty camp argues that if deterrence is taken to be a reason of punishment, a lifetime of imprisonment is as

good as a death sentence. Rather, a lifetime behind the bars, which denudes the convict of his freedom for his entire life, is a preferable form to punish him than death, which takes place in a flash.

123. Again, there is still scope of remorse and repentence in a person, if incarcerated over a long period of time.

124. Pitting the pros and cons against each other, if a person is hanged or otherwise killed by dint of a death penalty, the damage done is irreversible. Even if subsequently some new light is shed on the investigation or there is discovery of some new evidence or something to justify the reopening of investigation, there would be no chance of bringing back a life which has already been taken; thus, the death penalty is irreversible.

125. In such backdrop, let us consider the tests applied by the learned Trial Judge in the present case for awarding the death penalty.

126. Both *Bachan Singh*'s[12] case and *Machhi Singh (supra)*[13] were considered by the learned Trial Judge. One of the reasons attributed for handing out the death penalty in the impugned order of sentencing is betrayal of trust by the appellant, since he, being the nephew of the deceased, was given shelter in the house of the deceased victim after the premature demise of his father in his childhood and the deceased took care and protected him "like his own father". The Trial Court held that the convict was so treacherous that he committed dacoity in the house of

---

12. Bachan Singh v. State of Punjab, reported at (1980) 2 SCC 684

13. Machhi Singh and others v. State of Punjab, reported at 1982 SCC OnLine SC 160

his own maternal uncle where he was brought up after the demise of his father, for which he came back to Dhupguri from Delhi.

127. However, such yardstick is based more on emotion than bare facts. It has come out in the evidence and the statement of the accused as well that he was the nephew of the deceased Mehtab and had taken shelter after the demise of his father for 3-4 years under Mehtab. The "treachery" on the part of the appellant and the "care and protection like his own father" on the part of the deceased are not directly borne out by the evidence. We have to take into consideration that the court was simply unaware as to the reason for the appellant having to leave the family of the victims and shifting to Delhi and residing there. The "position of trust" approach cannot be applied, since at the time of the offence, the appellant was long gone from the shelter of his uncle and was no longer under the tutelage of the victim. Thus, the "betrayal" angle, *per se*, does not justify the death penalty.

128. The brutality of the offence was also considered by the learned Trial Judge and it was held that the appellant took a leading role in the gruesome, brutal, barbaric and diabolical crime, in that there were several stab wounds and the victim was killed in front of the family and he tried to finish off the family as well.

129. The trauma of the minor sons was also considered.

130. Although the brutality of the multiple stabbing cannot be denied at all, in the same breath, when resisted in dacoity, such brutality is not unheard of and cannot be classified as a "rare" event, let alone the "rarest of rare". It is to be noted that no motive for murder, on a

standalone footing without the intention of dacoity, has been established in the present case. Thus, the murder was in the context of dacoity.

131. The learned Trial Judge observed that the crime was deliberately planned and meticulously executed which, according to the learned Trial Judge, reflected that the appellant had sufficient maturity at 22 years of age "like a veteran criminal". The concept of the appellant being a veteran criminal was entirely the brain-child of the learned Trial Judge, with due respect, since the planning behind the attempted dacoity in the present case was extremely "unprofessional" (if one can use the expression in the context) and immature.

132. As the turn of events went, the appellant, along with other five co-accused, resided for some days in the vicinity of the PO in a hotel where at least the appellant checked in with his own Aadhar Card, which no "veteran criminal" would ever do.

133. Thereafter, they ambushed the house of the victims and first attacked Moumita and thereafter Mehtab. If they were to execute a planned and professional dacoity, multiple stabbings would not be necessary and it could have been executed much smoothly. We reiterate here that the offence with which the appellant has been charged is inter alia dacoity with murder. Although dacoity has been sufficiently established, the motive behind the murder, on a stand-alone footing, if the dacoity aspect of the offence was taken out, has not been established at all. No *mens rea* of the appellant to murder the victim in such a brutal manner by multiple stabs, as established by the prosecution case, has been

2025:CHC-JP:149-DB

established. Thus, it was not a murder with vengeance for its own sake, but a spontaneous reaction, may be due to the unprofessionalism of the accused persons, five of whom were minor and the appellant a borderline major.

134. Hence, the "veteran criminal" angle and "deliberate planning" is not reflected at all from the incident.

135. Moreover, the accused persons, after the offence, went and hid the weapons, along with certain clothes and a meagre amount of Rs. 3,500/-, in a nearby forest. The peculiar part is that thereafter, instead of fleeing the place and going back to Delhi, they chose to saunter back casually towards Deomali, which is close to the PO, in open view of all, so that they could be conveniently nabbed and arrested. This aspect of the matter strikes any reasonable man and clearly defies the theory that the accused persons were veteran criminals or meticulously and deliberately planned the dacoity. Rather, the spontaneous nature of the offence indicates lack of planning and impulsive behaviour.

136. The learned Trial Judge further found that the appellant has criminal antecedents. Such finding was entirely based on submissions made from the Bar by the Public Prosecutor, that too at the stage of sentencing, without any evidence in that regard coming on record throughout the trial. Moreover, no documentary evidence was produced even at the sentencing stage to substantiate such allegations. The appellant did not have any chance to refute such allegations, which were based on conjecture, without any document being produced in that regard which could have been refuted by the appellant if

confronted with the same. Hence, no previous criminal antecedents of the appellant were at all proved, either in the trial or even at the stage of sentencing. Thus, such finding regarding previous criminal antecedents of the appellant was perverse.

137. Antecedents are an important aspect which is to be looked into at the time of deciding whether a person should be awarded the extreme measure of death penalty. It is also inbuilt in the mitigating considerations such as the probability that the accused would not commit criminal acts of violence in future, as would constitute a continuing threat to society. In the present case, no evidence whatsoever regarding any criminal antecedent of the appellant has been brought on record. As such, we have to proceed on the premise that the appellant had not criminal antecedent which could be proved in the court of law. Even if, for the sake of argument, it is assumed that there are pending cases in Delhi, the presumption of innocence applies in Indian criminal jurisprudence and a person is presumed to be innocent until proved guilty. Thus, mere pendency of cases, even if any, cannot label a person to have "criminal antecedents" as such.

138. The other aspect taken into consideration by the learned Trial Judge for awarding the death sentence was that there was no remorse in the demeanour of the appellant throughout the trial. In this context, we cannot overlook the fact that there is nothing on record to indicate as to what is the current social status or current background of the petitioner. We are entirely unaware, at least from the materials on record, as to what financial situation or social condition the appellant

was going through immediately prior to the offence. The reasons for his moving to Delhi from the victims' house and staying there remain unexplained. We are totally in the dark about the present living conditions of the appellant. Thus, the "lack of remorse", read by the trial court into the eyes of the appellant or into his postures, might merely be the result of the hardened and jaded mind of a person who has barely crossed the threshold of majority and is confronting the world on his own, and may not be actual lack of remorse at all. To judge whether the appellant was himself a victim of society or a cornered animal defending himself during the trial is not clear to us. Thus, just as we cannot delve into the realm of conjecture to assume that the appellant have been socially suffering and the nature of the crime was in the nature of a social statement or revolt, where the appellant sought to thrash the rest of the society notionally, we cannot also resort to surmise to arrive at the converse conclusion that he was remorseless.

139. In any event, the purpose of detention in a 'Correctional Home', as the name suggests, is to give psychological and sociological support to the convict to ensure that he reintegrates into the mainstream of society upon being reformed. At the stage of the trial, the alleged lack of remorse in the gestures and postures of the accused cannot be an indicator that he has reached such a brink of the abyss that he cannot be reformed further.

140. Looking at the mitigating circumstances as laid down in *Bachan Singh*'s[14] case, we do not find any material to assess whether the offence was committed under the influence of extreme mental and emotional disturbance.

141. The young age of the accused is another mitigating factor which precludes awarding death sentence, as per the tests laid down in *Bachan Singh*'s[14] case.

142. The probability that the accused would not commit criminal acts of violence as would constitute a threat to society and the probability that the accused can be reformed and rehabilitated is, as per *Bachan Singh*'s[14] case, presumed by default. It is the State which, by evidence, has to prove that the accused does not satisfy such conditions, as per the tenets laid down in *Bachan Singh*'s[14] case. We find no such evidence or proof whatsoever being adduced by the State in that regard in the present case.

143. Since the mitigating factors, as per *Bachan Singh*'s[14] case, must receive a liberal and expansive construction, on balance with each other, the mitigating circumstances ought to be given more weight, howsoever slight, over aggravating circumstances, since it is the conscious killing of an individual human being by the society at large, with all its might, which we are discussing here.

---

14. Bachan Singh v. State of Punjab, reported at (1980) 2 SCC 684

144. Putting on balance, one of the aggravating circumstances could be if the murder was committed after previous planning and involved extreme brutality or exceptional depravity.

145. Previous planning is utterly absent, as evident from the post-offence conduct of the accused persons in the present case, as discussed above. Although there was brutality and depravity in the crime, it has to be considered whether such depravity or brutality is of such an extreme or exceptional nature that the life of a person should be extinguished by handing out the death penalty.

146. Keeping on balance the aggravating circumstances and the mitigating factors in the present case, the mitigating circumstances win hands down.

147. As discussed above, the pre-conceived notions with which the learned Trial Judge approached the sentencing process cannot be a reasonable basis of granting the death sentence to the appellant.

148. In view of the above discussions, we are of the opinion that the death sentence handed down to the appellant should be commuted.

149. Accordingly, D.R. No. 5 of 2024 with CRA (DB) 10 of 2025 with CRA (DB) 20 of 2025 are disposed of by confirming the conviction of the accused on the counts of Sections 396, 397 and 398 of the Indian Penal Code.

150. However, the death sentence awarded in the impugned judgment in view of the offence committed under Section 396 to the appellant is commuted to life sentence for the rest of his life, without any option of

premature release for 20 years, unless exceptional circumstances are made out to the satisfaction of the concerned court. Such sentence shall run concurrently with the sentences of rigorous imprisonment for seven years awarded on both counts of Sections 397 and 398 of the Indian Penal Code. Thus, seven years of the life imprisonment shall be spent as rigorous imprisonment. However, keeping in view the fact that the appellant was lastly residing in Delhi and not a local resident and no source of income of the appellant has been disclosed, the fine of Rs. 5,000/- on each count, respectively under Section 397 and Section 398 of the Indian Penal Code, are set aside.

151. The time already spent by the appellant in incarceration, pre, intra and post trial, shall be set off from the term of imprisonment qua the period of 20 years of restriction regarding premature release of the appellant.

152. The department shall immediately send copies of this judgment to the trial court as well as the Superintendent of the Correctional Home where the appellant is now housed, in order to ensure due compliance of the same.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)