

(2011) 03 MP CK 0038

In the Madhya Pradesh High Court

Case No : Criminal Reference No. 4 of 2010 and Appeal No. 48 of 2011

Additional Sessions Judge forwarded by District and Sessions Judge APPELLANT

Vs

Santosh Kumar Singh
 Santosh Kumar Singh Vs State of Madhya Pradesh RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 303, 366, 366(1)

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 302, 307, 394, 397, 450

Citation : (2011) ILR (MP) 1581 : (2011) 3 MPHT 155

Hon'ble Judges : Tarun Kumar Kaushal, J;Rakesh Saxena, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Saxena, J.—Since both the above cases arise out of the common impugned judgment passed by the trial Court, this judgment shall govern the disposal of both the cases.

2. Appellant has filed Criminal Appeal No. 48/2011 against the judgment dated 23.12.2010, passed by the Additional Sessions Judge, Singrauli, in Sessions Trial No. 351/2010, convicting him u/s 302 of the Indian Penal Code on two counts and sentencing him to death. Appellant has also been convicted u/s 307 of the Indian Penal Code on two counts, Section 394 and 397 of the Indian Penal Code on four counts and Section 450 of the Indian Penal Code and sentenced to imprisonment for life with fine of Rs. 10,000/-, rigorous imprisonment for 10 years with fine of Rs. 5000/-and rigorous imprisonment for 10 years with fine of Rs. 5000/-, on each count respectively. Sentences of imprisonment have been directed to run concurrent.

3. Since Appellant has been awarded penalty of death sentence, learned Additional Sessions Judge has made reference (Criminal Reference No. 4/2010)

for confirmation of the said sentence u/s 366(1) of the Code of Criminal Procedure.

4. In short, the prosecution case is that Gulam Mohd. resided in NCL Colony, Singrauli, with his wife Noorjahan, son Javed Akhtar and daughters viz. Rozi @ Razia and Zeenat. On 7.5.2010, accused Santosh, who was known to them, came to their quarter at about 2.00 p.m.. He stayed there for about 30 minutes and talked to Noorjahan Begum. At that time, Rozi and Zeenat were also present. Javed Akhtar was sleeping in the bedroom. When he left their house, Rozi bolted the house from inside and went to take bath. Noorjahan Begum went to offer Namaz. After sometime, accused again came back and knocked the door. Zeenat Parveen opened the door. In the meantime, Razia came out of the bathroom and saw accused talking with Zeenat. Suddenly, he took out an iron hammer from his T-shirt and dealt 2-3 blows by it on the head of Zeenat. Zeenat shouted and fell down unconscious. He then dealt blows by the hammer on the heads of Noorjahan Begum and Javed Akhtar, who also fell down. Thereafter, he dealt blows of hammer on the head of Rozi @ Razia. He then opened the box and almirah kept in the room and took out gold chains, tops, earrings, Jhala, gold rings and some other silver and artificial jewelery and cash of Rs. 23,000/-. After removing brass bangles from the hands of Noorjahan Begum he went away. Hearing shrieks of Rozi, Ramesh Satnami (PW-1), Ram Awadh Pal (PW-5) and some other people of the locality reached in the quarter. On getting information about incident, Gulam Mohd (PW-2), who was on duty, also reached there and thereafter all the injured persons were shifted to Nehru hospital. Noorjahan Begum was already dead.

5. First information report (Ex.P/10) was lodged by Rozi @ Razia Khatoon (PW-4) and a case under Sections 302, 307, 450, 394 and 397 of the Indian Penal Code was registered at Police Station Vindhya Nagar. On the same day, Javed Akhtar also died. Murg intimation in respect of death of these two persons was recorded. The first information was sent to Police Station, Waidhan, for registration, as the incident occurred within its jurisdiction.

6. Sub Inspector J.S. Paraste (PW-12), on the same day, went at the spot and prepared inquest memo of the body of Noorjahan Begum (Ex.P/12). Dead body of Noorjahan Begum was sent for postmortem examination. After conducting inquest proceedings in respect of dead body of Javed Akhtar, his dead body was also sent for postmortem examination.

7. Dr. Vinod Sharma (PW-16) examined the injuries of Razia Khatoon and Zeenat and found injuries on their heads. The injuries were grievous in nature and were dangerous to life.

8. Dr. V.N. Satnami (PW-10) conducted autopsy of the body of Noorjahan Begum. He found three injuries on her skull. Skull bones were fractured. He gave his postmortem examination report Ex.P/19. In his opinion, death of deceased was homicidal in nature. Dr. Satnami also conducted autopsy of the body of Javed

Akhtar and found two injuries on his head. There were depressed fractures of skull bones underneath the injuries. In his opinion, death of deceased was homicidal in nature. Postmortem report of Javed Akhtar is Ex.P/20.

9. Investigating Officer Anil Upadhyay (PW-11), on the same day, in the night, apprehended Appellant and recovered Rs. 23,020/- from the pocket of his pants. On the information given by the Appellant u/s 27 of the Evidence Act, he recovered the stolen articles, an iron hammer and blood stained clothes from his house situated in NCL colony. Recovered articles were identified by Gulam Mohd (PW-2) and Razia Khatoon (PW-4).

10. After due investigation, charge sheet was filed and case was thereafter committed for trial.

11. Appellant abjured his guilt and pleaded false implication. However, he did not adduce any evidence in his defence.

12. Learned Additional Sessions Judge, after trial and upon appreciation of the evidence adduced in the case, found the Appellant/accused guilty and convicted and sentenced him as mentioned above.

13. We have heard the learned Counsel for the parties.

14. It was no longer disputed that the deceased Noorzahan Begum and Javed Akhtar met with homicidal death due to injuries found on their bodies.

15. Dr. V.N. Satnami (PW-10), who performed the postmortem examination of the body of Noorjahan Begum, deposed that dead body of Noorjahan was brought to District Hospital, Waidhan. On the examination of the body, he found following injuries on her body:

(1) Reddish contusion 5 cm x 4 cm present on right side of forehead. Red blood clot was deposited under the skin.

(2) Lacerated wound 5 cm x 3 cm x bone deep on middle of the forehead posteriorly with depressed multiple fractures of underlying bone.

(3) Lacerated wound 4 cm x 3 cm x bone deep on left occipito parietal region of head with depressed multiple fractures of underlying bones.

In his opinion, death of deceased Noorjahan had occurred as a result of coma due to head injury. Death was homicidal in nature. The postmortem examination report (P/19) was written and signed by him.

On the same day, Dr. Satnami (PW-10) performed postmortem examination of the body of deceased Javed Akhtar. He found following injuries on his body:

(1) Lacerated wound on left parietal region of head 2 cm x 1 cm x bone deep with peripheral contusions in size of 6 cm x 5 cm. Sub-cutaneous reddish blood clot with multiple depressed fractures of underlying bone.

(2) Reddish contusion on occipital region of head 5 cm x 4 cm in size with sub-cutaneous reddish blood clot with depressed fracture of underlying bone.

In the opinion of doctor, death of Javed Akhtar had occurred as a result of coma due to injury. Death was homicidal in nature.

16. Apart from the above medical evidence, from the inquest memorandums (Ex.P/6 and P/12), the evidence of Sub Inspector J.S. Paraste (PW-12) and constable Raj Bahadur Pandey (PW-15), who conducted inquest, it is amply established that Noorjahan and Javed died of homicidal injuries found on their bodies.

17. Shri S.C. Datt, learned senior counsel for the Appellant, however, submitted that the trial of the Appellant was not fair, as he was not given an opportunity to be defended by a counsel of his choice. He drew our attention to the order sheets of the trial court dated 25.9.2010 and 27.9.2010. He submitted that on 25.9.2010 counsel, who was defending Appellant, made an application that accused wanted to get the witnesses cross-examined by senior advocate Shri Rajendra Singh Chauhan, therefore, the cross-examination of the witnesses be deferred. However, trial court rejected that application and did not stay the proceedings of the court. On 27.9.2010, counsel Shri Amrendra Singh, who was defending the accused, refused to defend him. The trial court then appointed Mr. G.P. Dwivedi, advocate, as defence counsel on State expenses. Learned Counsel submitted that the right of Appellant as conferred u/s 303 of the Code of Criminal Procedure and under Article 22(1) of the Constitution of India was denied to him. He placed reliance on *Ranchod Mathur Wasawa Vs. State of Gujarat*,

18. In *Ranchod Mathur Wasawa* (supra), the Apex Court observed that Sessions Judge should view with sufficient seriousness the need to appoint State counsel for undefended accused in grave cases. Indigence should never be a ground for denying fair trial or equal justice. Therefore, particular attention should be paid to appoint competent advocate, equal to handling the complex cases, not patronising gestures to raw entrants to the Bar. Sufficient time and complete papers should also be made available to the advocate chosen so that he may serve the cause of justice with all the ability at his command, and the accused also may feel confident that his counsel chosen by the court has had adequate time and material to defend him properly. On perusal of record, it is revealed that Mr. Amrendra Singh, advocate, had filed his Vakalatnama for representing Appellant on 26.8.2010. On 25.9.2010, when the case was fixed for evidence, he moved an application for deferring the cross-examination of the witnesses on the ground that accused wanted to be defended by senior advocate Shri Rajendra Singh Chauhan. On that date, neither Shri Rajendra Singh Chauhan was present nor any Vakalatnama was filed in his behalf. That apart, two witnesses viz. Ramesh Satnami (PW-1) and Gulam Mohd. (PW-2) were examined. Shri Amrendra Singh, advocate, cross-examined these witnesses. None of these witnesses were eyewitnesses. Ramesh Satnami (PW-1) was declared hostile. On

27.9.2010, Mr. Amrendra Singh refused to appear on behalf of Appellant. When Appellant was asked, he expressed his inability to appoint a counsel. Since there was none to represent him, trial court appointed Shri G.P. Dwivedi, advocate, to defend him on State expenses. Shri G.P. Dwivedi filed his power. Learned Counsel for the Appellant could not demonstrate that Shri G.P. Dwivedi was not a senior or competent advocate or was incapable of handling the case. On perusal of the cross-examination of the witnesses done by Shri Dwivedi, it appears that he was competent to deal with the case at hand. He effectively cross-examined the witnesses, who were examined on 27.9.2010. Even on that date neither Shri Rajendra Singh Chauhan, advocate, appeared nor he filed his Vakalatnama. It was not expressed by Appellant that he had no confidence on Shri G.P. Dwivedi, advocate. In these circumstances, in our opinion, it cannot be held that Appellant was not given sufficient opportunity to be defended by a pleader of his choice. Shri G.P. Dwivedi, advocate, did not express any inability to conduct the trial on 27.9.2010 and he cross-examined the witnesses. We are, therefore, of the view that the submission made by the learned Counsel for the Appellant is not sustainable. It cannot be held that the Appellant was denied his right to be defended by a pleader of his choice or his trial was not fair.

19. Learned Counsel for the Appellant next submitted that the trial court gravely erred in placing implicit reliance on the evidence of Razia Khatoon (PW-4), Zeenat Parveen (PW-3) and on the evidence of recovery of the ornaments and other articles from the possession of the Appellant. According to him, the aforesaid evidence was doubtful and the Appellant was falsely implicated. Shri Vijay Pandey, learned Counsel for the State, on the other hand, justified and supported the conviction and sentence of the Appellant.

20. Razia Khatoon (PW-4), who was injured in the incident, deposed that deceased Noorjahan Begum was her mother, deceased Javed Akhtar was her brother and injured Zeenat Parveen (PW-3) is her sister. She knew the accused. On 7.5.2010, when her father had gone on duty and her mother, brother and sister were at home, at about 2.00 O'clock in the noon, accused, who was previously acquainted to them, came to their house. Her mother asked him to sit in the outer room and offered breakfast to him. After about 30 minutes, he went away. Zeenat closed the door. After about 15-20 minutes, when accused again came to her house, Zeenat opened the door. When she came out of the bathroom, she saw that while talking to Zeenat, accused dealt 2-3 blows of hammer on her head. Hearing her shriek, when her brother Javed came in the room, accused also inflicted blows of hammer on his head. He then went in the bedroom and dealt blows of hammer on the head of her mother. When she, with a view to save herself, ran towards the store, accused gave 2-3 blows on her head also, due to which she fell down. Thereafter, he took out cash and ornaments of his mother from the box and alimrah and went away bolting the door from outside. Before leaving, he verified by kicking her whether she was alive. After about one and half hours, she managed to reach at balcony and shouted. Hearing her cries, Satnami uncle came to her quarter and opened the

door from outside. She narrated the incident to him and informed that accused Santosh committed the incident. Other people of the locality were called by Satnami uncle. On getting information, her father also reached there. Her mother had died. She and Zeenat were shifted to hospital. According to her, she had identified the ornaments of her mother in the test identification parade, which were stolen and she had signed the identification memo (Ex.P/9). Learned Counsel for the Appellant submitted that it was not possible for this witness to have seen the incident, because she admitted that there were curtains on the doors of all the rooms. We find no substance in it, as witness clearly stated that curtains though hanged on the doors, but were not used. Though this witness stated that accused did not come to her house in the past, but this does not affect the credibility of her evidence in view of her statement that when she studied in Class-III, accused used to give tuition to her. Apart from it, it is also clear from her evidence that immediately before commission of the offence accused had come to her house and talked with her mother. We find no substance in the submission of the learned Counsel for the Appellant that Razia (PW-4) did not see the incident because she went inside the store room for putting on cloths after she came out from the bathroom. Her presence at the spot cannot be doubted in view of the fact that she herself received injuries in the incident. Her evidence also finds corroboration from the first information report (Ex./10) lodged by her at about 5.40 p.m. naming the accused.

21. Ramesh Satnnami (PW-1) deposed that on 7.5.2010 around 4.00 p.m. when he passed on his motorcycle from the front of the quarter of Gulam Mohd., he heard Rozi shouting from balcony that somebody assaulted them and closed the door from outside. She asked to get the door opened and to inform her father. When he opened the door, he saw Zeenat lying unconscious in the room in blood. In another room, Javed was lying unconscious smeared in blood. In the bedroom, Noorjahan Begum was lying unconscious with blood. He then went to neighbour Arif Pal and informed about the incident and asked him to make a call to hospital. He also asked him to inform the father of Rozi. Number of people from the locality assembled there. Father of Rozi also reached there and when ambulance came there, Zeenat, Rozi and Javed were shifted to hospital. This witness though supported the evidence of Rozi (PW-4), but stated that Rozi did not tell him the name of the person who assaulted them. He was declared hostile and was confronted with his police statement (Ex.P/4) wherein it was mentioned that Rozi told him that incident was done by accused Santosh.

22. Zeenat Parveen (PW-3), who is also an injured eyewitness of the occurrence, categorically stated that on 7.5.2010 accused had come to her house and talked to her mother. Her sister Razia (PW-4) had given him breakfast. After his going, she had closed the door. After 10-15 minutes, he again came back. She opened the door. He pressed her mouth and dealt a blow with hammer on her head. He also assaulted her brother and sister with hammer. She then became unconscious. She regained consciousness in the hospital. She stated that when accused came second time, she was watching television, her mother was offering

Namaz and brother was sleeping. Razia had gone to take bath. According to her, as soon as she opened the door, accused dealt blows by hammer without talking. She denied that she could not see the assault made by accused on other persons. She however clarified that she did not see how Razia and her mother were assaulted. It is true that this witness was a young girl of about 10 years of age. She stated that she was too young when accused used to come to teach her sister Razia, but there was a photograph of the accused in her house because her mother treated him like a son.

23. Evidence of Rozi (PW-4) and Ramesh Satnami (PW-1) find corroboration from the evidence of Ramawadh Paul (PW-5), according to whom, at about 4.00 p.m. Ramesh Satnami came to his house and informed that Rozi was shouting from balcony saying that somebody entered her house and after assaulting them closed the door from outside. He informed to Gulam Mohd, father of Rozi, on telephone and also to hospital. When he went to the house of Gulam Mohd., he found Javed, Noorjahan and Zeenalt lying in the house with injuries on their heads. According to him, when Gulam Mohd. enquired from Rozi, she told that accused Santosh assaulted them by hammer and looted them.

24. Gulam Mohd (PW-2) deposed that on getting information from Ramawadh Paul, he went to his house and saw his son Javed and wife Noorjahan lying dead there. His daughter was lying unconscious. When he enquired from Rozi about the incident, she told that Santosh Singh came twice to their house. When he came second time, he assaulted them by hammer and robbed them of Rs. 23,000/-and gold, silver and other ornaments. He stated that accused, in the past, gave tuition to his children. He identified the ornaments (Articles A/1 to A/24) before the court. According to him, he had also identified the said ornaments in identification parade conducted in Tehsil premises. Though, in cross-examination, he stated that at the time of identification there were police officers at the police station, but he firmly denied that identification of ornaments was done at police station. It is true that he stated that test identification was done in the Tahsil premises whereas Razia (PW-4), stated that identification proceedings were conducted in Nehru Stadium, but, in our opinion, it does not affect the credibility of Gulam Mohd. (PW-2) in view of the evidence of Mohd. Ayaz Khan (PW-9), corporater, who conducted the test identification proceedings on 8.7.2010 in the stadium of Waidhan.

25. As far as recovery of ornaments and cash from the possession of accused is concerned, Inspector Anil Upadhyay (PW-11) deposed that on 7.5.2010 in presence of Mohd. Yunus and Mohd. Sadiq he apprehended accused on Khadia Chowk main road and recovered cash from him, vide seizure memo Ex.P/15. According to him, he searched accused near Khadia bus stand. In the night, at about 9.00 O'clock, he was trying to go away in the bus. After taking him into custody, he brought him to police station and enquired from him. Accused gave information about the ornaments, hammer and the clothes kept by him at his house. He recorded this information in the memorandum (Ex.P/13) and

alongwith witnesses he went to NCL colony and seized ornaments (Article A/1 to A/25) vide seizure memorandum Ex.P/14. He also seized blood stained clothes and the hammer vide seizure memo (Ex.P/16). This witness stated that when he reached at the house of accused, it was locked. Lock was broken, but he did not record any memorandum in that regard. According to him, he received information from the people of the neighbourhood that house was allotted by NCL in the name of father of accused. He did not obtain any information from the NCL.

26. It is important to note that Mohd. Yunus (PW-7), an attesting witness of information and seizure memorandums, stated that he and Sadiq (PW-6) were called by police at about 8.30 p.m.. They saw accused going on foot at Khadia Chowk, whereas Inspector Anil Upadhyay (PW-11) stated that he found accused about 100 paces ahead Khadia Bus Stand sitting in U.P. State Transport Corporation's bus. According to Sadiq Mohd. (PW-6), police had called him in the night at about 9.00 O'clock and, at the same time, accused was found and apprehended. It is surprising that when accused was arrested, he was keeping Rs. 23,020/-in the pocket of his pants. It is also surprising that accused gave detailed description of the ornaments while the memorandum u/s 27 of the Evidence Act (Ex.P/13) was recorded. From the evidence of Inspector Anil Upadhyay (PW-11), it is apparent that the house from which the ornaments and other articles were seized was locked and the lock was broken. It does not stand to reason that if accused could have disclosed all the incident and the articles alleged to have been stolen, he could have handed over the key of the lock also. Investigating Officer did not make any effort to investigate as to in whose possession the house was from which the seized articles were recovered. It is also strange that investigating officer did not arrange for the test identification parade of the articles to be conducted by an Executive Magistrate. The said identification proceeding was conducted by a corporater, who had no experience of conducting the test identification parade. Mohd. Ayaz Khan (PW-9) admitted that at the time when sealed packet of ornaments was brought to him by police, other ornaments, which were to be mixed, were also brought by them. Police informed him that the ornaments, which were to be mixed, were all artificial.

27. Aforesaid discrepancies and infirmities, in our opinion, create doubt about the genuineness of the recovery and seizure of the ornaments at the instance of accused. In these circumstances, the finding recorded by the trial Court that the ornaments and the cash, alleged to have been stolen from the house of complainant, were seized from the possession of accused, cannot be upheld.

28. After bestowing our anxious consideration to the submissions made by the learned Counsel for the parties and having gone through the evidence of Razia (PW-4) and Zeenat (PW-3), we find that there is nothing on record to indicate that they are not reliable witnesses. By their evidence, it has been clearly established that accused/Appellant came to their house and after assaulting them, deceased Noorjahan and deceased Javed took away the cash and

ornaments from their house.

29. On 7.5.2010, Dr. Vinod Sharma (PW-16), examined the injuries of Razia (PW-4) and Zeenat (PW-3). He found following injuries on the body of Razia:

(1) Tender Boggy swelling 6 cm x 6 cm on left temple.

(2) Lacerated wound 4 cm x 2 cm on occipital region of skull.

On CT scan, he found a depressed fracture of left parietal bone with an extra dural haematoma. According to him, injury of head was grievous in nature and was dangerous to life. Injury report Ex.P/30 was signed by him.

On the same day, he examined injury of Zeenat and found following injuries:

(1) Multiple lacerated wounds measuring 3 cm x 2 cm five in number at forehead and fronto parietal region of scalp. Palpable fracture of skull bone.

(2) Right eye black.

According to Dr. Vinod Sharma (PW-16) on CT scan, he found multiple intra cranial haematoma in the injuries. In his opinion, aforesaid injuries were serious and dangerous to the life of patient. Injury report is Ex.P/31.

30. Accordingly, the finding of conviction of Appellant recorded by the trial Court u/s 302 of the Indian Penal Code on two counts for causing death of Smt. Noorjahan and Javed Akhtar, u/s 307 of the Indian Penal Code on two counts for attempting to commit murder of Zeenat and Razia @ Rozi, u/s 394 read with Section 397 of the Indian Penal Code on four counts and Section 450 of the Indian Penal Code is affirmed.

31. The next question before us is whether the death sentence awarded to Appellant by the trial Court is justified? Learned Counsel for the Appellant submitted that Appellant is a young man of about 26 years of age. He is a first offender. There is nothing on record to indicate that he has a criminal background or he is a menace to society. He is an educated person, who had given tuition to injured Razia in the past. As such, it cannot be said that he is incapable of being reformed or he cannot be a useful member of society. Learned Counsel placed reliance on Bachan Singh Vs. State of Punjab, , Machhi Singh and Others Vs. State of Punjab, , Ram Anup Singh and Others Vs. State of Bihar, , Ram Pal Vs. State of U.P., , Sahdeo and Others Vs. State of U.P., and Swamy Shraddananda @ Murali Manohar Mishra Vs. State of Karnataka,

32. The Apex Court in Shivaji @ Dadya Shankar Alhat Vs. The State of Maharashtra, in the background of the guidelines indicated in Bachan Singh's case (supra) and Machhi Singh's case (supra) held that an extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Before opting for the death penalty, the circumstances of the "offender" also require to be taken into consideration alongwith the circumstances of the "crime". Life imprisonment is the rule and death sentence is an exception. In other words,

death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime. A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage.

33. The Apex Court in *Devender Pal Singh Vs. State National Capital Territory of Delhi and Another*, culled out the principle that when collective conscience of the community is shocked, the death penalty can be awarded. It was observed that:

The community may entertain such sentiment in the following circumstances:

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of "bride burning" or "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed by way of the test for the rarest or rare cases, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

34. in the instant case, from the evidence of witnesses, it is found that the Appellant, in the past, gave tuition to girl Razia Khatoon (PW-4). It has come in evidence that deceased Noorjahan Begum treated accused like her son. After a long time, when accused came to the house of deceased Noorjahan, she, with affection, entertained him and offered breakfast. However, with a view to satisfy his greed for money and ornaments, he again went to her house and assaulted 4 victims by an iron hammer on their heads. Noorjahan and her minor son Javed died and her minor daughters Razia Khatoon and Zeenat suffered grievous and

dangerous injuries on their heads. It was sheer luck that Zeenat and Razia remained alive. All the four victims were innocent persons, who had no animus against the accused. The manner in which assault was made on the victims indicated that the crime was enormous in proportion. Victims of murder were innocent child and a helpless woman. The nature of crime was extremely brutal, grotesque and diabolical. The motive for commission of murder was to commit robbery. The fact that accused was a young person, he was not menace to society or he could be reformed, in our opinion, could not be accepted as a ground for taking out the case from the category of rarest of rare cases.

35. The facts of the case of Ram Anup Singh (supra) are different. In that case, four members of the family were murdered. A gift deed was executed in the past, which gave rise to strained relationship between the two parties. There had been several Panchayats to resolve the dispute. Though some other minor disputes also arose between the two parties, but, for last 10 years, accused persons never resorted to violence. Therefore, in the opinion of the court, a lurking suspicion arose that something must have happened on account of which the Appellants resorted to mass killing. The evidence on record did not provide any clue. Considering this aspect, the Apex Court held that since there was no evidence on record to suggest that the accused persons could not be reformed or rehabilitated and that they constituted a continuing threat to the society and further that there was no evidence to disclose the immediate cause of the incident, it was not safe to confer the death sentence. In the case at hand, innocent child and the woman were brutally murdered and two minor girls were brutally assaulted by hammer by the Appellant for obtaining money and ornaments.

36. In Ram Pal Vs. State of U.P., the Apex Court observed that while in a given case death penalty may be appropriate sentence even for a single murder, it would not necessarily mean that in every case of multiple murders death penalty has to be normal punishment. Number of deaths cannot be the sole criterion for awarding the maximum punishment of death. In that case, the Appellant was a party to an incident in which 21 people including young children were murdered by gun shot injuries or by burning in latched house, but since the incident in question was found to be a sequel to the murder of a close relative of the Appellant and other accused. It was suspected to have been committed by the members of the victims' family and prior to that, the victims' family was accused of having committed the murder of two of the close relatives of the Appellant's family for which members of victims' family were prosecuted. The Apex Court, on the facts of the case, treated those circumstances amounting to be a provocation from the victims side and further that the role of Appellant was found to be somewhat similar to the role played by other accused persons, who were awarded lesser sentence. In these circumstances, the death sentence awarded to Appellant was reduced to imprisonment for life.

37. In Sahdeo and Others Vs. State of U.P., accused/Appellants armed with

deadly weapon intercepted the bus and killed six persons in bus and two in the house, who were running to save their lives. The Apex Court held the death penalty not justified because of the failure of prosecution to produce clear and distinct evidence to prove the actual overt act of each of the accused. It was held that some of the Appellants might not have had an occasion to use the firearm though they shared the common object of unlawful assembly. Considering these circumstances, coupled with the unsatisfactory investigation in the case, the Apex Court altered the death sentence into life imprisonment. The facts and circumstances of the present case are altogether different. There is clear cogent and consistent evidence that the sole accused/Appellant committed murder of two innocent persons and attempted to commit murder of two minor girls by brutally assaulting them by an iron hammer.

38. In *Swamy Shraddananda* (supra), the Apex Court felt hesitant in endorsing the death penalty to accused in the circumstances that he devised the plan to kill his wife in the manner that the victim could not know till the end and even for a moment that she was betrayed by the one she trusted most, and further, though the way of killing appeared quite ghastly it may be said that it did not cause any mental or physical pain to the victim. In the instant case, the facts are altogether different. Deceased and injured girls were brutally assaulted by a hammer.

39. In our considered opinion, the present case falls in the rarest of rare category. The circumstances and the manner in which the death of two innocent persons was caused and an attempt on the lives of two minor girls was made clearly established the mean and deprave motive of Appellant calling only for one sentence i.e. death sentence. Any other sentence, in our opinion, would be insufficient. The sentence of death awarded to accused/Appellant by the trial Court is, therefore, confirmed. The sentences awarded under Sections 307 (on two counts), 394 read with Section 397 (on four counts) and Section 450 of the Indian Penal Code are also affirmed.

40. Accordingly, reference made by the Additional Sessions Judge u/s 366 of the Code of Criminal Procedure is accepted and the appeal filed by the Appellant is dismissed.