

(2007) 03 AP CK 0030
In the Andhra Pradesh High Court
Case No : R.T. No. 1 of 2007

F.A.C. III Additional District and Sessions Judge	APPELLANT
Vs	
Chandra Bushan Upadhyay	RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Arms Act, 1959 — Section 25(1), 27(1)
Constitution of India, 1950 — Article 14, 19, 19(2), 19(3), 19(4)
Criminal Procedure Code, 1973 (CrPC) — Section 129, 235(2), 313, 354(3), 366
Penal Code, 1860 (IPC) — Section 201, 297, 302, 337, 34

Citation : (2007) 2 ALD(Cri) 135 : (2007) 2 ALT(Cri) 415 : (2007) CriLJ 3764

Hon'ble Judges : M. Venkateswara Reddy, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : Public Prosecutor, for the Appellant; C. Padmanabha Reddy, S.C. and Banala Krishna Rao, for the Respondent

Judgement

B. Prakash Rao, J.—The appellants, who are accused Nos. 1 to 5 in Sessions Case No. 291 of 2003 on the file of the IIIrd Additional Sessions Judge, Ranga Reddy District, by way of this appeal seek to assail the findings of guilty and conviction as against accused No. 1 u/s 302 of the Indian Penal Code (for brevity "IPC") and sentencing him to death; against accused Nos. 2 to 4 u/s 302 r/w Section 34, I.P.C. and sentencing them each to suffer imprisonment of life; against accused Nos. 1, 2, 4 and 5 u/s 201, I.P.C. and sentencing them each to suffer rigorous imprisonment for three years; against accused Nos. 1 and 2 u/s 435, I.P.C. and sentencing them each to suffer rigorous imprisonment for three years; against accused Nos. 1 to 5 u/s 411, I.P.C. and sentencing them each to suffer rigorous imprisonment for three years and against accused No. 1 under Sections 25(1)(a) and 27(1) of Arms Act and sentencing him to suffer rigorous imprisonment for three years under each count. All these sentences were directed to run concurrently. The other case in R.T. No. 1 of 2007 is a reference u/s 366 of the Code of Criminal Procedure for confirmation of death sentence.

2. Heard Sri C. Padmanabha Reddy, learned senior counsel appearing on behalf

of the appellants/accused and the learned Public Prosecutor appearing on behalf of the State/respondent.

3. The case of the prosecution, in brief, was to the effect that on 17-3-2003 from 10.00 a.m. to 7.00 p.m., in Railway Quarters, Secunderabad, accused Nos. 1 to 4, in furtherance of their common intention, caused the death of Baldevraj Seth (deceased No. 1), Prabhat Seth (deceased No. 2), Kum. Kanika Seth (deceased No. 3) and master Rishab Seth (deceased No. 4). Thereafter, they caused the disappearance of evidence by cleaning the blood stained marks on the floor with the help of accused No. 5 and then shifted the dead bodies and the blood stained clothes of accused Nos. 1 to 4 into a Maruti Alto Car of the first deceased and drove the said car to a secluded place near S.P. Nagar Railway track and there they poured petrol on the car and the dead bodies and set fire to it. During the course of the same transaction, they committed theft of gold jewellery and a net cash of Rs. 44,500/-.

4. As per the version of prosecution, deceased Nos. 1 and 2 are the husband and wife, P.W. 12 and deceased Nos. 3 and 4 are their children. Deceased No. 4 happened to be the adopted son, P.Ws. 10 and 13 are the brothers of the first deceased, P.W. 11 is the brother and P.W. 14 is the mother of deceased No. 2. Deceased No. 1 was working as Chief Track Engineer in S.C. Railway, Secunderabad and residing in the official Bungalow No. 100 at South Lalaguda, Secunderabad. Accused No. 1 is their servant residing in the out-house of the bungalow, accused No. 5 is his sister of accused No. 1, who was residing along with accused No. 1 and accused Nos. 2 to 4 used to visit accused No. 1.

5. At the relevant point of time, P.W. 12, who is the daughter of deceased Nos. 1 and 2, was doing her fashion-designing course at New Delhi. P.Ws. 4 to 8 and 21 are the domestic servants at the bungalow of the deceased family. On the date of the incident, all of them visited the bungalow on their respective working hours to attend their work. However, they were not allowed by accused No. 1 to do their work on the pretext that deceased No. 2 was not feeling well and she had gone to a movie.

6. On 17-3-2003 at about 9.00 a.m., P.W. 21 Mali of the house attended his duty and saw deceased No. 1 was going to the office and later at about 9.30 a.m., deceased No. 2 gave him tea and deceased No. 4 gave him biscuits. At about 10.30 a.m., deceased No. 2 purchased broom sticks from a woman, who came to the bungalow. At about 10.00 a.m., P.W. 23 Carpenter came to the bungalow to prepare twelve poster boards as directed by deceased No. 2, but accused No. 1 did not allow him to do the work saying that deceased No. 2 was not feeling well and it would cause disturbance to her. However, on his request, accused No. 1 allowed him to do the work at the main gate. Then at about 10.30 or 10.45 a.m., P.W. 23 heard the sound "Dhan" and on that he peeped towards the bungalow but could not see anything and he continued his work. At about 11.30 a.m., deceased No. 3 returned from the school and while she was entering through main door into the bungalow, accused No. 1 asked her to go from the kitchen

door. At about 12.30 p.m., P.W. 24 Driver came to the bungalow to take deceased No. 2 for a women organisation programme and parked his vehicle underneath a tamarind tree opposite to kitchen. Accused No. 1 informed that deceased No. 2 was not feeling well and asked him to wait. Later, accused No. 1 took the vehicle from the tamarind tree and parked it near the main gate. Forty-five minutes later, accused No. 1. asked him to go away as deceased No. 2 was not feeling well. In the meantime at about 1.00 p.m., office peon came to the bungalow for the purpose of taking lunch carrier to deceased No. 1 and gave him the carrier. After finishing the work at about 4.00 or 4.30 p.m., P.Ws. 21 and 23 went away. P.W. 8 is the Night Watchman and his timings are from 6.00 p.m. to 6.00 a.m. As usual on that day, he went to the bungalow at 6.00 p.m., and found the lights in the bungalow were switched off. At about 6.30 p.m., accused No. 1 gave him Rs. 100/- to get sweets for deceased No. 2 but he refused to go as it was the time for arrival of deceased No. 1 and he has to open the gate. In spite of it, accused No. 1 insisted him to get sweets stating that he would open the gate and on that P.W. 8 went to get the sweets. At about 6.50 p.m., deceased No. 1 returned to home. As the main gate was closed, P.W. 22 driver got down and opened the gate and then accused No. 1 came immediately and took the briefcase of deceased No. 1 and asked the driver to go away. When deceased No. 1 asked about the lights were off, accused No. 1 replied that one of the fuses had gone. Subsequently, the driver P.W. 22 went away. Later at about 8.00 p.m., P.W. 8 returned to bungalow and did not find accused No. 1 in the house and accused No. 5 took the sweets and informed him that the deceased family members had gone out for dinner.

7. In the meanwhile, P.W. 12, who is the daughter of deceased Nos. 1 and 2, was ringing up to the landline phone and also to the mobile of deceased No. 1 and there was no response from her family. At about 8.30 p.m., she called P.W. 3, who is their immediate neighbour, and requested him to find out why there was no response from her family and further asked him to inform her family that she was coming to Secunderabad by Rajadhani Express. Thereafter, P.W. 3 sent his peon i.e., P.W. 29 to the bungalow and who at about 9.00 p.m., on enquiry with P.W. 8 and accused No. 5, who were in the bungalow, he was stated that all the deceased family members had gone out.

8. On 18-3-2003 at about 6.00 a.m., P. W. 8 woke up and found the bungalow was locked and as usual he watered the plants and left the bungalow at about 7.00 a.m. At about 9.00 a.m., P.W. 21 came for his duty and saw accused No. 1 weeping and stated that the deceased family had gone out and yet did not return. On 18-3-2003, P.W. 3 received a telephone call from accused No. 1 about the same. Then he asked him to contact P.W. 26, who is the family friend, and subsequently P.W. 3 contacted P.W. 19 who made enquiries through P.Ws. 15 to 17 and later came to know that one burnt Maruti Alto car was traced in Moulali area.

9. On 18-3-2003 at about 5.25 a.m., while P.W. 2 was going to a Mosque near

the water tank, noticed smoke emanating from the car and he went near and saw a car was completely burnt and further noticed three dead bodies in the back seat of the car and one burnt body in the dickey of the car and he informed the same to P.W. 1 who in turn saw the dead bodies and then reported the same to Malkajgiri Police Station. On 18-3-2003 at about 6.45 a.m., on the basis of the report given by P.W. 1, P.W. 47 the then Sub-Inspector of Police, Malkajgiri registered the same as case in Crime No. 87 of 2003 and issued FIR, which is marked as Ex. P. 134. Thereafter, he rushed to the scene of offence and there P.W. 48 Circle Inspector of Police took over the investigation and noted the Engine and chassis number and sent them to R.T.O. Office to find out the ownership of the vehicle. At about 7.30 a.m., P.W. 16 R.P.F. Constable visited the spot and informed him that Railway Officer and his family members were found missing. At about 9.15 a.m., the other Railway Officials also visited the spot and among them P.W. 3 showed the photographs of the family members of deceased No. 1 and suspected that the burnt Maruti Alto Car belongs to deceased No. 1. In the meanwhile, he received information through telephone that on verification of the records in the R.T.O. Office, it was found that the burnt car belongs to deceased No. 1. Thereafter, P.W. 47 held scene of offence panchanama. During observation, he seized a plastic can M.O. 74 in the presence of P.W. 30 and drew rough sketch of the scene of offence, which are marked as Exs. P. 11 and 12 respectively. He further got the scene photographed and video graphed through P.W. 32 and sent a requisition to P.W. 44 Professor, Forensic Medicine, Gandhi Medical College to conduct autopsy. While removing the dead bodies from the dickey of the car, two metal rings M.Os. 4 and 5, two gold rings M.Os. 2 and 3 and one belt buckel M.O. 6 were recovered under M.O. 89 Panchanama. P.W. 3 identified M.Os. 2 to 5 as that of deceased No. 2. Thereafter, he held inquest over the dead bodies of deceased Nos. 1 to 4 in the presence of P.W. 30, which are marked as Exs. P. 13 to 16 respectively. On requisition, P.W. 44 visited the spot and held autopsy over the dead bodies of deceased Nos. 1 to 4. The cause of death could not be determined due to post-mortem charring of the bodies. Exs. P. 116, 110, 119 and 113 are the relevant post-mortem reports of deceased Nos. 1 to 4 respectively.

10. In the meanwhile, P.W. 49 Assistant Commissioner of Police, Malkajgiri Division, Cyberabad took up investigation and visited the bungalow of the deceased family where he noticed blood-stains on the door curtains of the bed room, in the bathroom, on the floor etc., and noted the physical features of the bungalow in the presence of P.W. 30 and prepared observation report and rough sketch, which are marked as Exs. P. 17 and 18 respectively. P.W. 38 Finger Print Expert visited the bungalow and lifter chance finger prints on steel almirah inner lock door (marked as A), two chance finger prints on the rear side bathroom door (marked as B & C) and on comparison, chance finger prints marked "A" was identical with the specimen prints of accused No. 1 and the chance finger print marked as "B" was identical with that of accused No. 2 and Ex. P. 73 is the relevant report.

11. During the process of investigation, P.W. 49 examined P.Ws. 4 to 8 and basing on their statements, he examined accused No. 1 on 19-3-2003, who was giving contradictory versions. During the course of examination, he noticed small portion of the hair on his forehead was found burnt and further noticed struggle marks on his both hands and neck to which he could not give any explanation. On securing the presence of P.Ws. 34 and 41 and in pursuance of the statement of accused No. 1, M.Os. 7 to 35, 60 to 63 and 102 (gold jewellery and cash) were recovered under Ex. P.37 panchanama and thereafter, accused No. 1 led them to the house of accused Nos. 2 to 4 and at the instance of accused No. 2, M.Os. 36 to 46, 65 to 68, 105 to 107 were seized under Ex. P.42-panchanama and at the instance of accused No. 4, M.Os. 104, 47 to 58, 69 to 73 were recovered under Ex.P.40 panchanama and then they led them to Orthopedic Ward in Gandhi Hospital where accused No. 3 was taking treatment as inpatient. At the instance of accused No. 3, a sum of Rs. 7,560/- was seized under Ex. P. 43-panchanama from his possession. As there were struggle marks on accused Nos. 1, 2 and 4, P. W. 49 sent them for examination and Exs. P. 34, 36 and 35 are their wound certificates respectively. P. W. 33 was informed by the accused during their examination that they received injuries while committing the murder. On 21-3-2003, he produced P. Ws. 11 to 13 before Forensic Experts at F.S.L. for the purpose of D. N. A. test. P. W. 39-Assistant Director in F. S. L. took their blood samples. Exs. P. 75 to 84 are the relevant reports. During his further investigation, P. W. 49 visited the petrol bunk at Tarnaka and examined and recorded the statement of P. W. 25, which indicates that on the intervening night of 17/18-3-2003 at about 12.30 or 1.00 a. m., accused No. 2 came to the petrol bunk and purchased 10 litres of petrol in can stating that his family members are in the car which came to a halt due to exhaustion of petrol.

12. On 24-3-2003, P. W. 49 filed a requisition before A. J. F. C. M., and obtained police custody of accused Nos. 1, 2, and 4. During the course of interrogation, at the instance of accused No. 1, empty catridges M. O. 109 were seized in the presence of P. W. 35 under Ex. P. 45 panchanama and he further led them to the bungalow of deceased No. 1 and there burnt pant M. O. 111 and blood stained cotton swab M. O. 110 were seized and further seized floor scrapings from the floor M. O. 109 and Exs. P. 45 and 46 are the relevant panchanamas.

13. On 3-4-2003, P. W. 49 filed a requisition before the Court to send accused No. 3 to F. S. L. for collecting blood samples. As per the Court order on 7-4-2003, P. W. 39 collected the blood sample of accused No. 3 for the purpose of comparison of blood stains on the articles.

14. On 17-3-2003 at about 2.30 or 2.45 p.m., accused No. 2 went to P. W. 31 Security Officer, Bharat Steel Industries where accused Nos. 2 to 4 worked and sought for his help stating that accused No. 3 was injured and thereupon, he referred the name of Balaram, who knows Doctors in the locality. Later at about 3.00 P. M., they visited P. W. 18-R. M. P. Doctor and requested him to accompany them to Gandhi Hospital and asked him to get accused No. 3 treated for his

injury and gave him Rs. 2,000/- and gave a telephone number of P. W. 31 and went away. Then, P. W. 18 tried to contact accused Nos. 1, 2 and 4 but could not get any response and he waited up to 9.00 a.m., and left. On 17-3-2003 at about 3.45 p. m., P. W. 33 examined accused No. 3 and gave him primary treatment and referred the injured to Orthopedic Surgeon. Ex. P. 33 is the M. L. C. register. Then P. W. 43-Assistant Professor in Orthopedic Department, Gandhi Hospital examined accused No. 3 and Ex. P. 106 is his care sheet.

15. On 9-4-2003, P. W. 43 collected attendance particulars of accused Nos. 2 to 4 from Bharat Steel & Co., Moulali. Exs. P. 139 to 141 are the particulars. On requisition, P. W. 40-A. J. F. C. M., recorded 164 statements of P. W. 18, 25 and 31. Exs. P. 5, 6 and 191 are their statements respectively. On his further requisition on 2-6-2003, he conducted test identification parade wherein P. W. 25 identified accused No. 2 and P. W. 18 identified accused Nos. 1 to 4. Ex. P. 100 is the test identification proceedings. After obtaining sanction order for prosecution under Arms Act and on receiving all the relevant expert opinions and relevant documents and on completion of investigation, P. W. 49 filed a charge-sheet. During the course of trial, prosecution examined P. Ws. 1 to 49 and marked Exs. P1 to 143. On behalf of the defence, one witness was examined as D. W. 1.

16. The plea of the accused was that of total denial.

17. On a consideration of the aforesaid evidence and the material on record, the Court below found ultimately the accused guilty as grated above on the aforesaid provisions and imposed the sentence as stated above and accused No. 1 was sentenced to death. Hence, the reference and also the appeal by the accused persons.

18. Sri. C. Padmanabha Reddy, learned senior counsel appearing for the appellants/accused strenuously contended by taking us through the entire evidence and the material on record that the entire prosecution case rests only on the circumstantial evidence and admittedly there is no eye witness account. Further, there is absolutely no evidence as to how, where and in what manner the offence has been committed and also as to how the dead bodies were taken out from the house of the deceased. It is further contended that the Court below sought to place reliance more on the confessions made to the Police, which are totally inadmissible. Even in regard to recovery, it is stated that the same is quite artificial above all and it has been contended that the very presence of accused Nos. 2 to 4 is very much doubtful and there is absolutely no positive, direct or any cogent evidence to show their presence or participation as such and that apart having regard to the facts and circumstances and even the absence of the very details in specie, the case does not warrant the imposition of harsh punishment of death nor any valid reasons were given in support thereof. It has been contended that the prosecution has utterly failed to prove its case beyond reasonable doubt and therefore, all the appellants are entitled to acquittal. Even otherwise, there being no direct account as to the very commission of offence nor the involvement of any of the accused, they cannot be mulcted with any

liability nor accounted therefor.

19. Repelling the said contentions, the learned Public Prosecutor once again taking us through the entire evidence and the material on record points out that the un rebuttable circumstances one or the other are directly linked to the commission of offence by the accused persons and that apart the extra judicial confessions given by the accused to the Doctor coupled with the Forensic evidence would amply establish the link of the accused persons with the commission of offence. Even otherwise, the absence of any explanation from any of the accused persons in spite of establishment of their presence is very pointer to the very involvement and therefore, the Court below was right in convicting the accused persons and imposing the death penalty as far as accused No. 1 is concerned. Having regard to the fact that he being a domestic servant and inside man, could not have taken such recourse against his own employer, which sends totally a wrong signal to the Society and therefore, the death sentence imposed against accused No. 1 is amply justified and fall well within the parameters laid down in various judicial pronouncements.

20. On an appraisal of the detailed submissions made from both the sides and on perusal of the material available on record, the points that arise for consideration in this case are as to whether the prosecution has established its case beyond reasonable doubt and whether the imposition of sentences awarded including the death as against accused No. 1 is justified.

21. On an appraisal of the very case as put forth by the prosecution visa-vis the charge as laid against the accused persons, this is a case which totally depends on the circumstantial evidence. Admittedly there is no eye witness account in regard to the very commission of the offence at the relevant point of time or even the later count as to taking away the bodies and setting them to fire in a car near S.P. Nagar Railway track away from the scene of offence. Therefore, the entire evidence has to be looked into and appreciated on various angles as put forth to see whether the circumstances lead to establish the involvement of the accused persons in the commission of any of the acts. However, it has to take note that the very narration of the prosecution version in regard to cause of death of the entire family which includes deceased Nos. 1 and 2 and their own children deceased Nos. 3 and 4 and later setting them on fire by placing their bodies in a car at a different place near the Railway track, appears to be a ghastly act.

22. While making the submissions, Sri. C. Padmanabha Reddy, learned senior counsel appearing for the appellants sought to draw a distinction on the evidence as available on record as to the very involvement of accused Nos. 2 to 5 on one count and accused No. 1 on the other. Therefore, it has to be seen that how far and to what extent the evidence leads to or connects to any of these accused persons with the offence as alleged against them. Going by the category-wise of the prosecution witnesses and analyzing the same, it has to begin with the domestic witnesses of the deceased family.

23. P.W. 4, who is a cleaning woman in the deceased house, stated that accused No. 1 was allotted two rooms in the same bungalow for his residence and he was working as a bungalow peon and accused No. 5, who is the sister of accused No. 1, resides with him and accused Nos. 2 to 4 used to come to the house of accused No. 1 frequently and she has seen them in number of times at the house of accused No. 1. Accused No. 2 looked after the garden work in the said bungalow No. 100 for a period of 2 to 3 months, by residing in the house of accused No. 1. The deceased family occupied the official bungalow ten months prior to the date of the incident. She worked as a maidservant for sweeping and cleaning (mopping) the floor of the bungalow and her duty hours are from 10.00 a.m., to 11.00 a.m., daily. She also stated that P. Ws. 7, 5, and 6 used to work in the house of the deceased family. On 18-3-2003 at about 11.00 a.m., she came to know about the death of deceased Nos. 1 to 4. However, on 16-3-2003 as usual, she did the work of sweeping and cleaning (mopping) the bungalow from 10.00 a.m., to 11.00 a.m. On 17-3-2003, as usual, she went to the bungalow for sweeping and mopping the floor of the bungalow. Daily she used to go into the bungalow through the kitchen door. On 17-3-2003 at 10.00 a.m., when she tried to enter into bungalow through the kitchen door (rear door), she found that the rear door was bolted from inside and therefore, she called accused No. 1 "Bhushan bhayya" and on hearing her voice, accused No. 1 partly opened the rear door and stated Madam told him that, she is not feeling well and asked him to do the work allotted to her i.e., sweeping and cleaning (mopping) the floor and therefore, he asked her to go away and so saying accused No. 1 closed the rear door. Therefore, she returned to home. On 18-3-2003 at about 10.00 a.m., accused No. 1 came to her house and informed that Madam told him that no maid servant should attend duties at the bungalow on 18-3-2003 as the Madam is not feeling well and therefore, she attended to her own household work. At about 11.00 a.m., a number of police officials and railway officials came to the bungalow of the deceased and then she came to know that the members of the deceased family were burnt in Malkajgiri area. On the date of incident, the other eldest daughter of the deceased family i.e., Kumari Meenal Seth was studying in New Delhi. In her cross-examination, she reiterated about the visit of accused Nos. 2 to 4 to the house of accused No. 1 frequently and accused No. 2 looked after the garden work for 2 or 3 months. She further asserted that when about her visit on 17-3-2003, accused No. 1 told her that since Madam asking the maidservant not to attend the duties, as she is not feeling well. Except referring to accused No. 1, this witness does not say anything in regard to the presence of accused Nos. 2 to 5. The only version, which she gave, was only accused Nos. 2 to 4 used to visit the house of accused No. 1 frequently.

24. The learned Counsel appearing for the appellants points out the contradictions in the statement of P. W. 49, who was working as A. C. P. and also the Investigating Officer, stated in the cross-examination that P. W. 4 did not specifically state before him that the deceased family occupied the bungalow ten months prior to the date of the incident and she did not state that P. Ws. 5, 6,

and 7 used to work in the bungalow for the duties assigned to them and she did not state to him that she visually enters the bungalow through kitchen door but she did not state before him that she addressed accused No. 1 as "Bhushan Bhayya". No doubt, there is a suggestion to P. W. 4 on behalf of the accused to the effect that she never resided in the out-house of the bungalow and she is giving false evidence at the instance of the railway officials. However, earlier thereto, she stated that P. W. 7 and herself are still residing in the out-house in the same bungalow. Thus, there is no serious challenge to her version that she has been a maidservant working in the bungalow.

25. Coming to the evidence of P. W. 5, who is another cleaning maidservant in the bungalow. She reiterated that accused No. 1 was allotted two rooms in the same bungalow and accused No. 5 is residing with accused No. 1 and accused Nos. 2 to 4 used to visit the house of accused No. 1 frequently. She stated that daily she used to sweep and clean (mop) the floor of the bungalow in the evening time from 5.00 P.M., to 5.30 P. M., or 6.00 P. M., whereas P. W. 4 used to massage deceased No. 2 and sweep and clean the floor of the bungalow with wet cloth daily from 10.00 a.m., to 11.00 a.m. She also stated that P. W. 6 used to wash the clothes of the deceased family. On 18-3-2003, at about 11.00 a.m., she came to know that deceased Nos. 1 to 4 were died and their bodies were burnt near the Railway track. On 17-3-2003, as usual, she went to the bungalow to sweep and clean and when she tried to enter through the rear door into the bungalow, she found the door was bolted from inside and then she called accused No. 1 as "Bhushan Bhayya, Bhushan bhayya" and on hearing her voice, accused No. 5 stated to her from inside without opening the door that Madam i.e., deceased No. 2 is not feeling well and asked them not to disturb her and that Madam asked accused No. 5 to attend the work allotted to her on that day and therefore, she returned to home. On the next day, she came to know about the death of deceased Nos. 1 to 4. In the cross-examination, she stuck to her version that accused No. 1 was residing there with accused No. 5 and accused Nos. 2 to 4 used to visit frequently the house of accused No. 1. Except giving a suggestion, nothing has been elicited from her as to her version that she was working as maid servant attending duties daily in the evening hours and also her visit on 17-3-2003 and she being stated by accused No. 5 that Madam's ill-health, she went back to her house. However, it is to be, noticed that she does not speak about the presence of accused Nos. 2 to 4 at the relevant point of time except stating that they used to visit the house frequently.

26. P. W. 6, who is another maidservant, used to do massage deceased No. 2. She stated that about 20 days prior to the date of incident, she occupied one of the outhouses of the official bungalow of the deceased family and she used to massage Madam daily at about 12.00 noon. She stated that she knew accused Nos. 1 to 5 and accused No. 2 used to come to the house of accused No. 1 and accused No. 5 was residing with accused No. 1. She stated that P. Ws. 4, 5 and 7 were residing in the same bungalow and P. Ws. 4 and 5 attending to sweeping and cleaning (mopping) the floor and P. W. 7 washing the clothes. On 17-3-2003,

as usual at about 12.00 noon, she went to the bungalow and found the rear door of the bungalow was bolted from inside and when called accused No. 1 as "Bhushan Bhayya" whereupon accused No. 1 partly opened the kitchen door and stated that Madam had gone to a movie and so saying, she returned to home. After taking lunch at about 2.00 p. m., on 17-3-2003, P. W. 7 met her and stated to her that she was told by accused No. 1 that Madam is suffering with fever and then she stated to her that she was told by accused No. 1 that Madam had gone to a movie, which are two different versions. Therefore, she again went to the bungalow at about 2.00 p. m., and found the rear side door (kitchen room door) was kept opened and she entered into the hall of the bungalow and accused No. 1 came into the hall from the bed room and then she asked accused No. 1 as to why he told lies saying that Madam had gone to a movie when he has stated to P. W. 7 that Madam is suffering with fever and then accused No. 1 stated that Madam had gone to a movie, got wild and in an angry mood asked her to go away and she noticed the floor of the hall is sticky and wet and then she asked accused No. 1 as to why the floor in the hall was sticky and wet and then he replied that Madam asked to clean the floor in the hall with acid and accordingly, he washed with acid and asked her to go away in an angry mood. As soon as she came out of the house, accused No. 1 closed the rear door from inside and thereupon, she returned to home. On the next day i.e., 18-3-2002 at about 7.30 a.m., while she was returning home by purchasing milk, she found accused No. 1 and the wife of P. W. 3 were talking with each other and on enquiry about the deceased family had come back or there is any information through telephone, accused No. 1 replied her that the deceased family did not come back and thereupon, she had returned to her house. On 18-3-2003 at about 11.00 a.m., police officials and railway officials came to the official bungalow and she came to know about the death of the deceased family. In the cross-examination, she reiterated her principal version and asserted that she used to reside in the out house and she stated that she remains in the out house within the compound of the bungalow from the morning on 17-3-2003 till she was examined by the Police on 18-3-2003 at about 8.00 p.m. She stated before the Police that she informed to the Police that she knew accused Nos. 1, 2 and 5 and accused No. 2 used to come to the house of accused No. 1 frequently and accused No. 5 is the sister of accused No. 1 and she is residing with accused No. 1. She also stated to the Police that P. Ws. 4 and 5 are residing in the same premises and they used to attend cleaning and mopping of the floor. However, this witness does not speak about the presence of accused Nos. 2 to 4 nor any detail is forthcoming in this regard.

27. The next domestic witness P. W. 7, who used to wash the clothes in the bungalow, reiterated about the allotment of outhouse to accused No. 1, who was working as a Peon, and accused No. 5 residing with accused No. 1 and accused Nos. 2 to 4 used to come to the house Of accused No. 1 frequently. She also resided in the out-house of the said bungalow along with her parents. She used to wash the clothes of the deceased family between 9.00 a.m., and 10.00 a.m.

All the maidservants used to enter the bungalow through the rear door (kitchen room door) and on 17-3-2003 at about 9.00 a.m., as usual, when she went to the bungalow to wash clothes, she found the kitchen room door was bolted from inside. She called accused No. 1 as "Bhushan Bhayya, Bhushan Bhayya". Accused No. 1 replied from inside without opening the door that Madam is not feeling well and asked her to work in the afternoon. Again on the same day at 1.00 p.m., she went to the bungalow for washing the clothes and found the soiled clothes dumped near the tap where she used to wash the clothes daily and found the door of the kitchen room was bolted from inside. She washed the clothes at the tap and went away without entering into the bungalow. She further stated that daily accused No. 5 used to fold the dried clothes and keep them in the bungalow. She reiterated that she knows P. Ws. 4 to 6 and they are also residing in the out-house. P. Ws. 4 and 5 used to sweep and clean the floor of the bungalow in the morning time and P. W. 6 used to massage Madam daily. After washing the clothes at about 02.00 p.m., she met P.W. 6 and stated to her that Madam is not; feeling well and asked her to go and attend her. On 18-3-2003, she was having some work in her house and intended to go to the bungalow at 2.00 p.m., for washing the clothes. On 18-3-2003, Police Officials and Railway Officials came to the bungalow before 12.00 noon and through them she came to know that deceased Nos. 1 to 4 died and their dead bodies were burnt near Moulali. In the cross examination, she stuck to her theory except usual suggestions. We do not find any reason to doubt her version. Here again, this witness does not speak about the presence or seen accused Nos. 2 to 4 on the date of incident.

28. P. W. 8, who is working as a Gangman in the Railways, stated that his superior has asked him to do night watchman duty in the bungalow of the deceased family for a period of two months and hence, he did the duty from 15-1-2003 to 17-3-2003 and his duty hours are from 6.00 p. m., to 6.00 a.m., on the next day. He stated that accused No. 1 is working as a bungalow peon and residing there along with accused No. 5. On 17-3-2003 at about 6.00 p.m., as usual, when he came to the bungalow for night duty, the lights in the bungalow were switched off and whenever such power cut is found, the deceased family used to sit in the chaman (garden) in the bungalow premises, however, he did not find them in the chaman though the lights were switched off. He further stated" that when he was standing at the gate of the bungalow at about 6.30 p.m., accused No. 1 came from inside the bungalow and gave Rs. 100/- to him and stated that Madam asked him to bring sweets and at that time lights inside the bungalow were switched off but one bulb in the garden and one light on the rear side of the kitchen of the bungalow were burning but he refused to go stating that he has no cycle and that it is the time for arrival of officer (deceased No. 1) and he has to open the gate but accused No. 1 insisted him to go and bring sweets and that he would open the gate, if the officer (deceased No. 1) comes. He further stated that he was not feeling well on that day and so went to Tarnaka area by walk and had a tea and took some tablets with tea and

purchased sweets and returned to the bungalow at about 8.00 p.m. He came inside the compound and found the main door of the bungalow was locked and then he went rear side door and the same was also bolted from inside. He did not find accused No. 1 in the bungalow but he found accused No. 5 standing in front of the residence of accused No. 1. He gave sweet packet to accused No. 5. On enquiry, accused No. 5 stated that Madam and her family have gone out and then he came back to the gate.

29. Now coming to the depositions of the other witnesses, who are not part of the domestic core, require to be considered.

30. P. W. 21, who is a Gardner (Mali) with the Railways, stated that his duty includes watering the plants and do gardening and he has been working as a Mali in the said bungalow. He reiterated that accused No. 1 was working as a bungalow peon and accused No. 5 is residing with accused No. 1 and accused Nos. 2 and 3 used to come to the house of accused No. 1 now and then as they are his friends. He stated that he used to attend duties from 8.30 a.m., to 4.00 p. m., daily. On 17-3-2003, he came on duty to bungalow at about 9.00 a.m., and at about 11.00 a.m., the youngest daughter of the deceased Nos. 1 and 2 returned home from the school and when she tried to enter the bungalow as usual from the main door, accused No. 1 asked her to come through the rear door of the bungalow as the front door of the bungalow was closed. As per the direction of accused No. 1, she entered the bungalow through the kitchen door. Deceased No. 1 left for Office at about 9.00 a.m., from the bungalow and thereafter, Madam gave tea to him in the verandah of the bungalow and the son of the deceased Nos. 1 and 2 gave biscuits to him. At about 10.30 a.m., a woman came to the bungalow for selling broom sticks. Madam purchased 10 broom sticks and gave three broom sticks to him and the remaining were taken to inside the bungalow and at about 12.00 noon, the driver came with jeep from the Office and parked the jeep under the tamarind tree and went out side for urination. At that time, accused No. 1 brought the jeep by driving it from tamarind tree to the main gate and said something to the driver, which he does not know. The driver went away in his jeep to the Office. At about 1.00 p.m., the Office Peon came and accused gave lunch carrier to him and he went away. At about 11.00 a.m., he heard some sound of falling of a chair and the main servants, who are staying in the out-houses, were coming out and talking with accused No. 1 and going back. On that day, he worked from 9.00 a.m., to 4.00 p.m., and thereafter he went to his home. On 18-3-2003, as usual, he came to duty at about 9.00 a.m., and saw accused No. 1 weeping at the bungalow stating that the deceased family members had gone out on the previous night and they have not come back. At about 11.00 a.m., on the same day. the officials along with their wives came to the bungalow and then he came to know that the deceased family members were died and their bodies were burnt in a car. In the cross-examination, he stuck to his version without any demur. However, as the learned senior counsel for the appellants rightly points out that he did not state that he has seen accused No. 2 to 4 on that day. No-doubt this silence is a

glaring one.

31. P. W. 22, who is the jeep driver, reiterated that he has been a staff driver and he stated that accused No. 5, who is the sister of accused No. 1, is residing with accused No. 1. On 17-3-2003, deceased No. 1 came out of the Office at 6.30 p.m., to go to the house bungalow and they came in a jeep along with him, however, he found that the main gate of the bungalow was closed and he got down from the jeep and opened the gate and took the vehicle inside the bungalow premises along with the Officer. He further stated that they used to stop their vehicles at a distance of 20 feet from the main door of the bungalow and the officer gets down from the vehicle and walks into the bungalow from that place. On that day, at about 6.50 p.m., accused No. 1 was waiting at the place usually where they park the office vehicle and as soon as the Officer got down from the jeep, accused No. 1 took the carrier and the briefcase from the jeep. As soon as the Officer got down from the jeep, he asked accused No. 1 as to what had happened to the electricity, then accused No. 1 replied that the fuse had gone and the lights inside the bungalow were switched off. He turned his vehicle and came out of the bungalow and after closing the gate, he went to the office and kept the vehicle there and went to his village Bhuvanagiri and daily he is doing up and down journey from his village to the Office. On 18-3-2003, he came to the office at Rail Nilayam for duty at about 2.00 p.m., he came to know that the deceased family members were done to death and their dead bodies were burnt in the car near Moulali area. He along with some other staff members went to the spot to see the dead bodies but they were not allowed to go near the dead bodies and they stayed there for a while and returned to the office. In the cross-examination, he stuck more to his aforesaid version and there is nothing in the cross-examination to cast any aspersion.

32. P. W. 23, who is a Carpenter working in the Inspector of Works Office, South Central Railways, stated that he knows accused Nos. 1 and 5, who are residing together in the bungalow, and he used to attend the carpentry work in the bungalow. On 15-3-2003, deceased No. 1 telephoned to his officer for the purpose of carpentry work in his bungalow. On the instructions of his Officer, he went to the bungalow and met deceased No. 2 and she asked him to prepare 12 poster boards with a card by preparing frames to them and she gave Rs. 1,000/- for purchasing the material stating that the boards are required for women organization. He returned to the Office and took permission from the Officer. Being 16-3-2003 was a Sunday. on 17-3-2003 in the morning he along with his Kalasi by name Aliuddin purchased necessary wooden material and went to the bungalow at about 10.00 a.m., on a rickshaw and took the material inside the compound and unloaded the same underneath the tamarind tree within the premises. After that his Kalasi went away. When he was about to start the work, accused No. 1 came and told him that Madam is not feeling well and asked him not to do work on that day as it will cause disturbance to Madam and the time then was 10.00 a.m. He told to accused No. 1 that Madam had ordered to prepare poster boarders by 17-3-2003 and as such he has to prepare the same

on that day itself and he further stated to accused No. 1 that if Madam asks him as to why he has not, prepared the poster boards, he will mention your name that he could not do the job as accused No. 1 asked him not to do the work and then accused No. 1 told him to do the work near the main gate. At that time, P. W. 21 was also attending his Mali work and accused No. 1 told him to tell P. W. 21 not to attend his work near the bungalow and ask P. W. 21 to go to the main gate and do the work there. At about 10.45 a.m., when he was doing the work, he heard the sound of DMAN" and he was under the impression that the crackers might have been fired for scaring the monkeys and he peeped towards the bungalow but he could not see anything and he continued his work. At about 11.30 a.m., the daughter No. 1 returned home from the school and when she was going towards kitchen door side, accused No. 1 clapped and asked the girl saying "Chinnujee" to come through main door. As per the directions of accused No. 1, the girl entered the bungalow through main door. At about 12-00 noon, the jeep driver came with the jeep and parked the same underneath the tamarind tree; near the kitchen of the bungalow. The jeep driver talked with accused No. 1 but he does not know what transpired between them. Accused No. 1 brought the jeep by driving it and parked it near the main gate, where he was doing the carpentry work. At about 1.00 p.m., the office peon came to the bungalow and accused No. 1 brought carrier from the rear side and gave it to the office peon. Accused No. 5 heaped the soiled clothes near the tap situated on the kitchen side. Dhobi came and washed the clothes and went away. The driver of the jeep came on the jeep and went away after staying at (he gate for some time. Accused No. 1 told him that he would give a ring to him, as soon as the Madam wakes up and he worked at the main gate till 4.30 p.m., and completed the work and kept the poster boards in the store of the bungalow and went away. He along with P. W. 21 together went home. On 18-3-2003, he came to know that deceased Nos. 1 to 4 were burnt in their car near Moulali. In the cross examination, nothing has been elicited by the defence to spell any doubt on him.

33. P. W. 24, who is the driver with the deceased family, reiterated that accused Nos. 1 and 5 are residing together in the out-house of the bungalow. On 17-3-2003, he has taken the jeep to the bungalow at about 12.00 noon and found the main gate was closed and P. W. 21 Mali opened the gate. Usually they stop the vehicle underneath the tamarind tree opposite to kitchen side and by the time he was parking the jeep underneath the tree, he told to accused No. 1 that Madam asked him to come. Accused No. 1 told him that Madam is not feeling well and he asked accused No. 1 whether he has to stay there or to go away and then accused No. 1 replied him that Madam will wake up one hour thereafter and asked him to wait near the main gate. In the meanwhile, he went outside the bungalow for urination. Accused No. 1 brought the vehicle from the tamarind tree to the main gate and parked it there and when he asked accused No. 1 as to where he is taking the vehicle, he stated to him that he is keeping the vehicle at the main gate and asking him to wait there. He along with P. Ws. 21 and 23 took their lunch near the main gate. Accused No. 1 came to him about

45 minutes later and told him that Madam did not wake up and asked him to go back and that Madam will tell if there is any necessity and then he will give him a telephone call and then he returned to his office and told his officer that Madam is not feeling well and his Officer asked him whether Madam has given any further instructions and he told him that no further instructions were given to him. On 19-3-2003, when he came for duty, he came to know that deceased Nos. 1 to 4 were murdered and their dead bodies were burnt near Moulali. In his cross-examination, nothing much has been elicited to reflect the other way on the version as he spoke in the chief-examination.

34. P. W. 27, who is the Stenographer attached to deceased No. 1, stated that he came to know about the death of the deceased family on 18-3-2003 at about 9.30 a.m., and further stated that deceased No. 1 attended the office on 17-3-2003 at about 9.00 a.m., or 9.05 a.m. and worked in the office till 6.30 p.m., and at about 6.35 p.m., on the same day, deceased No. 1 came down from 5th floor to go to his house and he followed him up to the vehicle and he further stated that usually deceased No. 1 takes lunch in the office and on 17-3-2003, he took lunch in his chambers in the office. On 18-3-2003, after knowing about the incident, he went to the spot and saw three or four dead bodies in a Maruti Alto car. In the cross examination, nothing has been elicited.

35. Thus, from the aforesaid versions as spoken to by both the domestic and non-domestic employees, it clearly shows the presence of accused No. 1 though who was giving different versions about the illness and also deceased No. 2 going to movie, all these witnesses consistently spoke about accused Nos. 1 and 5 residing together in the out-house of the same bungalow. However, none of these witnesses speak about the presence or otherwise visit of any accused Nos. 2 to 4 on that particular day in or around. It is also worth noting that there is no proper denial forthcoming on behalf of the accused to any of these witnesses as to the presence of accused Nos. 1 and 5. "

36. On the other angle on which the prosecution put forth its case is from the depositions of P. Ws. 31, 18; 33 and 43 which requires to be considered from proper perspective.

37. P. W. 31, who is a Security Officer in Industrial Entrepreneurs Syndicate Club, Nacharam from 15-7-2003, stated that he does not know the deceased family but he knew accused Nos. 2 to 4 as they worked under him as security guards under a contractor by name Dinesh Pande. He is running a Security Company under the name and style of Baba Security Company and employing security guards on contract basis. Initially, accused No. 3 joined with him followed by accused Nos. 4 and 2. He further stated that he saw accused Nos. 2 to 4 on 15-3-2003 on the last occasion and on 17-3-2003 at about 2.30 or 2.45 p.m., accused No. 2 came in an auto and stopped the auto at a distance of about 70 to 80 yards on the other side of the road and came to the factory by walk and he was on duty from 8.00 a.m., to 8.00 p. m. Accused No. 2 came to him and informed that accused No. 3 is in the auto and sustained an injury. Then he

asked accused No. 2 as to how accused No. 3 sustained injury and to that accused No. 2 replied that they lent some money to third parties and when they demanded for repayment, a quarrel had taken place and accused No. 2 sought some help from him. He replied to accused No. 2 that he cannot render any help as they are no more the security guards of his Company and the accounts of accused Nos. 2 to 4 were settled by the Company on 15-3-2003 itself. On Court's query, he stated that accused Nos. 2 to 4 have themselves stopped working in the company on 15-3-2003 and got settled their accounts in the Company and went away. Since they rendered service in the Company, they sought again help from him to provide medical assistance to accused No. 3 and then he asked him to approach one Balaram, who is working in Gautham Company, which is adjacent to Bharat Steel Company as he knows Doctors in the locality and then accused No. 2 went away. At about 7.45 or 8.00 p.m., on 17-3-2003, he received a telephone call from Dr. Baba enquiring about his telephone number and thereupon, the said Doctor stated that one person by name Monu Singh was brought to his clinic for treatment and he took the said Monu Singh to Gandhi Hospital for treatment and enquired as to whether he is his man or not and he also stated that there were three more persons along with Monu Singh. The Doctor further stated to him that Monu Singh sustained bullet injury and there is something wrong or foul play in it and the Doctor requested him to provide one person to attend the injured Monu Singh, and he replied him that Monu Singh is no more their employee and that he has no men with him and he is helpless and so saying, he disconnected the telephone. Later on 31-5-2003, his statement was recorded by the Magistrate under Ex. P. 19. In the cross-examination, he once again reiterated the very same version and denied all other suggestions given to him to the effect that he himself voluntarily had gone to Gandhi Hospital to see accused No. 3.

38. P. W. 18 is an R. M. P. Doctor by profession, who stated that on 17-3-2003 at about 2.00 p.m., he closed his clinic. While he was taking rest in his house, which is attached to his clinic, at about 3.00 p.m., accused Nos. 2 to 4 came to his residence and pressed the calling bell and then he opened the doors and noticed accused Nos. 1, 2 and 4 standing in front of his house and they came in an auto" and accused No. 3 was sitting in the auto. He further stated that accused Nos. 1, 2 and 4 represented to him that the patient, who is sitting in the auto, sustained an injury to his leg on account of fall due to drunken state and then he went to the auto and examined accused No. 3, and he noticed two bullet or gun shot injuries on the left leg of accused No. 3 and the left leg was fractured. Accused No. 3 was in intoxication condition and they stated to him that they are from Bihar State and they do not know anybody in Hyderabad City and requested him to get the patient treated somewhere and also requested him to accompany them to some other hospital and help them. He stated to the accused that the injury is serious in nature and it is beyond his capacity to give treatment. On repeated requests, he accompanied them in the Auto and took them to Gandhi Hospital. Accused No. 3 was taken to emergency ward and on

examination they stated that accused No. 3 sustained bullet injuries and on enquiry as to how he sustained those injuries, they replied that they do not know how accused No. 3 sustained injuries and it is they i.e., accused Nos. 1, 2 and 4 who knew about it are standing outside the hospital and then he will enquire with them and then he came out of the Hospital and searched for accused Nos. 1, 2 and 4 but they were not present there and within half an hour or one hour, accused Nos. 1, 2 and 4 again came to Gandhi Hospital and stated to him that they will not come inside the hospital and paid Rs. 2000/- and requested him to get treated the patient. When he refused to receive the said amount, accused Nos. 1, 2 and 4 requested him like anything and paid the amount to him. When he went inside the hospital to find out whether any treatment or prescription is given to accused No. 3, the Doctors, who examined accused No. 3, advised him to take X-ray and take medicines prescribed by them. He came outside the hospital and searched for accused Nos. 1, 2 and 4 and found they were missing. He purchased the medicines prescribed by the doctors and gave them in the ward. His statement was recorded by the Magistrate under Ex. P.5. On 2-6-2003, he identified accused Nos. 1 to 4 in the test identification parade conducted by the Magistrate in Cherlapally Central prison. In the cross examination, except the formal suggestions, nothing much has been brought out to discredit the version as he spoke in the chief examination except to the extent that the photos of accused Nos. 1 to 5 were published in the Eenadu daily newspaper and he saw the newspaper at about 7.30 a.m.; on 18-3-2003, on which the learned Counsel for the accused submitted that having seen such photos, P. W. 18 identified the accused Nos. 1 to 5 and therefore, such identification is of no consequence.

39. P. W. 33 is a Casualty Medical Officer in Gandhi Hospital from December 2000 to May 2003, who stated that on 17-3-2003, at about - 3.45 p.m., he examined accused No. 3 and noticed the following injuries:

1. Two punctured wounds 2" x 1" x 1" on the anteromedial and lateral aspect of left with deformity, suggestive of fracture;
2. Tenderness on the umbilical region;
3. Tenderness on right 2nd and 3rd toes. Injuries are fresh.

He gave primary treatment and advised for x-ray of the left leg and abdomen and medicines. He examined accused No. 1 also and found the following injuries:

1. Scratch marks on the left cheek, beneath right ear, right side of neck and left side back of neck brown in colour.
2. 4 linear abrasions over right dorsum of right hand, crusting present.
3. Scratch marks over 3rd finger of right hand, brown in colour;
4. Singeing of hair in frontal region.

40. At the time of examination of accused No. 1 accused Nos. 4 and 2 were present and enquired about as to how such injuries are sustained and on which

they stated that they sustained injuries while committing murder on 17,-3-2003. This version could not possibly be received in evidence as it would amount to an extra judicial confession. This witness was examined much later and in the cross examination, he stated that he did not obtain the signature of the person who brought accused No. 3 to the hospital. He admitted that he did not mention anywhere in Ex. P. 33 as to how the injuries are sustained. Having regard to different ink found in Ex. P. 34, he stated in the cross examination that the ink in the pen was exhausted by the time he was signing on Ex. P. 34. He also stated in the cross-examination that it is not mentioned in Ex. P. 35 that on the information given by accused No. 4, the cause of injuries was noted as while committing murder at 9.30 a.m. There is a mistake on his part while writing the same in regard to the date, which was subsequently corrected. He stated that, in fact, to his dictation, one of the house Surgeons scribed Exs. P. 34 to P. 36 but he does not remember his name.

41. P. W. 43, who is the Assistant Professor, Orthopedic Department, Gandhi Hospital, Secunderabad and who was working as Causality Medical Officer at the relevant: point of time, stated that he examined accused No. 3 on 17-3-2003, who sustained fractures to both the bones of the left leg at: lower 1/3rd. After giving anesthesia on 28-3-2003, he manipulated and corrected the deformity and achieved the alignment of the bone and thereafter, plaster of paris was applied from the toe to above the knee. The person, who brought the injured, did not disclose how the injured was sustained and the punctured wounds noticed by him can be caused by falling on a projectile or sharp object bullet injury.

42. Thus, the aforesaid evidence would only show the injuries of accused No. 3, which were attended to. Though there is a total gap in the evidence as to how, where and in what manner accused No. 3 did sustain those injuries, there is, nothing forthcoming from any of the witnesses. Further, noticeably none of the aforesaid domestic witnesses P. Ws. 4 to 7 and other than the domestic visitors namely P. Ws. 21 to 24, 27 and 8 speak about the presence or visit of accused No. 3 at the time of incident. It is not the version on behalf of the prosecution as to any use of arms in the commission of offence or the manner in which the actual incident occurred.

43. P. W. 3, who is a neighbour to the quarter where the deceased used to reside and who is working as Deputy Chief Engineer with the Railways and whose bungalow No. 1013, stated that he knew the deceased family and he can identify accused Nos. 1,2 and 5. On 17-3-2003 at about 8.30 p.m, he received a phone call from P. W. 12 from New Delhi that she is speaking from New Delhi Railway Station to board Rajadhani Express to come to Secunderabad and as there is no response from her father's residence telephone, she requested to find out and inform that she is coming to Secunderabad by Rajadhani Express. Thereupon, he sent his bungalow Peon P. W. 29 to the house of the deceased and convey the same. Within 10 minutes thereafter, P. W. 29 came back and informed that he asked P.W. 8 Watchman who informed him that the deceased family had gone

out and does not know the details. P. W. 29 further stated that he went inside the bungalow and enquired from accused No. 5 who informed him that the deceased family had gone out for dinner. However, he did not see accused No. 1 in the bungalow. On the next day morning i.e., 18-3-2003 at about 6.00 a.m., accused No. 1 telephoned to him that the deceased family had gone out for dinner in the previous night and they did not return so far. Then, he told accused No. 1 to enquire with one P. W. 26, who is admittedly friend and who resides outside the Railway Quarters. Then, he contacted P. W. 19, who is the Divisional Railway Manager, Hyderabad and who is also a close friend of deceased No. 1, over telephone and informed about non returning of the deceased family. He then told him to find out whether the exams of deceased No. 3 are over or not and then he telephoned Vijay Mohan, Additional Railway Manager, whose son is also studying in the same class as that of deceased No. 3 and who told him that the exams are still going on and on 18-3-2003 there is an exam of deceased No. 3. Then, he gave telephone number of Kendriya Vidyalaya School and then he telephoned to School at 8.00 a.m., and enquired with the class teacher of 8th standard, whether deceased No. 3 had attended for exam or not and then she verified in the class and informed him that deceased No. 3 did not turn up for examination on 18-3-2003. After hearing that news, he became worried and in the meanwhile accused No. 1 telephoned back again stating that he enquired with P. W. 23 and found that the deceased did not visit the house in the previous night. On 18-3-2003 at about 7.15 a.m., his wife had gone to the school bus stop and after getting her children in the bus and while returning home, she went inside the bungalow of the deceased and enquired about the deceased family with accused No. 1 who told her that the deceased family had gone to dinner on 17-3-2003 at about 7.30 p.m., or 8.00 p.m., and they did not turn up so far. At about 8.45 a.m., on 18-3-2003 P. W. 19 informed that the Railway Police Officials received an information that one Maruti Alto Car was found burnt near the Railway gate of Moulali and four charred bodies were found in the car and he asked him to come along with him and then he got suspicion and he took up photographs from his Album consisting of the deceased family members and went to the spot and found three dead bodies in the rear side and one dead body in the dickey of the car. At about 10.00 a.m., he telephoned to the bungalow of the deceased family and asked accused No. 1 to come to the spot. Within a few minutes, accused No. 1 came to the spot and as soon as he saw the car and dead bodies, started weeping and saying that the deceased family had gone to dinner in the previous night and they did not return. While removing the dead bodies From the car by police officials, forensic officials have noticed three rings in the dickey of the car. After seeing the rings, he identified that one of the rings belongs to deceased No. 2 i.e., wife of deceased No. 1 and it was also tallied with the photograph of deceased No. 2. M. O. 2 is the gold ring belonging to deceased No. 3. In the cross-examination, he only reiterated to the aforesaid events and identification of M. O. 2 though he stated that he did not state to Police that he has seen accused Nos. 2 and 5 number of times at the residence of the deceased family bungalow. In all other response, his version remained unassailed.

44. P. W. 29, who is the Peon of P. W. 3, in his chief examination reiterated that on being told by P. W. 3 about the telephone from P. W. 12, he went to the bungalow and also inside and found accused No. 5 and enquired about the deceased family and then she told that the deceased family have gone outside and he came back and informed the same. The same version is stuck in the cross-examination.

45. P. W. 25, who is working as an Helper in University Filling Station at Tarnaka, stated that he knew accused No. 2, who on the intervening night of 17/18-3-2003 at about 12.30 or 1.00 a.m., accused No. 2 came to the Petrol Bunk and asked him in Hindi to give 10 Its. of petrol and he bought a plastic can M. O. 74. On enquiry, accused No. 2 told him that the deceased family are in the car and the car came to a halt due to exhaustion of petrol and therefore, he came there by walk about 2 or 3 kms. Therefore, he gave 10 Its. of petrol to him and accused No. 2 paid Rs. 380/- towards cost of the petrol and when he was about to give back Rs. 3/- to accused No. 2, however, accused No. 2 without taking the change went away. In the cross-examination, though at length he slated that he did not write any bill for selling 10.Its. of petrol to accused No. 2 and no Supervisor stayed in the Petrol Bunk on that night.

46. P. W. 26, who is a family friend, stated that he knows the deceased family and he is running a Footwear shop, and on 18-3-2003 at about 7.00 a.m., accused No. 1 telephoned to him and informed that the deceased family had gone to dinner in their car on 17-3-2003 at about 8.00 p.m., and they have not returned home so far and on hearing the same, he got worried. On 18-3-2003, he telephoned to the residence of deceased and accused No. 1 lifted the same twice or thrice and subsequently some ladies lifted the telephone and represented that the deceased family met with an accident. Then immediately, he closed the shop and went to the bungalow at about 10.30 or 11.00 a.m., and he came to know about the incident. Nothing much can be of any assistance either way from his version.

47. P. W. 20, who is the Principal of Johnson Grammer School, I. C. S. C, Habsiguda, stated that deceased No, 4 was a student in his School and studying 3rd class and he came to know about the incident from newspapers.

48. P. W. 28 is a School Teacher working in Kendriya Vidyalaya School who stated that deceased No. 3 was her student studying 8th class in the School. On 17-3-2003, deceased No. 3 wrote her social studies exam, and on the next day she was to take Hindi exam, but she did not attend. Somebody telephoned to the School at about 8.00 a.m., on 18-3-2003 and enquired whether deceased No. 3 has attended the examination or not. She went to the examination hall and verified and found deceased No. 3 did not attend and informed the same. On 18-3-2003 in the T.V., they saw that the family members of the deceased including deceased No. 3 were done to death and their dead bodies were burnt. Except to this extent, her statement does not proceed further.

49. Now coming to the manner in which the Law was set in motion. P. W. 1 is a Councilor of 9th Ward, Malkajgiri and doing real estate business. Daily he used to visit his Ward in the morning. As usual on 18-3-2003 at about 6.00 a.m., while he was turning in his Ward, P. W. 2 one of the co-option members of Malkajgiri Municipality met him and informed that he found one Maruti Car completely burnt and smoke emanating from it and he also saw some dead bodies in the car near Uppariguda Railway Track on the left side of the road, leading from Uppariguda to Malkajgiri. Then, he along with some colony people rushed to the spot and saw a Maruti car was completely burnt and some smoke was emanating from it and they noticed three or four dead bodies in the car and those dead bodies were burnt beyond recognition. They, he gave a written complaint in Ex. P. 1 to the Sub-Inspector of Police, Malkajgiri Police Station. M. O. 1 is the burnt Maruti Alto Gar, which he identified. The contents of Ex. P. 1 are that he came to know one Maruti Alto Car was burning on the road leading from Uppariguda to Malkajgiri near Railway over head tank by the side of Railway Track in the limits of their Uppariguda Ward and he went there and found Maruti Alto car was completely burnt and appears that some burnt dead bodies are in that car.

50. P. W. 2, who is the minority co-option member of the Malkajgiri Municipality, reiterated the aforesaid version stating that while he was going to mosque to offer prayer and when he took left turn near the compound wall of Laxmi garden near the water tank, he noticed a car at a distance of about 300 yards and smoke was emanating from the car and on seeing it tyres of the car were completely burnt and three dead bodies were burnt in the back seat of the car and one dead body was burnt in the dicky of the car. He informed the same to P. W. 1, who in turn informed to the Police.

51. P. W. 45, who is the sub-inspector of police, recorded the FIR and P. W. 48 and 49 are the Investigating Officers one after the other, who conducted investigation. P. W. 30 is a panch witness to the scene of offence and P. Ws. 34, 41 and 35 are the panch witnesses to the recoveries. P. W. 40 conducted the test identification parade. P. W. 44 is the doctor, who conducted autopsy. P. Ws. 33, 43 and 46 are the doctors from the Gandhi Hospital.

52. On requisition from the police, the persons of the FSL are examined as PWs. 36, 37, 38 and 39, and 32 is the photographer. Ex. P-111 is the requisition from the police on 18-3-2003 and Ex. 112 is the postmortem examination report and Ex. P-113 is the final opinion given, P. W. 44-the Doctor who gave his opinion that the cause of death could not be determined due to the postmortem charring of the body of deceased No. 2. Ex.- P-I 14 is the requisition to conduct postmortem examination of deceased No. 1 and Ex. P-115 is the report and Ex. P-116 is the final opinion given by P. W. 44 stating that the cause death could not be determined due to the postmortem charring of the body of deceased No. 3. Ex. P-I 18 is the postmortem examination report of body of deceased No. 4. Ex. P-I 19 is the final opinion relating to the death of deceased No. 4. Thus, in spite of such exercise on behalf of the prosecution for autopsy by the doctors

concerned, the report does not indicate the cause of the death.

53. Now, falling back to the reports of FSL persons. P.W. 36 is the Assistant Director of Forensic Science Laboratory, who stated that on requisition from the police, he examined material objects items 1 to 8, 24 and 31 and gave report after examination. P.W.37 is another Assistant Director in Forensic Science Laboratory, who stated that on receiving requisition from the constable, he examined items 1 to 3, which included item No. 2 live cartridge and he gave opinion in Ex.P-48. Ex.P-49 is a photo micrograph comparison firing pin marks. P.W.38 is the finger print expert in the Finger Print Bureau who stated that on receipt of a message from the Cyberabad Commissionerate control, he went to the spot and found burnt car at the scene offence and noticed two articles like small plastic tins and he did not find any chance prints either on the plastic tins or on the burnt car. At about 3.30 p.m., on 18-3-2003, he went to the bungalow of deceased family and examined the entire bungalow and also inside the premises for the chance finger prints. He found one chance finger print on the steel almirah's inner lock door and developed the same and photographed on the spot, which was marked as "A". He noticed two chance fingerprints on the rear side bathroom door and developed them and photographed, which were marked as "B" and "C". On 27-3-2003, he received the fingerprints of accused Nos. 1 to 5. The fingerprint slip containing the finger prints of accused No. 1 is marked as "S-1" and the finger print slip containing the finger prints of accused No. 2 is marked as "P". He compared the fingerprints of accused with the chance fingerprints of A and B. The chance print marked as "C" was not a clear and so he compared the fingerprints of the accused with the chance prints of A and B, which are clear. On comparison, he found the right thumb impression of accused No. 1 marked as "S1" is identical with the chance finger print marked as "A" and the left middle finger print of accused No. 2 marked as "P1" is identical with the chance finger print marked as "B" and further he found that the thumb impressions of the other accused are not tallied with other chance finger prints and accordingly, he gave the report in Ex.P.51. Ex. P. 52 is the covering letter and P-53 is the finger print slip of accused No. 1. Ex.P.4 is the second finger prints slip of accused No. 1. Exs. P.61 to 63 are the finger print slips of accused No. 3. Exs.P.64 to 67 are the finger print slips of accused No. 4. Exs. P. 68 to 70 are the finger print slips of accused No. 5. Ex.P.71 is the photo comparison chart showing the identical ridge characteristics in the chance print marked as "A" and in the specimen right thumb impression marked S-1 is concerned in Crime No. 87 of 2003. On reading of the deposition of this expert and opinion given by him, it would be that the chance finger prints inside the bungalow were found that of accused Nos. 1 and 2 and not tallied with any of the accused Nos. 3 to 5. Having regard of the aforesaid evidence as pointed out above, the presence of accused No. 1 in the house being peon and accused No. 5, who is the sister of accused No. 1, resides with him is not seriously much in dispute. Though it is to be noticed that the version as given by the other domestic witnesses i.e., P.Ws. 4 to 7 and also the other accused Nos. 2 to 4, who are the friends of accused No. 1

and they used to visit him very frequently being his friends, none of these witnesses or any other witnesses spoke about any such visits by accused Nos. 2 to 4 inside the main bungalow where the deceased family resides. Therefore, the explanation sought to be given by the learned Counsel appearing on behalf of the appellants that since admittedly accused Nos. 2 to 4 being friends and used to visit accused No. 1 and a mere chance finger print of accused No. 2 could not put against him nor would in any way lead to any conclusion about his involvement. Noticeably as pointed above, none of these witnesses nor any of these suggestions given to them would give any indication of any such visits by accused Nos. 2 to 4 or having any access inside the bungalow. The only version, which has come forth is the visit of accused Nos. 2 to 4 to accused No. 1 or his residence portion at out house but not in the bungalow. Therefore, the presence of accused No. 2 has totally remained unexplained nor there is any suggestion in this regard worth taking note of. This material, which is a highly scientific based on forensic examination, would amply go to show the presence of either of these accused persons viz., A-1 and A-2. The presence of accused No. 5 is also not seriously in dispute as she was admittedly residing with accused No. 1. At this juncture, an important feature, which cannot go unnoticed or without any consequence is the statement given by accused u/s 313 of Cr.P.C. either of these accused viz., accused Nos. 1, 2 or 5 give any sort of explanation or come out with any reasoning in their statement in regard to their presence or absence either way. These statements recorded u/s 313, Cr.P.C. are only that of total denial as to the entire prosecution version and pleading not guilty. When the evidence leads to show the presence of these accused, the absence of any explanation forthcoming on their side would sufficiently go against them. Though is rightly pointed out by the learned Counsel appearing for the accused by placing reliance on the decision cited across the Bar in Bachan Singh Vs. State of Punjab, to the effect that absence of any explanation u/s 313, Cr.P.C. for their presence which has been sufficiently established by the prosecution cannot be a sole circumstance to show their involvement in the commission of offence. However, by taking the overall account and other circumstances, which are already there on record, suffice it to show their involvement rather than total absence of non-involvement. Even though the other medical evidence on autopsy did not indicate the cause of the death as such having regard to the fact that not only the very vehicle in which the dead bodies were found but also the bodies themselves were completely charred and beyond any recognition. It is highly impossible to expect any such opinion as to the cause of death, however, the very event in the way it has been shown would amply lead to show that it is a case of clear homicide. As pointed out above, there is no evidence of any such involvement directly or otherwise much less any role-played or specific overt acts as such on the part of accused Nos. 2 to 4.

54. Though detailed submissions are made across the Bar from both the sides in regard to the relevancy and to what extent the absence of any explanation forthcoming in a statement recorded u/s 313, Cr.P.C. of the accused could be

used finally. In this connection, it is relevant to note the principles laid down in Anthony D'Souza and Others Vs. State of Karnataka, where considering the facts of that particular case, it was held in paras 14 and 15 as follows:

The fourth circumstantial evidence appearing against the accused is the recovery of MOs. 20, 21 and 22 at the instance of A-3. M-20 is the wooden "katte" alleged to have been used for murdering both the deceased. Both the Courts below did not place much reliance on MO-21 the side mirror of the lorry and MO-22 sunmica piece fixed at the lorry. However, both the Courts relied upon M-20 the assaulting weapon. Further M-20 was stained with blood and it was sent to Forensic Science Lab and it is confirmed to have been stained with human blood.

The last and probably the most formidable circumstantial evidence against the accused is their own conduct. It appears that the accused were entangled in their own cogweb. As already noticed A-2 lodged the complaint Ex.P.45. In the complaint A-2 has stated that they were the occupants of the lorry which met with an accident on 18-2-1992 near Belagodu via Sakaleshpur due to rash and negligent driving of the driver. Their lorry fell down reversely and due to the accident the complainant and his cousin D'Souza suffered severe injuries and they are being treated in Government hospital. On the basis of the complaint, a case was registered under Sections 297/337, IPC. In the complaint A-2 gave his name as Sunil Farnandis which later on proved to be false and established as Anil, as noticed earlier. There is also enough evidence on record that accused have been treated at various hospitals which is borne out from the evidence of Dr. Prakash Inamdar P-28 and Dr. Vasanth Kumar PW26 and PW29 Dr. Chandra Kumar Ballal, as noticed earlier. This would go to show that the accused had admitted the boarding of the lorry and the lorry met with an accident and they sustained injuries on their bodies out of the lorry accident. In their examination u/s 313, Cr.P.C. the accused denied the prosecution story in toto. They denied that lorry accident had taken place. They also denied to have received any injuries. In short, in their 313 statement they completely denied the established facts and offered false answers. By now it is well established principle of law that in a case of circumstantial evidence where an accused offers false answer in his examination under 313 against the established facts that can be counted as providing a missing link for completing the chain.

In that case a reference was also made to the decision above referred to in paras 16 and 17:

In Swapan Patra v. State of West Bengal, (1999) 9 SCC 242, this Court said that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found not to be true then the same offers an additional link in the chain of circumstances to complete the chain. The same principle has been followed and reiterated in State of Maharashtra Vs. Suresh, where it has been said that a false answer offered by the accused when his attention was drawn to a circumstance, renders that circumstance capable of inculcating him. This Court further pointed out that in such a situation false answer can also be counted as

providing a missing link for completing the chain. The aforesaid principle has been again followed and reiterated in Kuldeep Singh and Others Vs. State of Rajasthan, .

In our view, therefore, the chain of circumstances as recited above coupled with the law laid down by this Court unerringly lead to one conclusion and that is the guilt of the accused.

55. From the above, it clearly follows that though such a circumstance cannot be a sole one to lead a guilt, however, coupled with or in addition to the circumstances which are already existing, it constitutes a valid piece of material and circumstance to implicate the accused.

56. The learned Counsel for the appellants/accused points that both in regard to the recording of the evidence and especially the recoveries and consequent appreciation has been totally in the teeth of the law since most inadmissible portions have not only been recorded in the evidence but was placed reliance by the Court below in support of its findings against the appellants herein. In this connection, it is relevant to take note of the depositions of the panch witnesses in regard to the recoveries.

57. P.W.30 is a panch witness to the scene of offence and also the sketches drawn there. He stated that by the time he went to the scene of offence on that day, the Police officials and other persons are already there and on the request of the Circle Inspector of Police, Malkajgiri Police Station, he acted as a panch witness and spoke about Ex.P. 11-scene of offence panchanama and Ex.P. 12-rough sketch and attesting the same. He also spoke about being a panch witness to the scene of offence observation panchanama at the bungalow No. 100 and spoke about the collection of the bloodstains and other material apart from stating about the physical feature and identifies the signature. Ex.P17 is the scene of offence observation panchanama.

58. P.W.34 is a panch witness to the recoveries and also the alleged confessions. In fact, he sought to be produced for the purpose of proving the recoveries in terms of the confessional statement made in Ex.P.37. However, curiously his entire version of the alleged confession of accused No. 1 has been extracted and taken down and ultimately sworn to by him, which is totally inadmissible in law. In stead of restricting his version to the extent of recoveries of M.Os. 7 to 19, M.Os.20 to 22, M.Os.60, 62, M.O.102 and M.Os.34, 35, 61 and 63, the entire alleged confession has been extracted in the chief examination which virtually runs into pages. Similarly, the alleged confessions of accused Nos. 2, 4 and 5 and accused No. 3 was also extracted. Even in the deposition of P.W.41 after speaking about the alleged recoveries, the chief examination on behalf of the prosecution extracts the entire confessional statement of accused No. 1 and other accused which is again totally inadmissible piece of evidence in law. Even the said confession again runs into pages and extracts of the entire version as recorded in Ex.P.37 as allegedly stated to be a confessional statement-cum-recovery

panchanama. He further stated no-doubt about the recoveries of M.Os.64 and 103 under Ex.P.38 panchanama. Similarly, he also spoke about the confessional statement of accused No. 2 in Ex.P.1 and apart from the recovery of M.Os.36 to 46, 65 to 67 and 105 to 107 under seizure panchanama Ex.P.42. The alleged confessional statement was marked under Ex.P4"3 and the recovery of M.O.108 is under Ex.P.43. These recoveries and the alleged statements are stated to be accused Nos. 1, 24 and 5. P.W.49 is yet another witness working as SDPO Ramachandran and a Police Officer whose version about the confessional statement of accused No. 1 was extracted in its entirety, which is again wholly inadmissible. Such confessional statement to a Police official or in the panchanama could not have been either recorded in its entirety during the depositions of the witnesses in the Court nor can find any basis for ultimate conclusions by the Court below. It is curious procedure, though, as adopted by the Court below, however solely cannot be blamed against, but for the assistance coming forth on behalf of the prosecution. Lack of knowledge on fundamental and basics is writ large. Everyone concerned in the administration should need to ask themselves for amiss on their part. Such a procedure apart from being quite contrary to the law but should be deprecated, since it not only adds to the waste of valuable time of the Court but adds to the volumes of inadmissible evidence and the material on record.

59. The learned Public Prosecutor sought to place much reliance on the extra judicial confessions made to the Doctors P.Ws.34 to 36 in regard to the involvement of the other accused persons and sought to place mainly the reliance on Exs.P.35 and P.36. At this juncture, it is relevant to refer to this material under Exs.P.34 to P.36, which are wound certificates of accused Nos. 1, 4 and 2 respectively. After referring to all other particulars in the column of injury and treatment, it was recorded that patient alleged to have sustained injury while committing murder at 9.30 a.m., at the residence near Lalaguda. This was repeated in all the certificates. It has been commented by the learned Counsel appearing for the accused that this version was recorded after about three months and therefore, no weight can be given to the same.

60. P.W.33, who was the Casualty Medical Officer in Gandhi Hospital, Secunderabad at the relevant point of time, in her deposition stated that at the time of examining accused Nos. 1, 3 and 4, she asked them how they sustained injuries and all the three accused persons stated that they sustained injuries while committing murder on 17-3-2003 at S.C. Railway Quarters on which the learned Public Prosecutor submits that this is sufficient enough to take the same as extra judicial confession. Primarily, the very version on the face of it is not properly admissible under Law and especially having regard to the time gap of recording. Even otherwise, this has not been duly put against the accused during their examinations, hence, it cannot be relied on. Therefore, this Court is not prepared to give much weight to this version or take it as an extra judicial confession. However, on considering the entire evidence, material and especially the unexplained total absence of any explanation on the part of accused Nos. 1,

2 and 5 and there is no clear cut version or any material to show as to how exactly and what manner all the deceased have been killed and any attribution individually as such in regard to the role played by them and the circumstances namely the presence of accused Nos. 1, 2 and 5 at the relevant point of time would amply show their involvement and thus, the findings as arrived at by the Court below in regard to these accused Nos. 1, 2 and 5 is perfectly valid and there is no warrant for coming to any different conclusion.

61. As regards accused Nos. 3 and 4 are concerned, the entire evidence as produced on behalf of the prosecution both inside and outside servants do not think about any visit or presence at any point of time. Except one version to the effect that they are all known friends of the accused No. 1 who used to visit the same very frequently, they did not say any access being had by these accused 3 and 4 inside the main Bungalow. Even the inside servants who have been examined on behalf of the prosecution including the other one like carpenter who has been working all along through out the day, they have not mentioned about the visit of these accused at that point of time nor there is any other material or circumstances which can be attributed against these accused either to indicate their presence or participation in any manner whatsoever. As already pointed out as far as A.2 is concerned, it is the chance finger print which has been found inside the bungalow and the same remained unexplained by him similarly the presence of accused Nos. 1 and 5. But however, as far as these accused 3 and 4 are concerned, even there is no such other material to rope them in. The prosecution has thus totally failed to establish or make out any involvement of these accused in the commission of offence nor there is even a whisper or a sign of any overt acts attributed against them in the entire process of commission of offence. Therefore, necessarily the only conclusion, which we can arrive at is to give a benefit of doubt. Accordingly, we hold that the prosecution did not establish any case against them and the Court below was not right in holding the guilty.

62. On a consideration of the entire material on record, we are constrained to make observation that here is yet another case where there has been a total failure in the process of investigation to find out the exact details in the manner in which the offence is alleged to have been committed though by an insider. The base with which the process commenced and completed including the ultimate trial as only lent aid for the real culprits to put a lid of silence. Even otherwise, the method and manner, which has been adopted in the investigation, is reflective of the age old process rather than adding or improving much less hastening in finding out the truth. Therefore, there is every need on the part of the concerned to have a re-look from every angle to usher in the efficiency by proper amends more so with the advanced technology available and which is making a rapid scientific know-how available including the suggestions for such improvements as made by the Apex Court. This Court is very conscious of the fact that it is only due to such lapses and lack of proper endeavour, the real culprits are going un-punished or less punished.

63. Coming to the sentences aspect, the Court below has imposed death sentence against accused No. 1 having regard to the reasons as pointed out therein. In support, it has been stated by the Court below that such sentence is warranted as against accused No. 1 in view of the fact that it is a pre-planned, cold blooded, brutal quadruple murder involving an higher official in South Central Railway, his wife, daughter and son, who were totally helpless and since accused No. 1 a kingpin Peon of the entire crime and being inside man as a servant. The extreme brutality with which accused No. 1 had acted shocks the judicial conscience and he is menace to the Society and thus, this case is undoubtedly falls within the rarest of the rare cases. In this regard, it is relevant to refer in regard to the sentence of death; the most authoritative pronouncement is Bachan Singh's case (one supra) wherein it has been laid down that:

This takes us to the question of indicating the broad criteria which should guide the Courts in the matter of sentencing a person convicted of murder u/s 302, Penal Code. Before we embark on this task, it will be proper to remind ourselves, again that "while we have an obligation to ensure that the constitutional bounds are not over reached, we may not act as judges as we might as legislatures.

In Jagmohan, the Court had held that this sentencing discretion is to be exercised judicially on well-recognised principles, after balancing all the aggravating and mitigating circumstances of the crime. By "well-recognised principles" the Court obviously meant the principles crystallized by Judicial decisions illustrating as to what were regarded as aggravating or mitigating circumstances in those cases. The legislative changes since Jagmohan - as we have discussed already - do not have the effect of abrogating or nullifying those principles. The only effect is that the application of those principles is now to be guided by the paramount beacons of legislative policy discernible from Sections 354(3) and 235(2), namely : (1) The extreme penalty can be inflicted only in gravest cases of extreme culpability : (2) In making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender also.

We will first notice some of the aggravating circumstances which, in the absence of any mitigating circumstances, have been regarded as an indication for imposition of the extreme penalty.

Pre-planned, calculated, cold blooded murder has always been regarded as one of an aggravated kind. In Jagmohan, it was reiterated by this Court that if a murder is "diabolically conceived and cruelly executed", it would justify the imposition of the death penalty on the murderer. The same principle was substantially reiterated by V.R. Krishna Iyer, J. speaking for the Bench, in Ediga Anamma, in these terms:

The weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of

the law for a sterner sentence.

It may be noted that this indicator for imposing the death sentence was crystallized in that case after paying due regard to the shift in legislative policy embodied in Section 354(3) of the Code of Criminal Procedure, 1973, although on the date of that decision (February 11, 1974), this provision had not come into force. In Paras Ram's case, also, to which a reference has been made earlier, it was emphatically stated that a person who in a fit of anti-social piety commits "bloodcurdling butchery" of his child, fully deserves to be punished with death. In Rajendra Prasad, however, the majority (of 2:1) has completely reversed the view that had been taken in Ediga Anamma regarding the application of Section 354(3) on this point. According to it, after the enactment of Section 354(3), "murder most foul" is not the test. The shocking nature of the crime or the number of murders committed is also not the criterion. It was said that the focus has now completely shifted from the crime to the criminal. "Special reasons" necessary for imposing death penalty "must relate not to the crime as such but to the criminal".

With great respect, we find ourselves unable to agree to this enunciation. As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the Court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because "style is the man". In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist.

Drawing upon the penal statutes of the States in U.S.A., framed after *Furman v. Georgia*, in general, and Clause 2(a), (b), (c) and (d) of the Indian Penal Code (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 u/s 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 u/s 37 and Section 129 of the said Code.

Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other.

In *Rajendra Prasad*, the majority said : "It is constitutionally permissible to swing a criminal out of corporeal existence only if the security of State and society, public order and the interests of the general public compel that course as provided in Article 19(2) to (6)." Our objection is only to the word "only". 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 is not possible to agree that imposition of death penalty on murderers who do not fall within this narrow category is constitutionally impermissible. We have discussed and held above that the impugned provisions in Section 302, Penal Code, being reasonable and in the general public interest, do not offend Article 19, or its "ethos": nor do they in any manner violate Articles 21 and 14. All the reasons given by us for upholding the validity of Section 302, Penal Code, fully apply to the case of Section 354(3), Code of Criminal Procedure, also. The same criticism applies to the view taken in *Bishnu Deo Shaw Vs. State of West Bengal*, which follows the dictum in *Rajendra Prasad* (ibid).

In several countries which have retained death penalty, pre-planned murder of monetary gain, or by an assassin hired for monetary reward is, also, considered a capital offence of the first degree which, in the absence of any ameliorating circumstances, is punishable with death. Such rigid categorization would dangerously overlap the domain of legislative policy. It may necessitate, as it were, a redefinition of "murder" or its further classification. Then, in some decisions, murder by fire-arm, or an automatic projectile or bomb, or like weapon, the use of which creates a high simultaneous risk of death or injury to more than one person, has also been treated as an aggravated type of offence. No exhaustive enumeration of aggravating circumstances is possible. But this much can be said that in order to qualify for inclusion in the category of

"aggravating circumstances" which may form the basis of "special reasons" in Section 354(3), circumstance found on the facts of a particular case, must evidence aggravation of an abnormal or special degree.

Dr. Chitaley has suggested these mitigating factors:

Mitigating circumstances:- In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:

- (1) That the offence was committed under the influence of extreme mental or emotional disturbance.
- (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death,
- (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
- (4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.
- (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
- (6) That the accused acted under the duress or domination of another person.
- (7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

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

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 (e.g. Mominuddin Sardar) AIR 1935 Cal 591. But those decisions can no longer be held to be good law in view of the current penological trends and the sentencing policy outlines in Section 235(2) and 354(3). We have already extracted the views of Messinger and Brittner (ibid), which are in point. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are

astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be overemphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expensive construction by the Courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be blood thirsty.... Hanging of murderers has never been too good for them. Facts and figures albeit incomplete, furnished by the Union of India, show that in the past Courts have inflicted the extreme penalty with extreme infrequency - a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative 10 voice the concern that Courts, aided by the broad illustrative guidelines indicated by us will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlines in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

64. In Bablu @ Mubarik Hussain Vs. State of Rajasthan, , it has been held by the Apex Court that:

(B) Penal Code (45 of 1860), Sections 302, 85 - Death sentence - Plea of drunkenness - Accused found guilty of committing murder of his wife, three daughters and a son- Brutal acts done by accused are diabolic in conception and cruel in execution - Acts were not only brutal but also inhumane with no remorse for same - Merely because he claims to be in state of drunkenness at relevant point of time, that does not in any way get diluted because one after another five lives were taken and that too of four young children - Case squarely falls under rarest of rare category to warrant death sentence.

65. In Om Prakash @ Raja Vs. State of Uttaranchal, the Apex Court held that:

Penal Code, 1860, Section 302 - Capital punishment - Killing three inmates of the house and attempting to kill another by their domestic servant out of revenge - It is a pre-planned crime committed in a brutal and diabolical manner - He is found beyond reformation - Mere young age of the accused is not a ground to desist from imposing death penalty - Death sentence passed by trial Court and confirmed by High Court does not warrant any interference.

66. On a consideration of the aforesaid principles, we are of the view that there are no two opinions to the fact that the offence has been committed by an insider, who is a servant. He as a confident man normally moves with all members within and inside the four walls and therefore, such person is no" entitled to any indulgence much less any lenient approach in regard to the sentence, though the exactitude and manner in which offence committed is lacking. However, the fact remains that a domestic servant stands totally on a

different footing than that of any other individual in a Society and it cannot be said that he would be a menace to the society as such and in a given case a servant would be a menace within the four walls of the house in the family where he works but not beyond and therefore, except to state that in these circumstances, he should not have any sympathy in any lesser manner but certainly does not fall in the mischief of menace to the Society. Therefore, the Court below was not right in awarding the sentence of death, which is quite far in magnitude than required. On the facts and circumstances, we are of the view that accused No. 1 is sentenced to suffer life imprisonment wholly without any extension of benefits of remissions. The sentence of death is accordingly set aside and in place he shall undergo the sentence of life in full. We are in entire agreement in regard to the sentence imposed as against accused Nos. 2 and 5 and the same is confirmed. However, in regard to accused Nos. 3 and 4 are concerned, we hold that the prosecution has totally failed to establish their involvement or even presence and its case beyond reasonable doubt as against them. Hence, we hold them as not guilty.

67. The Reference is accordingly answered and the Criminal Appeal in regard to accused No. 1 is partly allowed to the extent of sentence confirming the conviction u/s 302, IPC, however, the sentence of death is reduced to life as indicated above and the conviction in regard to accused No. 2 is confirmed to the extent u/s 302 read with Section 34, IPC and also the sentence of imprisonment for life and the conviction in regard to accused No. 5 also stands confirmed for the offence u/s 201, IPC and the sentence imposed by the Court below including for the offence u/s 435, IPC as against accused Nos. 1 and 2 and the offence under Sections 25(1)(a) and 27(1) of the Arms Act as against accused No. 1 and the sentence imposed thereunder. It is needless to mention that all the sentences imposed shall run concurrently. The Criminal Appeal to the extent of accused Nos. 3 and 4 is allowed and the conviction and sentence imposed as against by the III Additional sessions Judge, Ranga Reddy District-in Sessions Case No. 291 of 2003, dated 22-1-2007 is hereby set aside and accordingly appellant Nos. 3 and 4/ accused Nos. 3 and 4 are acquitted of the charges levelled against them and they are set at liberty forthwith, if they are not required in any other case, however, the Criminal Appeal as against accused Nos. 1 and 2 and 5 is dismissed except to the extent as indicated above.