
(2005) 07 AHC CK 0216
In the Allahabad High Court
Case No : Criminal Appeal No. 3463 OF 2004

Krishna Kumar and Tikaram alias Gantha (In Jail)	APPELLANT
Vs	
State of Uttar Pradesh	RESPONDENT

Date of Decision : 26-07-2005

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34, 506

Citation : (2005) 07 AHC CK 0216

Hon'ble Judges : Imtiyaz Murtaza, J; Amar Saran, J

Bench : Division Bench

Advocate : Manish Tiwary and A.K. Awasthy, for the Appellant; A.N. Mulla and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Imtiyaz Murtaza, J.—This appeal has been filed against the judgment and order dated 10.6.2004 passed by the Sessions Judge, Pilibhit in S.T. No. 546 of 2002 whereby the appellants are convicted u/s 302/34 I.P.C. and sentenced to death. Both are further convicted u/s 506 I.P.C. and sentenced to R.I. for 5 years.

2. Brief facts of the case, mentioned in the first information report lodged by Sher Singh alias Guddu, are that there was enmity between his family and the family of Krishna Kumar and Tika Ram alias Gantha, his cousins, due to partition of the house, which was made by the District Magistrate one year back. It is alleged that on 7.6.02 at about 7.30 A.M. his father Sumer Lal was sitting at the temple of Thakurdwara. Krishna Kumar armed with an axe and Tika Ram who carried a Bhujali (Banka) reached there and Krishna Kumar challenged him. His father ran away to save his life and also raised alarm. He was chased and murdered on the road near the house of one Puran Lal. His dead body was thrown in a drain. On hearing the cries of his father, his mother Smt. Rajjo Devi rushed to save him. She was also murdered by cutting her neck by an axe and Bhujali. The complainant alongwith Roshan Lal and Neelambar reached at the

spot. The accused persons ran away brandishing their weapons. The people of the village started running and confined themselves in their houses. The dead bodies of his father and mother were lying on the spot. It is further mentioned that Krishna Kumar had also earlier committed a murder. Due to fear of the accused, no body could protect them. It is further alleged that the accused had committed the murder with the connivance of Aqueet Ahmad and Aslam Zaidi. The report was registered at the police station Jahanabad, District Pilibhit on 7.6.2002 at 8.00 A.M. After the registration of the case, Arvind Kumar Sharma S.O. started investigation of the case. He recorded the statements of Head Moharrir Radhey Shyam Verma and informant Sher Singh alias Guddu. He alongwith Ramendra Singh S.I. Sanjai Pratap Singh Rathor S.I. and other police constables reached at the place of the occurrence. He found the dead body of Sumer Singh lying in a drain. He prepared the site plan on the pointing out of the informant which is Ex. Ka 10. On his direction, S.I. Sanjai Pratap Singh Rathore collected plain and blood-stained earth near the dead body of Sumer Lal and prepared its recovery memo which is Ext. Ka. 4. S.I. Ramendra Singh prepared the inquest memo and other papers. Thereafter he reached at the place where the dead body of Smt. Rajjo was lying. He prepared the site plan Ext. Ka. 11. S.I; Ramendra Singh prepared the inquest memo on the dead body of Smt. Rajjo. S.I. Sanjai Pratap Singh Rathore collected the plain and blood stained earth from near the dead body of Smt. Rajjo and prepared its recovery memo which is Ext. Ka. 5. On the same day he arrested accused Krishna Kumar and Tika Ram alias Gantha. At the time of arrest they were wearing blood stained shirt. The shirts of both the accused were seized and recovery memos were prepared. He also recovered a blood stained axe and a blood stained Banka on their pointing out from a kothari situated in the grove of Habibullah. The recoveries were made in the presence of S.I. Sanjai Pratap Singh Rathore and S.I. Ramendra Singh An axe was recovered on the pointing out of Krishna Kumar and Banka was recovered on the pointing out of Tika Ram. He also prepared the recovery memo of these weapons which is Ext. Ka. 6. On 8.6.2002 he recorded the statement of witnesses. On 24.6.2002 he recorded the statement of Roshan Lal, Neelambar, Udai Pal and Kali Charan. After the conclusion of the investigation he submitted the charge-sheet (Ext. Ka. 13).

3. After submission of the charge-sheet the case was committed to the court of Sessions and charges were framed against the appellants u/s 302/34 and 506 I.P.C.

4. The prosecution had examined 8 witnesses in support of its case. P.W. 1, Sher Singh, is the informant and eyewitness of the case. P.W. 2 is Dr. M.L. Sharma who conducted the autopsy on the dead bodies of the deceased. P.W. 3 Roshan Lal is an eyewitness of the occurrence, P.W, 4 Nilambar is also an eyewitness of the occurrence. P.W. 5, S.I. S.P.S. Rathor had prepared the recovery, memo of plain and blood stained earth near the dead bodies. P.W. 6 is H.C. R.S. Verma. He had prepared the chick F.I.R. (Ext. Ka. 7) and G.D. entry (Ext. Ka. 8).P.W. 7 A.K. Sharma is investigating officer of the case. P.W. 8 is S.I. Ramendra Singh who

had prepared the inquest reports of the deceased on the dictation of investigating officer. He had also prepared other relevant papers for the post-mortem examination.

5. The case of the accused is of denial. It is further stated that they are falsely implicated in the case due to enmity. Learned Sessions Judge after considering the evidence on record convicted the appellants as aforesaid. Hence this appeal.

6. The prosecution case is based upon the testimonies of three eye witnesses. P.W. 1 Sher Singh is the informant and son of the deceased.. He deposed that there is enmity between his family and the family of the accused. About one and half year ago, a partition of his house took place and the accused persons were not satisfied with the said partition. He stated that on 7.6.2002 at about 7.30 A.M., his father was sitting at Thakurdwara temple. The accused came armed with an axe and a Banka and Krishna Kumar exhorted. His father ran to save himself but he was surrounded and assaulted by Banka and Axe. His mother ran to save him but she was also killed in a field near the Thakurdwara temple. He further deposed that due to terror no person could dare to save them. Krishna Kumar had also committed a murder prior to this occurrence. He further stated that Neelambar and Roshan Lal also witnessed the occurrence. He had lodged the first information report (Ext. Ka. 1) at the police station. The report was scribed by Bhoop Singh.

7. P.W. 3, Roshan Lai, had fully supported the prosecution case. He stated that on 7,6.2002 about two and half years back at about 7.30 A.M. Krishna Kumar and Tika Ram had firstly committed the murder of Sumer Lai. They were carrying an axe and a Banka. His murder took place in front of a temple. He died in front of the house of Pooran Lai. Smt. Rajjo was attracted by hearing shrieks of Sumer Lai and she was also murdered by Krishna Kumar and Gantha. Thereafter both the accused ran away threatening the witnesses and on account of their threats nobody could apprehend them. Krishna Kumar is earlier convicted for committing the murder of one Vinay. After the occurrence, Sher Singh had gone to lodge the report. The investigating officer had recorded his statement. In the cross examination he admitted that he is maternal uncle of Sher Singh. His house is at a distance of 1 Km. from the house of Sumer Lai. He stated that Neelambar stayed in his house one day prior to the occurrence. He also stated that at the time when he reached near the dead body Sher Singh was not present there.

8. P.W. 4, Neelambar stated that about 2 years back Sumer Lai and Smt. Rajjo were murdered at about 7.30 A.M. and Krishna Kumar and Tika Ram had murdered them. Firstly Sumer Lai was murdered near the temple by Krishna Kumar and Tika Ram who were armed with an axe and Banka respectively. The dead body of Sumer Lai was thrown in a drain. When Smt. Rajjo Devi rushed to save the life of her husband, she was also murdered by both the accused. They had also extended threats that if any one comes they will also kill him. There was enmity with regard to the house. Sher Singh had lodged a report of the occurrence at the police station. It is further stated that accused had threatened

him from the jail. In the cross examination he stated that Sumer Lai was his brother-in-law. Smt. Rajjo was his sister. He had come to the house of his sister in the evening. His sister lives in mohalla Puraina, which is at a distance of 100 steps. The police had arrived half an hour after the occurrence. The police had not interrogated him as he had run away from the place of occurrence. He returned after about 1 or 2 hours. The dead body of Rajjo Devi was lying in a Chari crop. The dead body of Sumer Lai was lying south of the temple. The house of Sher Singh was at a distance of 50 steps from the place where the dead body was lying. The dead body of Rajjo Devi was at a distance of 20 - 25 steps from the dead body of Sumer Lai. At the time of occurrence he was going towards eastern side of the temple for returning the call of the nature. He was at a distance of 10 - 15 steps from the temple.

9. P.W. 2 Dr. M.L. Sharma had conducted the autopsy on the dead bodies of the deceased. The post mortem examination of Smt. Rajjo was conducted on 7.6.2002 at 4.00 P.M. and the doctor had noted following ante-mortem injuries :

1.I.W. 12 cm x 2.5 cm x mandible cut on the left side face including left side neck, 1 cm below left ear lobule major vessels cut.

2. I.W. 5.5 cm. x 1.5 cm x trachea cut on the frontal neck, 4.5 cm above sternal notch.

3. I.W. 10 cm x 4 cm x mandible cut on the lower part of chin.

4. I.W. 6 cm x 2 cm x mandible cut on the Rt. Side face up to chin, 5 cm anterior from Rt. ear lobule.

10. In the opinion of the doctor the cause of death was haemorrhage shock due to ante mortem injuries.

11. Post-mortem on the dead body of Sumer Lai was also conducted on 7.6.2002 at about 4.30 P.M. and following ante-mortem injuries were noted by the doctor :

1. I.W. 7 cm x 2.5 cm x mandible cut on the Rt. side mandible just below Rt. ear lobule.

2. I.W. 5 cm x 1.5 cm x cervical vertebra deep on the Rt. side neck, 4.5 cm below Rt. ear lobule.

3. I.W. 4 cm x 2 cm x muscle deep on the Rt. side neck 1 cm below injury No. 2.

4. I.W. 3 cm x 1cm x bone cut on the left side face just lateral to left eyebrow.

5. I.W. 17 cm x 2 cm x bone cut & membrane seen on the left side head occipital & parietal bone region; on deeper dissection occipital bone fractured in multiple pieces and haematoma present on brain membrane & 50 ML blood present in brain tissue.

6. I.W. 1.5 cm x 0.5 cm x muscle deep on the back of left fifth finger proximal pharynx.

7. I.W. 4 cm x 0.5 cm x muscle deep on the anterior aspect of left wrist.
8. I.W. 2 cm x 0.5 cm x bone cut on the palmer aspect of left thumb proximal part.
9. I.W. 3 cm x 0.5 cm x bone deep on the left middle finger middle part palmer aspect.
11. In the opinion of the doctor the cause of death was due to ante-mortem injuries. P.W. 5, S.P.S. Rathore, S.I., stated that on 7.6.2002 he was posted as Sub Inspector. He reached at the place of occurrence alongwith S.H.O. Arvind Kumar Sharma and other police personnel. On the dictation of S.H.O. Arvind Kumar Sharma he had collected the plain and blood stained earth near the dead bodies of Sumer Lai and Smt. Rajjo Devi. He prepared the recovery memos (Exts. Ka. 4 and Ka. 5). On the same day he alongwith S.H.O. Arvind Kumar Sharma, Sub Inspector Ramendra Singh and other constables arrested the accused Krishna Kumar and Tika Ram near the crossing of Lalpur. On the pointing out of Krishna Kumar a blood stained axe was recovered from a Kothari. On the pointing out of Tika Ram, one Banka was recovered. Both were blood stained. Its recovery memo was prepared which is Ext. Ka. 6. In the cross examination he stated that axe and Banka were sealed by S.I. Ramendra Singh and other police constables.
12. P.W. 6 is Radhey Shyam, Head Moharrir. On 7.6.2002, he was posted as Head.Constable at the police station. He had prepared the chik F.I.R. (Ext. Ka. 7) and also prepared G.D. entry (Ext. Ka. 2). In the cross examination he stated that on the same day Krishna Kumar was brought to the police station and his shirt, which was blood stained, was taken into custody and shirt of Tika Ram, which was also blood stained, was also taken into custody. Recovery memos of the shirts was prepared which is Ext. Ka 9.
13. P.W. 7 is the investigating officer Arvind Kumar Sharma. After the completion of the investigation he had submitted the charge sheet against the accused.
14. We have heard Sri Manish Tewari counsel for the appellants and A.G.A. for the State and perused the entire record and judgment and order of the court below.
15. The counsel for the appellants challenged the findings of the court below on various grounds. The first submission of the counsel for the appellant is that the presence of the informant at the time of occurrence is doubtful. It is pointed out that P.W. 3 Roshan Lai stated that when he reached near the dead bodies, Sher Singh was not present there. It is further pointed out that Sher Singh had admitted that after seeing the occurrence he had gone straight to the police station. His conduct is very unnatural. It is further contended that in case he was present at the alleged time of the occurrence he should have made some effort to save his parents
16. We have considered the submission of the counsel for the appellants and also

perused the evidence and in our opinion there is no substance in this submission of the counsel for the appellant Sher Singh is the son of the deceased and the place of the occurrence is hardly fifty steps from his house. When his father was assaulted his mother had heard the shouts and she ran to save him. She was also assaulted while she was at a short distance from her house. Her dead body was found only twenty five steps away from her house. The occurrence, took place early in the morning and his presence in his house is quite natural.

17. So far as the submission of the counselor the appellants that neither Sher Singh nor other witnesses tried to save the deceased is concerned, in our opinion, has no substance. Simply because they were unarmed and bare-handed and the accused persons were armed with deadly weapons. Smt Rajjo had run to save the life of her husband but she was done to death. How a person would react in a situation like this cannot be encompassed by any rigid formula. It would depend on many factors, like in the present case where witnesses are unarmed, but the assailants are armed with deadly weapons. In a given case instinct of self-preservation can be the dominant instinct. That being the position, their inaction in not coming to the rescue of the deceased can not be a ground for discarding their evidence.

18. It has been observed by the apex court in the case of State of Uttar Pradesh Vs. Devendra Singh,

" Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counterattacking the assailants. Some may remain tightlipped, overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon a variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way"

19. In the case of the Hardev Singh v. Harbhej Singh reported in (1997) 1 SCC 87 the Apex Court has held coming to the next ground of acquittal, viz., non-intervention of the relatives of the deceased including the eyewitnesses during the assault on the victims to protect them, in our opinion is wholly unsustainable. Since the respondents (accused) were armed with deadly weapons as against this the victims and his relatives were totally unarmed and in such a situation it was absurd to expect any intervention and if they were to do so it would have led to some more casualties. We, therefore, do not see any merit whatsoever in the

reasoning given by the High Court in this behalf.

20. The counsel for the appellants had also challenged the time of occurrence. It is submitted that occurrence might have taken place during the night and no one had witnessed the occurrence. It is submitted that occurrence did not take place at the alleged time. This submission has no substance simply because the dead bodies were recovered from a considerable distance from the house. There was no occasion for the deceased for going to the place of occurrence in the mid night. If the occurrence might have taken place in the midnight the dead bodies must have been found inside the house. The eye witness account with regard the place of occurrence and time of occurrence is corroborated by the post mortem and the serologist report which shows that blood stained earth which was recovered from the place of occurrence was soaked with blood.

21. The counsel for the appellants had also challenged the presence of the eye witnesses at the time of the occurrence. It is submitted that both the eye witnesses are close relative and resident of different places. There was no occasion for their being present at the alleged time. It is further submitted that none of the witnesses of the close proximity are produced to support the prosecution case.

22. It is not disputed that P.W3 Roshan Lai lives in village Puraina and his house is one kilometer away from the house of the deceased and P.W 4 is resident of village Bhujia Teli. P.W 3 Roshan Lai is real maternal uncle of P.W.I Sher Singh and P.W.4 Neelambar is brother of Smt. Rajjo and brother in law of Sumer Lai. It has come in the evidence of P.W.3 Roshan Lai that Neelambar had not stayed at his house one day prior to the occurrence. The testimony of P.W.4 Neelambar shows that he stayed in the house of younger sister meaning thereby that he stayed in the house of Roshan Lai. On account of this contradiction the counsel for the appellants vehemently argued that their testimonies should be rejected. We do not find any substance in the submission of the counsel that simply because of some minor contradictions the whole testimony of otherwise reliable witness should be rejected. The Apex Court in the case of State of U.P. v. Anil Singh, reported in 1988 SCC 686, at page 692 observed :

"It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses: It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform "

24. The submission of the counsel for the appellants that the witnesses being

close relatives and consequently, being partisan witnesses, should not be relied upon, has no substance. The law on the point is well settled that the testimony of relative witnesses cannot be disbelieved on the ground of relationship. The only requirement is to examine their testimony with caution.

25. The counsel for the appellants contended that the alleged recovery of weapons on their pointing out should not have been relied upon without any independent corroboration. The recoveries are from the open place which are accessible to all. The counsel for the appellant placed reliance on the decision of the apex court reported in *Yamanappa Goolappa Slirgumpi v. State of Kanataka*, reported in 1980 SCC 345, at page 346 wherein it is observed that

"As regards the recovery of the clothes from A-2, who is said to have assaulted the deceased with an axe, the story appears to us to be wholly improbable because when A-2 appeared before the police as an innocent person, he would not have done so after wearing bloodstained clothes so as to entangle himself in a murder case, especially when he had sufficient lime at his disposal to destroy these clothes or the stains of blood on them."

26. Another decision relied by the counsel for the appellant is *Narsinbhai Haribhai Prajapati etc. v. Chattarasingh and Ors.* reported in AIR 1977 S C 1753 wherein it is observed that

" We may also accept that blood - stained shirt and dhoti were seized from the person of respondent I and Dharias were seized from the houses of respondents 1 and 3. But these circumstances are in our opinion wholly insufficient for sustaining the charge of murder of which the respondents are accused "

27. The counsel for the respondent also placed reliance on the observations made in the case of *Kevji and Others Vs. State of Rajasthan*,

"In the matter at hand one knife was allegedly recovered from the accused Shamim alias Tamulala on the basis of disclosure statement. Shamim khan accused gave two disclosure statement u/s 27 of the Indian Evidence Act. On 18-10-1994 at 8.00 a.m. he gave Ex. P/44 with regard to recovery of dagger and at 11.00 a.m. ExP/44 with regard to recovery of Rs. 5,000/- which he received for cutting into pieces the dead body of Pramila. Both these informations were not given before any independent person only to PWS4 Man Singh, Station Officer, Kalinjara who too has not disclosed any reason why independent persons were not involved when this accused made disclosure statements lose importance "

28. The last decision relied upon by the counsel for the appellant is *State of U.P. v. Naseem Ahmad and Anr.* reported in (29) 1992 ACC 409.

" The respondent Naseem Ahmad had denied that any recovery had been made at his pointing. In the absence of evidence that the blood on his articles or on the knife had been found to be of the same group as the blood on the clothes of the deceased no inference could legitimately have been drawn against the

respondents.

29. We have considered the submission of the counsel for the appellants and perused the evidence on record and in our opinion there is no substance in this submission. In the case of Kevji (supra) there were two disclosure statements and no reason were given for not involving the independent witnesses. In the present case the investigating officer had mentioned that he tried to get the public witness but no one agreed. The facts of the Kevji(supra) are different.

30. The Apex Court in the case reported in 2001 S.C.C. 248, State Govt. of N.C.T. of Delhi v. Sunil observed as under:

"Hence it is a fallacious impression that when recovery is effect pursuant to any statement made by the accused the document prepared by the investigating officer contemporaneous with such recovery must necessarily leads to recovery of any article it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth. "

31. In the instant case the evidence on the record shows that report of the occurrence was lodged on 7.6.2002 at 8.00 a.m. and the accused were named in the report itself The investigating officer had arrested the accused same day at 12.10 and thereafter on their pointing out weapons are recovered. In the recovery memo it is mentioned that he tried to obtain public witness but no one agreed to become witness of the recoveries.

32. In the case of Yammannappa Golappa Shirgumpi (supra) the recoveries were disbelieved on the ground that the story of recovery of an axe was highly improbable because when accused appeared before the police as an innocent person then he would not have been wearing blood stained shirt and secondly the accused had sufficient time for the disposal to destroy the clothes. In the present case the accused were arrested by the investigating officer only after about four hours and recoveries are made immediately thereafter. Therefore the facts of the case of Yammannappa (supra) are totally different and do not apply to the present case. In the case of Narsinhbhai (supra) the only evidence against the accused was recoveries of blood stained shirt and dhoti and the apex court had observed that "in our opinion wholly insufficient for sustaining the charge of murder of which the respondents are accused " In this case the main evidence against the accused is eye witness account furnished by three eye witnesses; therefore the case of Narsinhbhai (supra) is not applicable. In the case of Naseem Ahmad (supra)a Division Bench of this court had observed that "in the absence of evidence that the blood on his articles or on the knife had been found

to be of the same group as the blood on the clothes of the deceased no inference could legitimately have been drawn". The counsel for the appellant submitted that serologist report did not mention the blood groups on the articles sent for the analysis to the serologist, therefore, no adverse against the accused could be drawn in the absence of the blood group. The serologist report shows that human blood was found on several articles and on some of them blood was disintegrated. The submission of the counsel for the appellants that in the absence of blood group no inference could be drawn has no substance. In the case of State of Rajasthan Vs. Teja Ram and Others, the Apex Court observed"

"Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood is unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused.

33. Learned counsel for the accused made an effort to sustain the rejection of the abovesaid evidence for which he cited the decisions in Prabhu Babaji Navle v. State of Bombay and Raghav Prapanna Tripathi v. State of U.P. In the former, Vivian Bose, J. has observed that the chemical examiner's duty is to indicate the number of bloodstains found by him on each exhibit and the extent of each stain unless they are too minute or too numerous to be described in detail. It was a case in which one circumstance projected by the prosecution was just one spot of blood on a dhoti. Their Lordships found that "blood could equally have spurted on the dhoti of a wholly innocent person passing through in the circumstances described by us earlier in the judgment"; In the latter decision, this Court observed regarding the certificate of a chemical examiner that inasmuch as the bloodstain is not proved to be of human origin the circumstance has no evidentiary value "in the circumstances" connecting the accused with the murder. The further part of the circumstance in that case showed that a shirt was seized from a drycleaning establishment and the proprietor of the said establishment had testified that when the shirt was given to him for dry cleaning, it was not bloodstained

34. We are unable to find out from the aforesaid decisions any legal ratio that in all cases where there was failure of detecting the origin of the blood, the circumstance arising from recovery of the weapon would stand relegated to disutility. The observations in the aforesaid cases were made on the fact situation existing therein. They cannot be imported to a case where the facts are materially different."

35. In view of the above decision of the Apex Court the submission of the

counsel has no substance and is rejected.

36. The counsel for the appellants further submitted that the recovery of shirt which is alleged to have been recovered by the investigating officer after their arrest is shrouded in mystery. At the time of the arrest it was not mentioned that the shirts of the accused were stained with the blood. At the time of admission in police station the G.D entry did not mention that shirts of the accused were stained with the blood. The contention of the counsel for the appellants is that in order to falsely rope the appellant in this case false evidence is created. We have carefully considered the submission of the counsel and we do not find any substance in the same. The investigating officer had prepared a recovery memo and the shirts were sent for confirmation of the blood on the same and the serologist report confirms the presence of human blood on the shirt. The argument of the counsel that at the time of admission in the police station G.D. entry did not mention that shirts were blood stained is not tenable simply because there is no such provision to mention such details in the general diary entries.

37. We have carefully examined the testimonies of the eye witnesses especially considering the fact that they are close relatives of the deceased and informant and in our opinion they are trustworthy and implicit reliance could be placed on their testimonies.

38. The eye witness account is furnished by three eye witnesses namely P.W1 Sher Singh, informant of the case, P.W.3 Roshan Lai and P.W.4 Neelambar. All the three eye witnesses are close relatives. Roshan Lai is the husband of the sister of the mother of informant Sher Singh and Neelambar is maternal uncle of Sher Singh. The testimony of P.W.1 Sher Singh shows that at the time of the occurrence his father was sitting at the Thakurdwara temple, when both the accused namely, Krishna Kumar and Tika Ram reached armed with an axe and a Banka, respectively. Krishna Kumar exhorted to kill him, thereupon his father tried to run away to save himself but he was chased and surrounded and killed near the house of Pooran Lai by inflicting injuries by Banka and axe. It is further deposed that when his mother came to rescue his father, she was also murdered by the accused near a field which was close to Thakurdwara temple. After the occurrence he had lodged the report. His testimony finds corroboration from the testimonies of two other eye witnesses namely, P.W.3 Roshan Lai and P.W.4 Neelambar. P.W.3 Roshan Lai deposed that murders of Sumer Lai and Smt. Rajjo Devi were committed by the accused at about 7.30 A.M on the date of occurrence. Sumer Lai was murdered near the temple. The accused were armed with an Axe and a Banka. Sumer Lai had fallen down in front of the house of Puran Lai. On hearing the cries of Sumer Lai, Smt Rajjo also rushed to save him but she was also assaulted by the accused, which resulted in her death. Thereafter, the accused had ran away by saying that if any one dare to come, he will also be killed. None had dared to chase them. The report was lodged by Sher Singh at the police station. This witnesses had fully supported the prosecution.

case and had also corroborated the testimony of P.W.I Sher Singh P.W.4 Neelamber had also supported the prosecution case. He stated that Sumer Lai and Smt. Rajjo were murdered at about 7.30 A.M. by the accused, who were armed with an axe and a Banka. The accused had attacked Sumer Lai near the temple. Sumer Lai had ran to save himself but he was chased and murdered near the house of Laxman. They had assaulted him with their respective weapons. Smt. Rajjo had came to save her husband but she was also killed by the accused person. The accused had also threatened that if any one come near them, he will also be killed. He further deposed that he had witnessed the occurrence along with Roshan Lai and Sher Singh. He had explained his presence at the spot. He had stated that he was coming after returning the call of the nature and he was fifteen steps away from the temple. The statement of all three eye witnesses arc very natural and convincing. They have fully described the occurrence which finds full corroboration from the post mortem report as well as from the investigation. The sessions judge rightly relied upon their testimonies to record the findings and we also concur with the same The first information report is promptly lodged by the informant According to him occurrence took place at 7.30 A.M and a written report was lodged at the police station at 8.00A.M. The distance of the police station from the place of occurrence is 2 furlong. The first information report contains all the necessary details including time of occurrence enmity between the parties weapons in the hands of the accused name of witnesses. The criminal courts attach great importance to prompt lodging of the report because it eliminates the chances of embellishments creeping in the prosecution case. The time of registration of the report is also proved by the testimony of P.W.6 H.C.Radhey Shyam who stated that Sher Singh had lodged the report at 8 A.M. On the basis of his report he had prepared the Chik F.I.R. which is Ex.Ka 7 He had also prepared the G.D.No 14 at 8 A.M. Therefore, prosecution has fully proved the prompt lodging of the report. The medical evidence also corroborates the ocular testimony. According to the prosecution case the deceased were assaulted by an Axe and a Banka and this manner of assault is fully corroborated by the fact that according to the post mortem reports the deceased had suffered incised wounds which arc more probably caused by sharp edged weapons. The Post Mortem of the deceased Smt. Rajjo was conducted by P.W.2 Dr M.L.Sharma on 7.6.02 at 4 P.M. and the Post Mortem examination on the dead body of Sumer Lai was also conducted same day at 4.30 P.M. In the opinion of the doctor the deaths of the deceased are possible on 7.6.02 at 7.30A.M. However he stated that there can be variation of four hours either way. The time of the occurrence is also supported by the fact that both the dead bodies were found outside the house. In case the murder had taken place at the sleeping hour, as suggested by the defence, the dead bodies must have been found inside the house. Therefore, the time, manner and place of the murders, weapons of the assault all are corroborated from the medical evidence, serologist report and by the investigation.

39. The prosecution evidence also finds corroboration from the report of the

serologist which is Ex Ka 27. The investigating officer had sent the plain and blood stained earth collected from near the dead bodies. The serologist report confirms the presence of blood on the same. This confirms the place of occurrence is the same as alleged by eyewitnesses and confirmed by the investigation. Similarly axe and Banka, which were recovered on the pointing out of the accused, also sent for the analysis and its report shows that blood was found on the same. The serologist report confirms the human blood on the axe and blood found on Banka was disintegrated. The shirts of the accused were also found stained with human blood. It is also relevant to point out that both the accused were arrested on the same day of the occurrence and recoveries of weapon of crime and blood stained shirt were also recovered after their arrest.

40. In view of the discussions made above, we are of the opinion that the prosecution has fully proved its case beyond reasonable doubt and Sessions judge rightly recorded the findings of conviction of both the appellants and we confirm the findings of conviction recorded by the trial court.

41. Lastly, the question that arises for serious consideration is whether imposition of death penalty in the facts and circumstances of the case is justified?

42. Under the old code of Criminal Procedure ample discretion was given to the courts to pass death sentence as a general proposition and the alternative sentence of life term could be awarded in exceptional circumstances, that too after advancing special reasons for making this departure from the general rule. The new Code of 1973 has entirely reversed the rule. A sentence for imprisonment for life is now the rule and capital sentence is an exception. It has also been made obligatory on the courts to record special reasons if ultimately death sentence is to be awarded. A Constitutional Bench of the Supreme Court in the case of *Bachan Singh v. State of Punjab* AIR 1980 898 while upholding the constitutional validity of the death sentence voiced that as a legal principle death sentence is still awardable but only in rarest of rare cases when the alternative option of lesser sentence is unquestionably foreclosed.

43. The Sessions Judge considered that accused had committed the murders of their close relatives in a most ghastly manner and Krishna Kumar is a previous convict and came to the conclusion that it is a "rarest of rare case". We are not inclined to accept the justification for imposing extreme penalty of death. We are not oblivious to the fact that it is a case of double murder but in our opinion ipso-facto that would not be a ground for confirming the death sentence of appellants.

44. The Apex Court in the case of *Ram Pal v. State of U.P.* (47) 2003 A.C.C. 567 for the reasons mentioned in paragraph 8 and 9 of the judgment reduced the sentence from death to life imprisonment despite the fact that 21 persons were murdered in an incident.

45. Compassion in sentencing is also a key factor. It allows the scars to heal. Longevity of incarceration may make them see reason. Passage of time may make them ponder over the crime they had committed. This might arouse in

them a feeling of remorse and repentance.

46. Considering the over all circumstances of the case this case does not fall within the category of rarest of rare case and it cannot be said that imprisonment for lesser sentence of life term altogether foreclosed and we are of the view that a sentence of imprisonment for life to the appellants would meet the ends of justice.

47. We therefore, reduce the sentence of death of the appellants, Krishna Kumar and Tikaram alias Gantha to imprisonment for life

48. In view of the above the appeal is dismissed with the modification that the conviction of the appellants are maintained but the sentence of death is reduced to imprisonment for life.

49. The reference for confirmation of death sentence is also rejected.

50. The appellants are in jail and they shall be kept there to serve out their sentence as modified by this court.

51. Office is directed to send a copy of this order to the concerned court within a week.