
(2001) 09 UK CK 0006

In the Uttarakhand High Court

Case No : Jail Appeal No. 108 of 2001 and Criminal Reference No. 2 of 2001

Om Prakash @ Raja

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

Date of Decision : 19-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 366
Evidence Act, 1872 — Section 6
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2003) 2 UC 1029

Hon'ble Judges : A.A. Desai, C.J; M.C. Jain, J

Bench : Division Bench

Advocate : Rajendra Dobhal, Amicus Curiae, for the Appellant; Learned G.A., for the Respondent

Judgement

M.C. Jain, J.—Two persons, namely, Nitesh and the present Appellant Om Prakash alias Israil @ Nazrool @ Raju @ Raju Dass @ Raju Chaudhary @ Safuel Islam were tried before the Additional Sessions Judge, Dehradun in S.T. No. 149 of 1999. By the impugned judgement and order, the trial Court acquitted Nitesh, but convicted the present accused-Appellant Under Sections 302 and 307, I.P.C. He has been sentenced to death and to pay a fine of Rs. 5000/- with an order to suffer rigorous imprisonment for one year, in default of payment of fine for the offence punishable u/s 302, I.P.C. u/s 307, I.P.C. he has been sentenced to undergo R.I. for seven years and to pay a fine of Rs. 2000/-. In default he has been ordered to suffer R.I. for one year. Both the substantive sentences of imprisonment and in default of payment of fine have been ordered to run consecutively. Aggrieved, the accused-Appellant has preferred this appeal from jail. Sessions Judge made a reference u/s 366, Code of Criminal Procedure for confirmation of death sentence.

2. Consequent upon the lodging of the F.I.R. by Smt. Rama Khanna, P.W.1, the investigation began. The dead bodies of three persons were sealed after preparation of the Panchayatnamas Ex.Ka.8, Ex. Ka.9 and Ex.Ka.23 respectively

of Smt. Bishna Mathur, Sarit Khanna and Brig. (Retd.) Shyam Lal Khanna and sent for post mortem examination. The informant Smt. Rama Khanna, P.W.1 was also subjected to medical examination. During spot inspection recoveries were made including of blood stained Khukri (Ex.16), blood stained sword (Ex. 15), blood stained knife (Ex. 17), blood stained sheath (Ex. 14) and chilly powder (Ex.19) vide recovery memos Ex. Ka.3 to Ex. Ka.7.

3. It would be relevant to state here that it was Dr. H.G.S. Manral, P.W. 6, who had conducted post mortem on the dead bodies of all three victims between 3.30 p.m. and 5.15 p.m. on 15.11.1994.

A. Deceased Shyam Lal Khanna was aged about 62 years. The injuries found on his person were as many as ten in number. Out of them two were incised wounds, six lacerated wounds, one subconjunctrial haemorrhage on right eye and one traumatic swelling over occipital region. One of the incised wounds was 7cm. x 3 cm. x bone deep over left side of scalp 2 cm. above upper border of upper left ear lobe. One of the lacerated wounds 6 cm. x 3 cm. x bone deep was over mid scalp 2 cm. above injury No. 1 with clotted blood. The rest of the injuries were on different parts of the body. The death had occurred due to shock and haemorrhage as a result of ante mortem injuries.

B. Deceased Sarit Khanna was aged about 27 years. Four lacerated wounds were found as ante mortem injuries on his person. One lacerated wound 2 cm. x 10 cm. was over anterior aspect of neck. Muscle tissues were exposed on both the sides. He died due to shock and haemorrhage as a result of ante mortem injuries.

C. Deceased Smt. Bishna Mathur was aged about 65 years. As many as eight injuries had been inflicted on her person which comprised of six incised wounds, one punctured wound and one lacerated wound. Five of the incised wounds were on the neck. She, too, had died due to shock and haemorrhage as a result of coma because of ante mortem injuries.

As per the opinion of the Doctor, sharp edged weapon like sword (Ex. 15) and blunt object had been used in inflicting injuries on the deceased persons.

Injuries other than those of incised wounds could have been caused to the victims by blunt side of sword (Ex.15) and Khukri (Ex. 16) wielded by the accused as also by grinding stone (Ex. 18). It may be pointed out that the blood stained grinding stone (Sil Batta) Ex. 18 was also found near the dead body of Sarit Khanna. Besides, a blood stained knife (Ex. 17) had also been recovered from the dining hall, apart from blood stained sword (Ex. 15) and Khukri (Ex. 16) having been recovered at the spot. The sword (Ex. 15) belonged to Brigadier himself as stated by Smt. Rama Khanna, P.W.1, having been gifted to him by someone.

4. Originally, in the charge-sheet the present accused-Appellant was shown as absconder. He could be arrested from West Bengal after the passage of five years when his photograph was displayed and incident was telecast in a mock serial

under the programme "India's Most Wanted" on Zee T.V. Supplementary charge-sheet was, therefore, subsequently submitted by the police against the accused-Appellant.

5. It is gleaned from the testimony of Dr. A.K. Goel, P.W. 5 that the complainant Smt. Rama Khanna, P.W.1 was also subjected to medical examination and treatment in O.N.G.C. Hospital on 15-11-1994. She was given first aid with the stitching of her left forearm. The same was subjected to X-Ray also which revealed compound fracture of lower shaft of ulna of her left fore arm.

6. Though in all as many as 19 witnesses were examined by the prosecution, but the claim of prosecution rests on the substantive testimony of Smt. Rama Khanna, P.W.1 and Raju Jamadar, P.W.4.

7. The accused denied the charges. The gist of what he stated in his statement u/s 313, Code of Criminal Procedure may be recorded. He admitted that he was employed by the deceased Brig. Khanna as a gardener in the month of February-March, 1993 and after some time, he started working there as a domestic servant, occupying the servant quarter of the Kothi. He also admitted that at that time he had disclosed his identity as Raja alias Israil r/o Jalpaiguri (West Bengal). He could not deny that on 14-11-1994 two exits of the premises were closed and only one was open. It was also admitted by him that during his employment with Brig. Khanna he had opened an S.B. A/c No. 7855 in Vasant Vihar Branch of Punjab National Bank and pass book and cheque book Ex. 50 and 51, were issued to him by the Bank. He admitted his snaps Ex. 8 and Ex. 61 which were got clicked by him in army uniform of Brig. Khanna in his absence, recovered from the room of Jyoti. It was also admitted by him that soon after the occurrence, he had left the town and he was arrested with the help of West Bengal police from Jalpaiguri. He admitted his friendship with co-accused Nitesh (acquitted) who is the brother of Jyoti. It was also admitted by him that Nitesh was employed by complainant's daughter Sangeeta at her house at Delhi on his recommendation.

8. That facts revealed from the evidence adduced in the Court by Smt. Rama Khanna, P.W. 1 are thus:

The accused-Appellant was serving as domestic servant for a few months preceding the incident in the family of the complainant Smt. Rama Khanna, P.W. 1 which consisted of her husband retired Brigadier Shyam Lal Khanna (deceased) and their son Sarit Khanna (deceased) who had returned on 2-11-1994 from England after completing his M.B.A. For sometime past, the members of the complainant's family were observing abnormal and objectionable conduct of the accused. On 14-11-1994, it was conveyed to him that another servant would be employed at his place. The accused then left the house and came back late in the night. He used to reside in the outhouse of the "Kothi" of the complainant. On 15-11-1994 at about 8 A.M. the accused served tea to the complainant, her husband and her sister deceased Bishna Mathur who was with the complainant in

her house. After taking tea, the complainant's husband Brig. Khanna left the house for his morning walk as usual. The complainant and her sister went to two different bath rooms. Sarit Khanna was asleep in his room.

Soon thereafter at about 9.30 A.M. on 15-11-1994, the accused bolted complainant's bathroom from outside and committed murder of her son Sarit Khanna while he was asleep. His neck was almost severed from his body. The accused then caused fatal injuries to the complainant's sister with the sharp edged weapon which resulted in her instantaneous death. Lastly, he came to the complainant's bathroom, unbolted it and as soon as the complainant wanted to come out, he attacked her with the sword with which he was armed, causing grievous injury on her left arm. She, however, managed to bolt her bath room from inner side and raised alarm. The accused then tried to break the window net of the bathroom from the back side, threw chilly powder therefrom on the complainant and threatened to kill her. In the mean time, Brig. Khanna returned from his morning walk and took notice of the complainant's alarm, came over there and unbolted the bathroom which had again been bolted by the accused while going towards its back-side. Soon after the complainant came out of the bath room, the accused threw chilly powder on Brig. Khanna and caused fatal injuries to him by using sword.

On witnessing the incident, the complainant again rushed to the bath room and bolted it from the inner side. The accused again bolted the bath room from outside and reached its back side to attack the complainant from that direction. Despite having sustained serious injuries, Brig. Khanna managed to unbolt the complainant's bath room from outer side. The complainant came out and closed the main door of the house to prevent entry of the accused. Even thereafter, the accused knocked the main door of the premises repeatedly, threatening the complainant of dire consequences. However, in the meantime, Raju Jamadar, P.W. 4 and other neighbours arrived there. The accused managed to escape, scaling the boundary wall of the Kothi. The complainant thereafter found her son and sister to be dead. Her husband, though alive at that time, had little chance of survival. With the help of neighbours, she took her husband to O.N.G.C. Hospital, Dehradun where he was declared dead.

9. P.W. 4 Raju Jamadar has deposed that he used to work as a sweeper in the house of Brig. (Retd.) Shyam Lal Khanna in the year 1994. At the relevant time, Brig. (Retd.) Khanna, his wife (complainant), his son and one lady were living in the house. Accused Raja was engaged in their house as servant. The accused used to reside in their out-house. The witness used to come for cleaning in the house of Brig.(Retd.) Khanna between 8.30 a.m. to 9 a.m. According to him, the incident occurred after Dewali. He reached to their house at about 9 a.m. for cleaning. Their main iron gate was locked from inside. Wife of Brigadier Khanna was screaming aloud asking him to come inside at once as Raja had murdered all inside the house. When he asked her to open the gate, she replied that gate was locked and asked him to come inside by scaling the boundary wall. At that time

he saw a person wearing red shirt fleeing away from southern side after scaling the boundary wall. He was told by Mrs. Khanna that Raja was fleeing after committing murders. Then he broke open the lock of main gate with stone. Other persons also arrived there. He saw that Brig. Khanna was lying wounded inside the room. Mrs. Khanna took him to hospital. The statement of the witness is that the person fleeing away was Raja.

10. On perusal of the evidence adduced by the prosecution, the trial Court found the accused to be guilty of triple murder and of having attempted the murder of the complainant Smt. Rama Khanna, P.W. 1. Holding it to be the rarest of rare cases, he passed death sentence against the accused for triple murder alongwith other sentences as detailed in the opening of this judgement.

11. The appeal came to be preferred by the accused from jail. We appointed Sri Rajendra Dobhal, Advocate, as Amicus Curiae for the accused. We heard at length the learned Amicus Curiae on behalf of the accused Appellant in support of his appeal and learned Government Advocate on behalf of the State in opposition thereof. We have also carefully gone through the evidence and material on record. It would be worthwhile to deal with the arguments advanced at the Bar so as to arrive at the right conclusion.

12. It has first been argued by the learned Amicus Curiae that the accused had no motive to commit this crime. It may be pointed out in this regard that motive is not "sine qua non" for the conviction of a crime. Motive is known to the culprit alone and is concealed in his mind. Others, including the prosecution, can only guess about it having regard to the back-ground and circumstances. Moreover, motive loses its significance when there is direct, satisfactory and clinching evidence of the crime by a particular person as is the case here.

13. Furthermore, it is not a case where the prosecution failed to prove any motive on the part of the accused. The prosecution has brought on record motive on the part of the accused to commit this crime as known to it. As per the statement of Mrs. Sangeeta Mahendru, P.W. 3, he (accused) had illicit relations with Jyoti. The accused's beloved Jyoti Gurang, P.W. 10 and her mother Indramaya Gurang, P.W. 11 were examined by the prosecution. Jyoti is the sister of Nitesh, who had been got employed by the accused at the house of complainant's daughter at Delhi. Both these witnesses admitted their familiarity with the accused. It is the own admission of the accused u/s 313, Code of Criminal Procedure in reply to the question whether he had anything else to say that he had been scolded by the complainant, her son and sister accusing him of having illicit relations with Nitesh's sister Jyoti and he had been made to quit the job with payment of Rs. 1000/- as arrears of salary. It is a fact that snap of the accused in Brigadier's uniform (which he got clicked in the absence of the deceased Brigadier) was recovered from the house of Jyoti vide Ex. 61.

14. The fact that the accused got himself clicked in army uniform of Brigadier in his absence is indicative of his mischievous design. It can also justifiably be

inferred that he felt hurt and completely devastated for losing the opportunity of developing his intimacy with Jyoti because of the ultimatum held out by the complainant to dismiss him from service because of his illicit relations with her.

15. Moreover, it comes from the testimony of complainant Smt. Rama Khanna, P.W. 1 that the accused had stolen some money from her husband's purse. His other activities, too, reflected his beast-like attitude as he had killed her pet-birds and at another occasion had made holes in the nose of hens. They indicate his cruel and perverse mentality. According to the complainant Smt. Rama Khanna, P.W. 1, his such conduct had constrained them to terminate his services, which decision had been conveyed to him. Thus, the accused found that his misdeeds had come to the notice of the employer and the members of his family and they had lost faith and trust in him. As a result, his dismissal was staring in his face.

16. It appears to have made him desperate to take revenge in the wicked and crude form. There are persons who do not value life at all. They wield weapons and would stab another for the smallest things, killing for few coins or taking away life of another person to satisfy their own lust. Unmindful of his own failings and short-comings, the accused was motivated to avenge himself for an imaginary insult by committing this horrendous crime.

17. Apart from taking revenge, another motive of the accused could be to take away all the valuables from the house after eliminating the entire family. It appears that his plan failed because of the miraculous escape of Smt. Rama Khanna, P.W. 1. This argument for want of motive as advanced by the learned Amicus Curiae is lost.

18. The learned Amicus Curiae then levelled criticism against the testimony of Smt. Rama Khanna, P.W. 1. It has been urged that according to her she had been assaulted by the accused with a sword (Ex. 15). However, she did not sustain any cut injury. We do not feel impressed by this argument. It has come to be established by the testimony of Dr. A.K. Goel, P.W. 5 that she had been given first aid in O.N.G.C. Hospital on 15-11-1994 with stitching of the wound on her left fore-arm. The explanation coming forth from the own testimony of Smt. Rama Khanna, P.W. 1 as to how she escaped a more serious cut injury is acceptable that she was wearing a gold bangle and the same saved her from receiving an injury of more grievous nature. Thus, the blow of the sword fell on her gold bangle which bore most of the impact of the sharp edge of the sword. The result was that while sustaining some visible injury treated by stitching, there was fracture of lower shaft of her ulna of left fore-arm.

19. As a matter of fact, the complainant, Rama Khanna, P.W. 1 was herself injured of the felony. She is the most natural witness of the incident. Her presence at the spot is beyond question. Her testimony is entitled to the greatest weightage which we have summarized earlier. The account of the incident given by her is natural and untainted. She is also the informant of the incident. The

report was lodged without any loss of time vide F.I.R. Ex.Ka.1. To say in other words, no time gap had intervened for concoction and deliberation as the F.I.R. was lodged by the complainant Smt. Rama Khanna, P.W. 1 on 15-11-1994 at 10.30 a.m. The recital of the F.I.R. is that Israil Das @ Raja s/o Ajit Das r/o Fakettola, Post Jalpaiguri (West Bengal) used to work in her house for the last six months on monthly salary of Rs. 600/-. Noticing his objectionable behaviour for some time past, her husband on 14-11-1994 asked him to find out some another servant. Substance of the F.I.R. rendered corroboration to substantive testimony of P.W. 1 Smt. Rama Khanna.

20. Moreover, it is to be kept in mind that it is a case of single accused. It does not stand to reason at all that she would give a clean chit to the real culprit and would substitute the accused instead, without any apparent cause whatsoever. With the assistance of learned Counsel, we have carefully scrutinized the cross examination of this witness. Nothing is brought to discredit her version. To our mind, criticism advanced by the learned Amicus Curiae against the testimony of Smt. Rama Khanna, P.W. 1 is wholly unwarranted. Her singular testimony corroborated by F.I.R., medical evidence and spot Panchanamas, is sufficient to sustain conviction.

21. It has next been argued by the learned Amicus Curiae that the medical evidence is in conflict with the ocular testimony. According to him, the incident took place sometime in the night by unknown person(s) and the accused has been implicated simply on the basis of suspicion. He attempted to support this argument on the reasoning that in all the three post mortem reports which were prepared between 3.30 p.m. and 5.15 p.m. on 15-11-1994, the death had taken place about 12 hours before. He urged that this factum clearly indicated that the incident must have taken place much earlier than between 8 and 9 a.m. on 15-11-1994 as alleged by the prosecution. The argument does not stand an indepth scrutiny. It is significant to point out that the categorical statement of Dr. H.G.S. Manral, P.W. 6, is that the three victims could have died between 8 a.m. and 9 a.m. on 15-11-1994 on receiving injuries found on their person. It is also relevant to state that as per medical jurisprudence there could be variation or margin of six hours on either side in the approximate time of death. Thus judged, the three victims could have died as a result of injuries sustained by them between 8 - 9 a.m. on 15-11-1994 as is the case of the prosecution, established by the clinching and trustworthy evidence of Rama Khanna P.W.1 who received corroboration from Raju Jamadar, P.W. 4.

22. Learned Amicus Curiae, however, argued that no reliance could be placed on the testimony of Raju Jamadar, P.W.4 that the person who was fleeing away by scaling the boundary wall was accused Raja and it could not be taken that he had rendered corroboration to the testimony of Smt. Rama Khanna, P.W. 1. It has been pointed out that his statement is that he had identified the accused from a distance of 70 paces when he was running. It has been urged that he could not say with certainty that the person running was actually the accused. The

argument does not have any substance. It is pertinent to state that the incident took place in broad day light and Raju Jamadar, P.W. 4 was acquainted with the accused from before and was familiar with his stature, gait and physique. There could be no question of mistaken identity. Moreover, another significant aspect of the matter is that the specific statement of Raju Jamadar, P.W. 4 is also to the effect that when he had reached the main gate of the Kothi of complainant at about 9 a.m. for cleaning as per his usual routine, the main gate was locked from inside and Brigadier's wife (Smt. Rama Khanna, P.W. 1) was shouting aloud that the accused Raja had committed the murders. It was her spontaneous venture and had been made before she had any time to device or contrive anything for her advantage. The spontaneity of her shouting referring to accused is the guarantee of its truth. It was voluntary, obviously natural and made at the spur of moment.

23. When Raju Jamadar P.W. 4 asked her to open the gate, she replied that it was locked and asked him to come inside by the wall of the boundary of the Kothi. This is an important piece of "Res Gestae" evidence that at that very time Rama Khanna, P.W. 1 had stated that it was the accused Raja who had committed the murders. Section 6 of the Indian Evidence Act incorporates the rule which in English Text books is treated under the head "Res Gestae". Res Gestae may be broadly defined as matter incidental to the main fact and explanatory of it including acts and words which are so closely connected therewith as to constitute a part of the transaction. Sec. 6 makes the consistent incident of a transaction relevant, if a part of the transaction is fact initio. These consistent incidents may be acts, declarations or other facts accompanying or explaining the transaction or may vary according to the nature of the case. They may comprise things done or omitted either by the principal or his agent or partly by one or partly by the other.

24. Therefore, we are of the opinion that the testimony of Raju Jamadar, P.W. 4 is worthy of reliance and it leads corroboration to the testimony of the injured witness Smt. Rama Khanna, P.W. 1.

25. Yet another argument advanced by the learned Amicus Curiae is that as per the own case of the prosecution, the gate of the boundary wall was locked and it casts cloud on the prosecution story as advanced. We do not see how the locking of the gate of the boundary wall goes to affect the merits of the case. The Court is not required to hazard a guess as to who had locked it. We are of the definite view that the locking of the gate does not at all affect the merits of the case.

26. Learned Amicus Curiae then argued that no belonging of the accused had been found in his out-house and it indicated that actually he had been dismissed from service and had gone away. It has been urged that he has simply been implicated on the basis of suspicion. We are not inclined to accept this line of approach. As a matter of fact, the removal of his belongings from his quarter by the accused is indicative of his having planned the crime. On being scolded the previous day and given a notice for his dismissal, he, while planning the crime,

removed his belongings from his quarter without notice of his employer.

27. Learned Amicus Curiae has argued that the prosecution story suffers from inherent improbabilities. It has been reasoned that in case the accused intended to commit the said murders, he could have easily done so in the night time. This argument may look to be appealing in the first blush, but it does not stand a close test. Even otherwise, it has no bearing on merit of prosecution claim in view of direct and clinching evidence. Moreover, planning of criminals need not always stand to the test of probability.

28. It is however, pertinent to observe that the accused was residing in the out-house of the Kothi. He had to go to his quarter after finishing work in the night. Only the inmates of the house were to be there during night with the bolting of the doors from inside. He was well aware of the routine of the family members and that the son of the Brigadier who had come from England a few days before was a late riser that the Brigadier used to go for morning walk after tea whereafter both the ladies were all alone. He could not have dared to plan to get ingress inside the house during night without breaking open the door, which was, in all probabilities, to awake the inmates. Had he dared to do so, he would not have succeeded in his mission because there was every likelihood of serious resistance being offered to him by the Brigadier (retired military personnel) and his young son. He, therefore, well planned the time for commission of this crime when the Brigadier had gone for morning walk and when his young son, a late riser, was fast asleep. His every movement was well designed and calculated. He first murdered the young son of the Brigadier when he was asleep and then proceeded to murder the two ladies one by one, who could be easy victims incapable of offering any meaningful resistance. We are, therefore, of the opinion that the prosecution case does not suffer from improbability, what to say of inherent one.

29. It has lastly been argued by the learned Amicus Curiae that in this statement u/s 313, Code of Criminal Procedure recorded on 7-3-2001, he gave his age as 20 years, meaning thereby that the accused was a juvenile at the time of commission of the crime on 15-11-1994. He was required to be tried by a Juvenile Court and to be given benefit of being juvenile. We do not agree. It may be pointed out that in answer to question No. 26 u/s 313, Code of Criminal Procedure the accused admitted that he had opened S/B a/c No. 7855 at Indira Nagar, Vasant Vihar Branch of Punjab National Bank, Dehradun. The cheque book issued to him is Ex. 50 and pass book is Ex.51. It is found that the said account was opened on 9-3-1994.

Indeed, a savings bank account could be opened in the Bank only by a major. It is thus apparent that he was a major even on 9-3-1994 when Savings Bank account was opened. The present crime was committed by him on 15-11-1994. Therefore, there could be no question of accused being a juvenile on the date of the commission of this crime. Thus, there is concrete evidence that he was a major when he committed this crime. The argument in this behalf is not worthy

of a moment's attention otherwise also in view of the law laid down by the apex Court in a case of Abdul Mannan and others Vs. State of West Bengal, . In the present case, the accused absconded after the commission of crime and could be apprehended from West Bengal after five years. It has been ruled by the Apex Court in the case referred to above that the benefit of being juvenile could not be extended to the person who had caused the trial to be protracted. The facts of the present case voluminously speak against the accused otherwise also that actually he was major when he committed the crime. The argument advanced by the learned Amicus Curiae is rejected.

30. On examining the arguments advanced by the learned Amicus Curiae threadbare, we do not locate any merit therein. To conclude, we agree with the learned trial Judge that the case of the prosecution as against the accused was proved to the hilt primarily by convincing and trustworthy evidence of Smt. Rama Khanna, P.W. 1 and Raju Jamadar, P.W. 4 and by other circumstantial evidence and attending witnesses established on record. The presence of these two witnesses at the scene of occurrence was natural. Out of them Smt. Rama Khanna, P.W. 1 was herself injured of this crime. The accused brutally murdered Brigadier Shyam Lal Khanna, his young son Sarit Khanna and his sister-in-law and attempted to commit murder of his wife Smt. Rama Khanna, P.W. 1. It was just by chance that Smt. Rama Khanna, P.W. 1 had miraculous escape while lives of three others were mercilessly cut short by the accused. This was a ghastly crime committed by him, which was proved to the hilt. His conviction u/s 302 I.P.C. and 307, I.P.C., is perfectly justified.

31. Now, we address ourselves to the aspect of punishment. The learned Sessions Judge has awarded death sentence to the accused for the triple murder committed by him. As death sentence has been passed against him, other sentences awarded to him Under Sections 302 and 307, I.P.C. are of theoretical and academic importance only.

32. Learned Amicus Curiae has prayed for leniency and for converting the death sentence into life imprisonment, having regard to the young age of the accused. We have given our anxious thought to this aspect of the matter. We find that the murders committed by the accused were evidently pre-planned and well thought of. He committed three murders without any provocation and even attempted the murder of fourth member of the family Smt. Rama Khanna, P.W. 1, who, by providence, escaped by suffering injury only. He was hell-bent to eliminate the entire family. He meticulously used chilly powder which he threw on the victims so as to immobilize them and to incapacitate them of their defence. It may be pointed out that chilly powder had been found at the spot. It is obvious that gruesome triple murder had been committed by the accused in a merciless and diabolical manner. Smt. Rama Khanna, P.W. 1 has been drowned in the ocean of tears for the rest of her life, whose husband - a retired Brigadier and a young unmarried son, who had just returned from England after doing his M.B.A. were murdered apart from her aged sister. Punishment of death should reflect

adequately the revulsion felt for the gravest of crimes by the great majority of citizens. In our country, for the offence of murder death sentence has been retained for rarest of rare cases. It is our duty to administer the law as it is. We find the present case falling in the category of rarest of rare cases in which the extreme penalty of death is called for to meet the ends of justice. Almost the entire family has been eliminated. The offence was committed by the accused with planning. There was no mitigating circumstance. Rather, the circumstances are of aggravating nature. Having regard to the totality of the facts and circumstances of the case and the magnitude of the horrendous crime committed by the accused, the extreme penalty of death is justified. The rest of the sentences passed against the accused being of theoretical and academic interest only do not call for any interference.

33. We may point out that the facts of the present case are almost akin to that of *Amrutlal Someshwar Joshi v. State of Maharashtra* 1994 S.C.C. (Cri.) 1591 in which murder of three persons of a family was committed by a domestic servant by stabbing. The crime had been cleverly planned and committed in a merciless, cruel and diabolical manner. In that case, the death sentence awarded to the accused was held to be justified.

34. In view of the foregoing discussion, we hereby dismiss this jail appeal preferred by the accused Om Prakash alias Israil @ Nazrool @ Raja @ Raju Dass @ Raju Chaudary @ Safuel Islam. We confirm the death sentence passed against him u/s 302, I.P.C. and also other sentences passed against him for the said offence and u/s 307, I.P.C. as detailed in the opening part of the judgement. As a result, the accused Om Prakash alias Israil @ Nazrool @ Raja @ Raju Dass @ Raju Chaudary @ Safuel Islam shall be hanged by neck till dead. He is already in jail.

35. Criminal Reference No. 2 of 2001 made by the Additional Sessions Judge, Dehradun stands decided accordingly.

36. Sri Rajendra Dobhal, learned Amicus Curiae, who argued the appeal for the Appellant shall get Rs. 5000/- (Rupees Five Thousand only) as fee.

37. Let a copy of this judgement alongwith the record of the case be immediately sent to the Court below for needful compliance under intimation to this Court within two months positively.