

(1998) 02 AP CK 0004

In the Andhra Pradesh High Court

Case No : RT No. 3 of 1997 and Criminal A. No. 31 of 1998

Referring Officer, The I Additional District and Sessions
Judge, Nellore

APPELLANT

Vs

Bonda Venkata Reddy @ Ganapathireddy @ Chiranjeevi

RESPONDENT

Date of Decision : 17-02-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 366
Penal Code, 1860 (IPC) — Section 201, 302, 379, 380, 75

Citation : (1998) 4 ALD 646

Hon'ble Judges : N.Y. Hanumanthappa, J; B.V. Ranga Raju, J

Bench : Division Bench

Advocate : Public Prosecutor, for the Appellant; M/s. C. Padmanabha Reddy and C. Praveen Kumar, for the Respondent

Judgement

N.Y. Hanumanthappa, J

1. This referred trial and criminal appeal arise out of judgment passed by the learned I Additional Sessions Judge, Nellore in SC No. 163 of 1997 on 22-12-1997.

2. The sole accused in the case was tried by the learned I Additional Sessions Judge for the following charges :

0.1. u/s 302 IPC for causing the death of Ayyaru Kavitha (D1), wife of Ramachandran (PW3) by strangulation with a rope.

0.2. Under Section 302 IPC for causing the death of R. Sivaranjani (D2), aged 10 years, daughter of D1 by strangulation with violet blouse piece.

0.3. Under Section 302 IPC for causing the death of R. Rakesh (D3), aged 7 years, son of D1 by strangulation with blue blouse piece.

0.4. Under Section 380 IPC for committing theft of gold ornaments and cash of Rs.350/- and Rs.8800/- from the house of PW3.

0.5.Under Section 201 IPC for dictating D2 to write a letter in order to screen the offence.

3. The learned Judge have tried the accused of the above offences, convicted and sentenced him as follows :

On Charge No. 1 i.e., u/s 302 IPC, the learned Judge convicted the accused and sentenced him to imprisonment for life.

On Charges 2 and 3 i.e., u/s 302 IPC, the learned Judge convicted the accused and sentenced him to death subject to confirmation by High Court.

On Charge No.4 i.e., u/s 380 read with Section 75 IPC, the learned Judge convicted the accused and sentenced him to suffer rigorous imprisonment for seven years.

On charge No.5 i.e., u/s 201 IPC, the learned Judge convicted the accused and sentenced him to suffer rigorous imprisonment for three years.

4. The gravamen of the charge against the accused is that on 15-7-1996 between 11 a.m. and 12 noon, the accused entered into the quarter No.C-2-252 belonging to PW3 which is situated in Pulicat Nagar, Sullurpet and caused the death of the deceased 1 to 3 and committed theft of gold ornaments and cash.

5. The case of the prosecution in brief is narrated below:

The accused is a resident of Pemmallaipalli village, situated in Tirupati Rural, Chittoor District and he used to sell bananas near the Stonehousepet Police Station, Nellore. The material prosecution witnesses are all residents of Pulicat Nagar Colony, which is also known as K.R. Palem. It is situated at a distance of 2 kms. from Sullurpet and 15 kms from SHAR centre. The deceased D1 to D3 are also residents of Pulicat Nagar Colony.

6. D1 is the wife of PW3, D2 and D3 are their children. B. Tomala Devi @ Chinni @ Sridevi (PW37) is the sister-in-law of K.V. Ramana Babu (PW35). PW37 used to purchase bananas from the accused near Stonehousepet Police Station. It is alleged that accused used to accost PW37 and inform her that he loves and desires to marry her. PW37 was taken to Bhavani Lodge by the accused and they stayed there for six days. Inaganti Ramana Reddy (PW41), Manager of Bhavani Lodge provided room to the accused in their lodge when he brought along with him PW37 by making necessary entries in the register of the visitors to their lodge. PW41 stated that on an earlier occasion, the accused brought another woman to their lodge stating that she was his wife and requested room in the lodge. It is alleged that the accused took gold ear studs and silver anklets from PW37 on the pretext of paying the rent for staying in the lodge. Thereafter, the accused took PW37 to a hut in Porlakatta area, Nellore and they stayed there for a month. The accused stating that he is in need of money for carrying on his business sent PW37 to her parents house for getting money. PW37 approached her parents for money, but her parents pleaded helplessness. PW37 again went

to Porlakatta, but the accused threatened her that if she fails to bring money, he would finish off her parents, and PW37 broke into tears.

7. Finding PW37 missing from their house, the father of PW37 informed his son-in-law PW35, who is an employee of SHAR, over telephone that PW37 was missing. PW35 along with his wife went in search of PW37 and found her in a hut. PW37 was then sent to Chirala for safety.

8. It is alleged that the accused pledged ornaments in the shop of R Bharath (PW38) and in return received Rs.3,000/- on 18-3-1995 after signing his name. He had also taken a sum of Rs.1,000/- on 22-3-1995. On 8-4-1996, the accused pledged ear studs and leg chains with Prokash Modmal Kumar (PW39) for Rs.900/-.

9. In the first week of April, 1996, the accused along with his friends went to Pulicat Nagar. The accused alone went to quarter of PW35, knocked the door and introduced himself as the husband of PW37 and expressed his willingness to take his wife along with him. PW35 informed the accused that PW37 was not staying in his house and that she is not available in Nellore. The accused alleged that PW37 was confined by PW35. In the month of May, 1996, when PW35 was proceeding to Madras, the accused met him at Sullurpet Railway Station and picked up a quarrel and threatened to liquidate him if he failed to hand over PW37 to him. PW35 told the accused that PW37 was immature and that she had no discretion to decide about herself. The accused tailed PW35 to some distance in the train.

10. K. Lakshminarayana (PW6) who is working as Surplus Junior Assistant in the office of the Mandal Revenue Officer, Sullurpet, used to visit the studio of one Ramesh in the morning and evening, which is situated opposite to the MRO office, to read newspapers. One Srinivasula Reddy, his friend (PW6) Ramesh and the accused used to smoke ganja in the studio of Ramesh. Ramesh informed PW6 that accused sells ganja and he can have whenever he required. Accused asked PW6 to meet him on the Railway platform, at the ending point, on the evening of that day. PW6 met the accused at the said place and time and they smoked ganja for 4 to 5 times on the Railway platform. It is where the accused narrated his woes to PW6, who made up his mind to help the accused solve his problems.

11. On 10-7-1996, the Mandal Revenue Officer, Sullurpet, directed PW6 to distribute photo identity cards to the residents of Pulicat Nagar. PW6 informed this to the accused and the accused told him that he would accompany him to distribute the photo identity cards so that he could trace out PW37. PW6 agreed to this proposal and took the accused to Pulicat Nagar.

12. K. Srinivasulu (PW7) was working as Security Guard in Pulicat Nagar on 11-7-1996 on the eastern gate. PW6 informed PW7 that he had come to distribute photo identity cards and that the accused was his assistant. PW7 after noting their names and the time of their arrival in the register Ex.P8 which is kept at the gate, allowed them to enter into Pulicat Nagar. At about 1.30 p.m.,

PW6 and the accused came out of Pulicat Nagar and again PW7 made necessary entries in the register about their exit. On 12-7-1996, PW6 and the accused again went to Pulicat Nagar. Ex.P13 is the relevant entry in Ex.P8. On that day, the accused went to quarter of PW35 and obtained the signature of the sister of PW35 viz., Sujatha and left the place. The accused informed PW6 that PW37 was not available in the quarter of PW35. PW6 and accused commenced distributing of photo identity cards at the club from 6.30 p.m. to 8.30 p.m. While PW35 returning from his office in the evening he saw a crowd at the club and went there and asked for his card. The accused replied that his card was delivered at his quarter. Then PW35 left the place. PW6 informed the accused that he had no work of distribution of photo identity cards on 13th and 14th of July, 1996 and asked the accused to meet him on 15-7-1996.

13. On 15-7-1996, while PW6 was on his way to his office at about 9.30 a.m., the accused met him. PW6 told him that he had one and half hours work in the MRO office and asked the accused to wait at the photo studio. The accused stating that he would be detained at photo studio and that as he was very particular to see his wife on that day, requested PW6 to hand over the bag of identity cards and registers to him so that he could enter Pulicat Nagar in search of PW37. The accused also told PW6 that by the time he complete his work, he would return and hand over the bag of photo identity cards and register. Believing this and with a view to help the accused, PW6 handed over the bag of cards and registers to the accused.

14. On the fateful day i.e., on 15-7-1996 at about 8 a.m. PW3 went to his work spot and D2 and D3 to their school. At about 10.30 a.m., the accused rang the calling bell of E Prema (PW10) and told her that he had come to distribute the photo identity cards. So saying, he entered into the quarter of PW10 and sat on a chair. At that time, on hearing the voice of a mango vendor, PW10 called her from the balcony and purchased a dozen fruits. The accused then told PW10 that her card was not available and went away. PW10 then closed the door.

15. On 15-7-1996, M. Lakshminarayana (PW9) was attending the maintenance of street light in front of the quarter of PW3. Hewent to the electric pole and while examining the defect, he heard the sound of a calling bell and found the accused pressing the calling bell of quarter No.C-2-252 belonging to PW3. The door was opened and the accused went inside. Pindi Boadeiah (PW17) also heard the sound of calling bell from the quarter of PW3. He also heard some sound and was under the impression that some article must have fallen in the house of PW3. PW17's grand children came and tapped the door to be opened. His daughter also came, and along with her, D2 and D3 went to their house and tapped the door. The accused partly opened the door, allowing D2 and D3 to enter. The accused closed the door. PW17 was under the impression that the accused is a person known to the family of PW3. After taking lunch, PW17's grand children went to school and his daughter went to their neighbour's house to attend some function. While closing the door, PW17 found the quarter of PW3 locked from

outside.

16. PW3 came to his quarter and found it locked from outside. He opened the lock with the key which he was having and to his consternation, found the prepared food items on the dining table in an unusual manner and D2 lying on the ground without any movement in her body. He rushed to the quarter of K. Kishore Kumar (PW1) saying "where is my wife, where is my wife". PW1 came to the quarter of PW3 and saw D2 lying on the ground with her school uniform. PW3 was shivering. PW3 opened the kitchen and noticed the dead body of his wife D1 in the kitchen with a black contusion around her neck. He started weeping uncontrollably slapping his forehead with his palms saying "see my wife in the kitchen". PW1 saw the dead body of D1 and came out shouting for the attention of neighbours. On hearing his cries, B. Balaiah and T.T. Sudharam Babu (PWs.4 and 5) rushed to the quarter of PW3 and found him weeping. PW4 opened the door of the bed room and found the dead body of D3. On seeing the dead body of his son D3, PW3 swooned. They noticed the almirah kept open and the clothes scattered pellmel in front of the almirah and dead body of D3 beneath the clothes. Dr. V. Parthasarathy (PW2) Medical Officer in SHAR Centre shifted PW3 to SHAR Hospital. T.T. Sudharambabu (PW5) informed the police.

17. On receiving the phone call from PW5, V. Srinivasulu Reddy (PW42), Sub-Inspector of Police, Sullurpet Police Station, about the death of D1 to D3, he made entry in the general diary Ex.P131 and sent constables to the scene of offence. He then proceeded to the scene of offence and found crowd standing in front of quarter of PW3. PW42 obtained a report from PW1 as Ex.PI and registered the same as Cr.No.67 of 1996 of Sullurpet Police Station for the offences punishable under Sections 302 and 379 IPC at 8 p.m. Ex.P132 is the original FIR. PW42 also sent copies of FIR to all concerned.

18. PW42, Incharge Inspector, Sullurpet, on receiving information visited the scene of offence, entered the quarter of PW3 and found dead bodies of D1 to D3. A letter Ex.P7 was found near the dead body of D2. PW42 examined PWs.1, 2, 4, Sand 17 and recorded their statements. On 16-7-1996, PW43 at about 6 a.m. again visited the scene of offence and prepared observation mahazar in the presence of S. Premnath Reddy (PW29) and another. Ex.P122 is the panchanama of the scene of offence. He then prepared a rough sketch of the scene of offence under Ex.P133, and held inquest over the dead bodies of D1 to D3 in the presence of PW29 and 2 others under Exs.P123 to 125, inquest reports.

19. Dr. K. Mastanamma (PW26), is the Civil Assistant Surgeon, Government Hospital, Sullurpet, Dr. B. Krishnaiah (PW27), is the Civil Assistant Surgeon, Government Hospital, Venkatagiri and Dr. S. Janakiramiah (PW28) is the Medical Officer, Government Dispensary, Naidupet. They conducted autopsy over the dead bodies of D1 to D3 respectively and they opined that the cause of death is "Asphyxia" due to strangulation with soft material like cloth and smothering of hands.

20. PW43 handed over the file to K. Bhupal Singh (PW44), Inspector of Police, Sullurpet, on 16-7-1996, who examined PW10, and some others and recorded their statements, On 17-7-1996, PW44 examined K. Srinivasulu (PW7), N. Venkateswarlu (PW8), A. China Venkata Subbaiah (PW12), Kodetipalli Penchalaiah (PW22) and other witnesses and recorded their statements. PW44 also examined K. Lakshminarayana (PW6). He seized a wire bag (MO21), handkerchieves (MOs.22 and 23), Hundred rupee currency notes bearing Nos.2 FA 582670 and 2DK 762567 (MOs.26 and 27) and a fifty rupee currency note bearing No.6GB 253248 in the presence of G. Harinarayana Reddy (PW23) and another. PW24 on receiving information arrested the accused near Railway parcel office, Tirupati on 20-8-1996 and on questioning him, the accused led him to different shops where he had pledged the jewellery, which was seized by PW44 in the presence of PW23 and others.

21. On 24-8-1996, the learned Magistrate conducted identification parade and N. Venkateswarlu (PW8) identified the accused. On 27-8-1996, N. Raj Kumar (PW13), Judicial Magistrate of First Class, Venkatagiri recorded the confessional statement of the accused by following the due procedure under Ex.P24.

22. PW44 on 20-11-1996 filed the charge-sheet in the Court of the Judicial Magistrate of First Class in PRC No.3 of 1997. As the offences alleged were to be tried by the Court of Sessions, the learned Magistrate committed it to the Principal Sessions Judge, Nellore, who after receipt of the necessary papers took cognizance of the case and registered it as Sessions Case No. 163 of 1997, and made it over to the I Additional District and Sessions Judge, Nellore, who after going through the papers framed the charges earlier extracted, read and explained the same to the accused in Telugu. The accused pleaded not guilty.

23. The prosecution in support of its case examined PWs. 1 to 45 and got marked Exs. P1 to P154 and material objects MOs.1 to 44. On behalf of the defence, no witnesses were examined, but Exs.D1 to D11 were marked. The Court also marked office copy of the report, dated 12-8-1996 of V. Anandam (PW34), Mandal Revenue Officer, Gudur, as Ex.C1.

24. After closure of evidence, the learned Judge examined the accused u/s 313 Cr.PC and heard the arguments. The following circumstances weighed most with the learned Judge for convicting the accused of the offences alleged against him :

- (1) The accused was spotted in and around the scene of offence at the time of the commission of the offence.
- (2) The accused was seen in the quarter o.C-2-252, where the offence took place.
- (3) The stolen ornaments which were pledged/sold by the accused were recovered and seized at his instance.
- (4) The accused made voluntary confession before the learned Judicial First Class Magistrate, Venkatagiri, about the commission of the crime.

25. Taking into consideration the above circumstances and other factors viz., the conduct of the accused, the deceased was alone in the quarter and the evidence on record, the learned Judge came to the conclusion that the accused with an intention to make monetary gain committed murder of D1 and in order to obliterate the evidence, murdered D2 and D3. He therefore, convicted the accused for the offences alleged against him. With regard to the sentence, the learned Judge taking into consideration the gravity of the offence -being ghastly and diabolical, imposed the punishment of death, as according to him, the offence fell within the range of rarest of the rare cases.

26. Aggrieved by the conviction and sentence, the accused preferred Criminal Appeal No.31 of 1998. With regard to the death sentence imposed on the accused,, the trial Court has referred the case to this Court for confirmation as required u/s 366 Cr.PC. Sri Padmanabha Reddy, learned senior Advocate, appearing on behalf of the accused, attacked the judgment and order of the Court below, both on conviction and sentence on several grounds. According to him, the trial Court committed a mistake in convicting the accused for offence under Sections 302, 380 and 201 IPC in the absence of ocular witnesses. He also contended that the trial Court erred in coming to the conclusion that the accused alone might have committed the murder of the deceased D1 to D3 merely because at the relevant time he was found moving in an around the locality and was also seen at the quarter of PW3. He submitted that the trial Court failed to notice as to whether the circumstances explained were sufficient to convict the accused of the offences alleged against him. He further contended that the evidence given is not cogent and convincing, and that any amount of confessional statement, either as to the recovery of the stolen property or other properties, used in the commission of the crime, cannot be taken as the basis to order conviction. He further stated that the so called test of identification parade is a make believe one and the person alleged to have identified the accused during the identification parade cannot be believed. He contended that the investigation discloses that the incident took place in a dramatic manner. Even if it is believed that the incident had taken place as set out by the prosecution, the deceased would have raised commotion to attract the attention of the neighbours. No witness said that he heard any noise or cries of the deceased. He further contended that the Court below failed to notice that there was no reason for the accused to enter the house of PW3 when he had already entered the house of PW10 who was alone in the house, and if he had an idea to commit theft, he would have committed the same in the house of PW10. This shows the innocence of the accused. He further stated that the trial Court based its conclusions on the entries made in the observation panchanama and inquest reports, and submitted that though a number of witnesses have been examined and the documentary evidence voluminous, the same is not helpful to the prosecution as it is full of inconsistencies and discrepancies. He also stated that the trial Court did not evaluate the evidence dispassionately, and ignoring the rule "evidence has to be weighed and not counted", convicted the accused of the

offences alleged against him. He lastly contended that the accused is innocent of the guilt, and as such he is entitled to be acquitted.

27. With regard to reference made to this Court for confirmation of the death sentence imposed upon the accused by the learned Judge, the learned senior Advocate for the appellant, Sri Padmanabha Reddy submitted that the prosecution has failed to establish that the so called murders of D1 to D3, fell within the ambit of rarest of the rare cases. He submitted that when the entire case itself is suspicious, basing on circumstantial evidence convicting the accused and sentencing him to death is quite unjust and improper. He submitted that if for any reasons the Court comes to the conclusion that the accused has committed murder of the deceased D1 to D3, he may be sentenced to life instead of confirming the death sentence.

28. Smt. Susheela Devi, learned Public Prosecutor, supported the judgment and order of the Court below. According to her, the conviction and sentence of the accused of the offences punishable under Sections 302, 380 and 201 IPC is correct as the accused has committed the murder of three innocent lives -mother and two children, which act is quite heinous, and hence the sentence of death imposed against the accused is a just one. She further contended that the circumstances required to connect the accused to the offences alleged against him have been successfully established by the prosecution and as such no interference is required by this Court.

29. Since both sides are at variance on the procedure followed by the learned Sessions Judge in reading the evidence, we once again went through the entire judgment and the evidence on record - both oral and documentary, and found that the prosecution's case completely rested on circumstantial evidence.

30. We are very sure aware that when the case is completely based on circumstantial evidence, the circumstances so suggested should be free from artificiality, and they should suggest only one conclusion i.e., the involvement of the accused in the crime alleged against him. A slightest doubt as to the involvement of the accused in the crime alleged against him, entails the benefit of doubt in his favour. In a case of this type where the conviction recorded is lock, stock and barrel, based on circumstantial evidence, what should be the evidence, how it should be appreciated and what are the conditions required to be fulfilled to record such conviction have been laid down by the Supreme Court in a catena of decisions, some of which are State (Delhi Administration) Vs. Shri Gulzari Lal Tandon, , Lakhan Pal v. State of Madhya Pradesh AIR 1976 SC 1620 and Sarbir Singh v. State of Punjab 1993 (1) Crimes SC 616.

31. We are also quite aware that recovery of material objects through the accused are extra-judicial confession and they cannot be taken as substantial pieces of evidence for recording a conviction, unless such confession is supported by other evidence. To fortify this view of ours, we derive strength from the decision of the Supreme Court in Kishore Chand Vs. State of Himachal Pradesh, .

32. If we examine the evidence available on record in the light of the decisions of the Apex Court *supra*, we find that the conclusion drawn by the Court below in connecting the accused to the offence alleged against him i.e., murdering three innocent people D1 to D3 is correct.

33. The conduct of the accused as spoken by the prosecution is that he had an affair with PW37 and married her, and later he sent her back to her parents house demanding money, which was refused. PW37 again went to her husband, and thereafter the father of PW37 informed his son-in-law (PW35) over telephone that PW37 is missing. PW35 went in search of PW37 along with his wife and traced her in a hut and took her along with them. The accused in his efforts to trace the whereabouts of his wife went to PW10's house in Pulicat Nagar. He had also gone to the quarter of PW3 and rang the calling bell and later entered into the quarter and bolted it from inside. This was seen by some witnesses. Later in the evening, PW3 came to his quarter and found it locked from outside, and on opening found to his astonishment the dead bodies of the deceased.

34. The Doctors PWs.26 to 28 conducted autopsy over the dead bodies of the deceased and they opined that the cause of death is "Asphyxia" due to strangulation. There is no artificiality in the evidence of the police inspectors viz., PW43 and PW44. The Section 161 Cr.PC statements correspond with the statements given by the witnesses before the Court. The discrepancies and contradictions pointed out by the defence are trivial and negligible. The witnesses discharged their burden by giving correct version. If the version of each of the witnesses is read impartially, the ultimate conclusion that can be drawn is the death of three innocent lives -mother and two children, which was not natural. The links required to connect the accused to the offence alleged against him are present and they point the accusing finger towards the accused. Nothing has been elicited to discredit the evidence of the witnesses. Nowhere it is stated that the evidence given by the witnesses is false. On the other hand, the evidence is strong enough to believe the story put forth by the prosecution to record conviction against the accused of the offences alleged against him.

35. In our view the reasoning adopted by the trial Court in arriving at the conclusion that the accused committed theft of valuables in the house of PW3 and in the commission of such offence murdered D1 and with a view to shadow the evidence of death of D1 committed the murder of D2 and D3, cannot be faulted. Hence, the conviction recorded against the accused of the offences alleged against him, is just and proper and no interference/ is warranted.

36. As far as the reference made by the trial Court as to the capital punishment imposed upon the accused is concerned, u/s 366 Cr.PC wherever sentence of death is imposed upon the accused, the same has to be confirmed by this Court.

37. On receipt of papers from the Court of Sessions, this Court registered the same as RT No.3 of 1997, and u/s 366 Cr.PC has to decide whether the case is

for retrial or whether the retrial can be dispensed with or whether the evidence available on record can be made use of.

38. After going through the entire evidence we found that no retrial is warranted. Since we have dispensed with the retrial, the point that arises for our consideration is whether the capital punishment imposed by the trial Court on the accused is justified or not in the facts and circumstances of the case.

39. When sentence of death can be ordered has been explained by the Apex Court and this Court in a catena of decisions. To impose capital punishment on the accused, the accused should have committed an act which is brutal and heinous in nature. In other words, it should be one falling within the ambit of rarest of the rare cases. While dealing with a similar case in *Yerraguntla Nagaiah v. State of A.P.*, this Court referred to the decisions in *Shidagouda Ningappa Ghandavar Vs. State of Karnataka*, *Bachan Singh Vs. State of Punjab*, and while referring to the decision of the Division Bench of the High Court in *Rataniya Bhima Bhil and Others Vs. State of Gujarat*, extracted the following, which is relevant to the case on hand :

"Now in order to pass an order of capital punishment, Mr. Pardiwala is right that this Court must reach a definite conclusion that the case at hand is one falling in the categories of that of the rarest of the rare cases as repeatedly emphasised by the Supreme Court. Now it is indeed true that merely because five persons were done to death on the spot as a result of the action initiated by the accused No.2 by axing down two persons on the spot and thereafter killing 3 and injuring five others that by itself cannot be said to be an exceptional case !!

Further, there is indeed nothing on the record to show that the accused No.2 had in any way criminal antecedents of being professional killer, in other words, there is nothing on the record to show that he was a person of desperate and dangerous character, living on a life of crime by indulging in such maniac murders. No doubt, the accused No.2 has committed two murders setting the ball of vendetta rolling further on the spot, but that by itself, as stated above, does not bring the case within a special category of the "Rarest of the rare case" more particularly in view of the fact that the incident of five murders flared up unexpectedly. There was certainly no premeditation to commit five murders or injure others. In fact had indeed deceased party not gone to the house of accused in respect of the previous day incident, incident in question certainly would not have taken place at all. This indeed is one of the most important and saviour ground to save accused No.2 from gallows of death. Further the Supreme Court in its decision rendered in the case of *Machhi Singh and Others Vs. State of Punjab*, has laid down guidelines in para Nos.33 and 34 placing reliance upon its earlier decision in the case of *Bacchansingh*. Bearing in mind these guidelines, in our opinion, no case for the enhancement of sentence is made out, and hence the suo motu notice for the enhancement of the sentence against accused deserves to be dismissed."

40. This Court also referred to the decision of the Supreme Court in Krishan Vs. State of Haryana, , in which it was held as follows ;

"Undoubtedly, felonious propensity of an offender is a factor which requires consideration while dealing with the question of imposition of the sentence of death but that cannot be made the sole basis for such sentence as all other facts relating to the commission of the crime including motives, manner and magnitude have also to be taken into consideration."

41. The reason that weighed in the mind of the learned Judge to award punishment of death against the accused is that the accused is responsible for the death of three innocent lives D1 to D3. In the instant case, it is not shown by the prosecution that the appellant had been earlier involved in acts of murder, For ordering sentence of death, felonious propensity of the offender is a factor which has to be considered while dealing with the question of imposing sentence of death, but that cannot be made the sole basis for imposing such sentence as other factors relating to the commission of the crime, including motives, manner and magnitude have to be taken into consideration. Having tested the instant case in the light of the above factors, we feel that punishment of death imposed by the trial Court against the accused is not warranted.

42. Having considered the evidence on record and taking into consideration, the attending facts, we fail to approve the sentence of death imposed by the trial Court on the appellant for his conviction u/s 302 IPC, as it does not fall within the ambit of rarest of rare cases.

43. We, therefore, commute the sentence of death imposed upon the appellant for his conviction u/s 302 IPC to that of imprisonment for life.

44. As far as conviction for other offences is concerned, we do not disagree with the trial Court as the same is based upon proper appreciation of evidence.

45. The criminal appeal and referred trial are accordingly disposed of.