

(1987) 10 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Murder Reference No. 1 of 1987 and Criminal Appeal No. 4 of 1987

State of Himachal Pradesh

APPELLANT

Vs

Kashmira Singh

RESPONDENT

Date of Decision : 08-10-1987

Acts Referred:

Constitution of India, 1950 — Article 19, 21
Criminal Procedure Code, 1898 (CrPC) — Section 364
Criminal Procedure Code, 1973 (CrPC) — Section 164, 235(2), 281, 354(3), 6
Evidence Act, 1872 — Section 21, 24, 25
Penal Code, 1860 (IPC) — Section 302

Citation : (1988) 1 ShimLC 207

Hon'ble Judges : V.P. Gupta, J;R.S. Thakur, J

Bench : Division Bench

Advocate : M.S. Chandel, Asstt. A.G. in Murder Reference No. 1 of 1987 and M.G. Chitkara, in Cr. A. No. 4/1987, for the Appellant; M.G. Chitkara in Murder Reference No. 1 of 1987 and M.S. Chandel, Asstt. A.G. in Cr. A. No. 4/1987, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Thakur, J.—The accused, Kashmir Singh (32) resident of village Bhatti, Tahsil Dehra, District Kangra, has been convicted by the learned Additional Sessions Judge (I) Kangra Division at Dharamsala, vide his judgment, dated January 17, 1987 u/s 302, of the Indian Penal Code and sentenced to death. The accused has filed an appeal in this Court against this judgment. The learned Additional Sessions Judge has also made a reference to this Court for confirmation or the death sentence passed by him in the impugned judgment. Both the appeal and the Reference were heard together and are intended to be disposed of by this judgment.

2. The accused being mason has been doing masonry work of different people in his neighbourhood. He had two wives, namely, Smt. Resho alias Reshma and Jiwna alias Chaina. In the morning of June 3, 1985, both these ladies were found

to have been murdered and their bodies were lying at a distance of about 100 yards from the house of the accused and a distance of 50 feet from each other with the following injuries on their bodies:

Injuries on the body of Smt. Resho Devi.-(1) Cut throat injury encircling whole of neck leaving two inch area of skin muscles and vertebra on the posterior aspect of neck. All soft tissues including blood vessels muscles traches aescphogus cut. Clotted blood present all around, Edges irregular and deeply stained with blood.

(2) Incised wound three inches one half inch two inches infront of right ear, extending over right cheek underlying bones were fractured. Margins sharp and deeply stained with blood.

(3) Incised wound infront of chin oblique one and half inches half inch X half inch. Margin sharp and deeply stained with blood. Gaping of wound present.

(4) Lacerated wound over front of left shoulder U" X 1" X 1" clavicle bone fractured Margin irregular.

Injuries on the body of Smt. Jiwna Devi.

(1) An incised wound across the neck from below the mandible on the left side to the right side 25 cm X 5cm x 5cms. Maximum depth is on the left side, it had. cut below the hyoid bone and above the thyrecid cartilage. The position of the wound was vessels and other tissues were cut. Clotted blood was present.

(2) Incised wound on the chin 7 cms x 3 cms X 1 cm oblique near the lip on the right side and slanting down on the left side. The wound is deeper on the left side where the lower jaw is cut in its entirety.

(3) Incised wound from the bridge of the nose to above the right pinna. The right eye ball is burst. Lateral orbital wall zygomatic and temporal bones have been cut. Muscles and other tissues have also been cut. Lower edge of the wound over hangs the upper edge.

(1) Sim LC-27

3. These injuries were found by a team of Medical Officers in the Civil Hospital at Dharmsala during the post-mortems performed by them on June 4, 1985 on the dead-bodies of the two ladies and in their opinion the injuries were apte-mortem in nature caused by sharp edged weapon except injury No. 4 on the person of Smt. Resho which was caused by blunt weapon. In their opinion these injuries were sufficient in the ordinary course of nature to cause death.

4. The accused had married Resho some 13 years prior to the incident. She did not bear any child to the accused and therefore, about five years later he married the other wife, Jiwna. It is stated that the accused had developed pre-marital relations with Jiwna and later on married her in the temple of Jawala Ji when she was pregnant. Both the wives continued living with the accused and Jiwna during her stay with the accused bore him two sons who are still living.

One year prior to the incident since the accused started neglecting and maltreating the elder wife Resho, she left the matrimonial home and started living with her father Rajinder Singh.

5. In March 1984 the accused undertook the construction work as mason of the house of one Panjab Singh in village Mehwa. A colleague of the neighbouring area, Sh. Ramesh Kumar of village Garh also worked as mason with the accused in the construction of the house of Panjab Singh for one month but thereafter he left the work while the accused continued working there even thereafter for many months. Said Panjab Singh had an unmarried daughter aged about 20 years at that time named Shashi alias Lalita living with him during those days who also worked as a helper in the construction work with the accused and in due course the accused is said to have developed love-affair with said Shashi. In the early part of the construction work the accused used to go home in the evening daily but later on he even started living at the house of Panjab Singh and would stay there for four or five days every week and go home only once or twice in a week and during this period Jiwna even faced difficulties with regard to her rations and other domestic necessities of life.

6. After the construction work of the house of Panjab Singh was over the accused undertook the construction work of a well for his own elder brother, Prithi Singh. Said Prithi Singh and the accused had separated from each other but were living in the same house separately. It was a two storied house with three rooms on the ground floor and three in the upper storey out of which two rooms in the ground floor and two in the upper storey were in the exclusive possession of said Prithi Singh while one room in the ground floor and one in the upper storey were in the exclusive possession of the accused. Said Prithi Singh was in the Army service and was posted at that time at a place near Pathankot who had come home on leave when this construction work of the well was going on. Some time on May 25, 1985, said Prithi Singh had brought his sister Chanchila from her matrimonial home to his house to look after the labourers employed in the construction of the well as serving tea etc. to them as his wife was sick. Said Chanchila was still in the house when Prithi Singh left his house on May 30, 1985 to join his place of posting after his leave was over. The work of the well, however, had yet not been completed and it was left to the accused to see that it was completed in the absence of Prithi Singh,

7. The accused on June 1, 1985 went to the parental house of his wife Resho and asked her father Rajinder Singh to send Resho with him to the matrimonial home as he (accused) intended to celebrate the birthday of his elder son and brought her to his house on the same day. On June 2, 1985 the accused remained at his house with his wives. He was seen sharpening his "dardot" some-time in the afternoon that day and in the evening said Ramesh Kumar of village Garh, his colleague mason, came to his house to invite him to his village for "jagratta" and he found that at that time the accused was having liquor with one Kishan Singh, a local teacher, inside his house. As the night fell, the accused was still seen with

his wives in his house.

8. Next morning, that is, on June 3, 1985, at about 7.00, Ram Lal (PW-B), who is the next door neighbour of the accused, while watering his kitchen garden near his house, found that the village Children who were going to school were raising an alarm Said Ram Lal suspecting that school children had come across a snake, ran towards them and found that the dead bodies of two ladies, Resho and Jiwna were lying with cut throat injuries on their bodies. Meanwhile, his brother Tilak Raj (PW 9) had also came there and while he (Ram Lal) asked said Tilak Raj to guard the dead bodies, he himself rushed to the house of the pardhan of the Gram Panchayat Sh. Lal Chand, Shri Lal Chand (PW 3) also immediately came to the spot and after confirming that the two ladies were dead, went to the house of the accused but the accused was not found at his house. They then sent for the Lambardar Kishan Kumar (PW 6) and chowkidar Rattan Chand (PW 7) who also promptly came to the scene of crime and so did the up-Pradhan Gian Singh (PW 5). Said Lal Chand, Pardhan then sent a ruqa in writing to the police post Ranital to the effect that the dead bodies of two ladies were lying in a bamboo grove in the morning and the accused himself was not found at home whereas he was present at his house on the previous night and the police should come to the spot to carry out the necessary proceedings. On receiving this ruqa, Shri Hiara Lal (PW 26), A.S.I. Incharge of the police post Ranital came immediately on the spot and after verifying the facts sent ruqa (Ex. P?/I) to the police station. Haripur, for registration of case u/s 302 of the Indian Penal Code while he himself started the preparation of the inquest proceedings on the two dead bodies. Meanwhile, Shri Rikhi Ram, SI Station House Officer, Haripur (PW 29) also learnt about this incident while he was proceeding to the police post Ranital to disburse the salary of the police staff over there and he also then rushed to the place of incident and took over the investigation from the A.S.I. Hira Lal.

9. On the other hand the accued in the early hours of morning of June 3, 1985, round-about 4 a.m. arrived at the house of Panjab Singh (PW-20) called him cut of his house and confessed to him that he had killed both his wives and sought his advice as to what he (accused) should do. Said Panjab Singh then told him that he should report the matter to the police but when the accused expressed his apprehension that the police would torture him, said Panjab Singh advised him to go to a court at Dharamsala and confess his guilt before the Court, The accused at that time gave four bottles of Rum to said Panjab Singh and said Panjab Singh gave him a hundred rupee note on account of the balance of wages of masonry work done by the accused while constructing his house and also served him with a cup of tea. The accused then went to Ranital and from there took a bus and went to Dharamsala and entered the Court of the Sessions Judge at 10.20 a.m. While the Sessions Judge Shri D.P. Sood was holding his Court and expressed his desire that he intended to make a confession, with regard to a commission of a crime to him. The learned Sessions Judge then recorded the statement (Ex. PN) of the accused which when translated into English reads as follows:

Stated that I do surrender myself before the Court. I have committed an offence. I have committed the murder of my both the wives in the night intervening 2nd and 3rd June 1985 at about 12/1 O'clock. I had consumed liquor and was in a drunken condition. After consuming the liquor I had my meal with both the wives. I had one broken cot in my house on which my first wife Reshmo used to sleep. On that day she objected that how could she sleep on that cot and insisted that first bamboo should be brought and the cot should be mended and that only then would she sleep on that cot.

Upon this I and my both the wives Reshmo and Chenno went to bring bamboo at a distance of about 100 yards from our residential house. On reaching there both of my wives talked arrogantly (spoke some naughtily words) and said that I consumed liquor and do not bother for them. Upon this I became angry. When both of them chose the bamboo and said that one was good and asked me to cut the same, I under the influence of liquor chopped the necks off of both the women with a drat since under the influence of liquor. I also remained unconscious there for two/three hours. When I came to my senses, I realised as to what I had done. Thereafter I had left for home.

On reaching home I changed my clothes and washed the hands which were smeared with blood. Thereafter I have come to surrender myself before the Court. I do produce in the court one bloodstained Payjama and Parna which was wrapped around the head. The blue under-vest which I am wearing at present is the same which I was wearing during the previous night. I have come to this Court because a case against Shri paras Ram who is a resident of Bankhandi had been tiled in this Court. The decision was passed 5/6 years ago by this Court. Therefore, instead of going to Dehra or any other Court, I have come straight to this Court. Both the dead bodies are lying near the bamboo trees. I have kept the drat in my house after washing the same.

I have come after leaving behind my younger sister, who is married and has come to my house these days and both of my sons aged 5 years and 2 years while sleeping. They don't have any knowledge of this murder.

My brother and sister-in-law (Bhabi) are residing in Madhopur Basoli Mod, Pathankot-Jammu Kashmir. My brother Prithi Singh had come on two months leave who has left for his duty 4/5 days before with family. I am illiterate and cannot append my signature.

10. The learned Sessions Judge then at the foot of the statement recorded a certificate (Ex. PW 1) in his own hand which reads as follows:

This is to certify that Sh. Kashmir Singh aforesaid (whose statement has been recorded by my Reader Sh. Jagdish in my presence and supervision) has repeatedly been warned to think over as to what he has stated and whether he is making the statement under pressure of police or any other person. He claims to have made the statement voluntarily. After having satisfied myself regarding the voluntary nature of statement, one Payjama of "angoori colour" (light green

colour) and one "tumbling" styled as "parna" by the maker of the statement Sh. Kashmir Singh checked duly initialed by me and after affixation of seal of Sessions Judge at Dharamsala" the same are handed over to the police in a sealed cover which clothes bear seal "DP" with a forwarding letter to take proper legal action in accordance with law at the earliest.

Sd/- Sessions Judge, Dharamsala.

11. This statement, the learned Sessions Judge then sent in a sealed cover to the Superintendent of Police Kangra at Dharamsala with a covering Memo (Ex. PN/2) which reads as follows:

No. DSJ/85-Dated Dharamsala 3rd June, 1985.

To The Superintendent of Police, Kangra District at Dharamsala.

Sub: Information regarding double murder case of Smt. Reshmo and Smt. Chaino Devi, by Sh. Kashmir Singh informant.

Memo:

I am sending herewith the information per the statement of Sh. Kashmir Singh informant, surrendered before this Court at 10.20 a.m. and disclosed having committed non-bailable and cognizable offence. He was made to understand as to what he was stating was of voluntarily character, but ultimately he repeatedly stated to have committed the crime. Thus, his statement was got recorded by me, per his version from 10.40 a.m. to 11.25 a.m. and after again certifying myself as to the voluntarily character of the statement, took into possession one Pajama and one parna, now duly signed by me and stamped with the stamp of Sessions Judge at Dharamsala at 11.30 a.m. The above said two articles, namely, Pajama and parna have been put in a sealed parcel-sealed with seal "DP" which is inscribed on my finger-ring (golden). You are requested to take proper legal action immediately on the basis of the enclosed statement, The informant is sitting in my court at this moment.

The sample seals three in number on a separate paper, are being sent to you.

Sd/- D.P. Sood, Sessions Judge, Dharamsala, 3-6-1985.

Ends: As above. Total Four leafs plus one sealed parcel with 10 seals of "DP".

12. As a result of this communication the police officials headed by A.S.I. Dinga Singh (PW 24) from the office of the Superintendent of Police, Dharamsala, placed the accused under arrest and also took into possession the sealed cover of the clothes which the accused had entrusted to the Sessions Judge while making his statement before him with regard to the incident in question.

13. The accused thereafter was taken by Dharamsala police to the place of occurrence. As already recorded, SI. Rikhi Ram and ASI Hira Lal were already on the spot and SI. Rikhi Ram who had taken over the investigation in hand after obtaining the custody of the accused from Dharamsala police interrogated him.

As a result of his interrogation, the accused made a statement to the said Investigating Officer as a result whereof a "darat" (Ex. P-1) was recovered at his instance which was hidden in a heap of "sanyadus" by the side of the out wall of his house in the presence of respectable witnesses of the area like the Pardhan, Lal Chand and Up Pardhan, Gian Chand, which was at that time stained with blood and it was taken into possession by the police after putting it into a sealed packet and after tracing a sketch thereof (Ex. PK).

14. The case of the prosecution is that the accused did away with the lives of his two wives since he was in love with Shashi, the daughter of Panjab Singh, but could not marry her as he already had two wives and he was also finding it difficult to support and maintain not only his two wives and two children but also a mistress and, therefore, he committed the murder of his two wives in a cool, calculated and premeditated fashion so that the field is clear for him to have his love affairs with Shashi unhampered and unobstructed.

15. The learned Additional Sessions Judge in the impugned judgment believed this story of the prosecution and convicted and sentenced the accused as stated earlier.

16. The learned Counsel for the accused at the time of the arguments before this Court has assailed the finding of the trial Court on a number of contentions raised by him. His first target was the confessional statement (Ex. PN) which purports to have been made by the accused before the learned Sessions Judge at Dharamsala making a clean breast of the whole affair, namely, that it was he who had killed his two wives Resho and Jiwna during the night intervening 2/3rd June, 1985 by cutting their throats with a "darat" while he was taking them to a bamboo grove for fetching bamboo sticks for repairing a Charpai in his house. He has attacked this document on a number of grounds. In the first place, according to the learned Counsel, since Shri D.P. Sood recorded this statement of the accused when he was holding his court as a "Sessions Judge" he should be deemed to be acting as a Magistrate recording a confession and as such he was duty bound to follow the provisions of Sections 164 read with Section 281 of the Code of Criminal Procedure, (New) and that since he has not complied with the mandatory requirement of the said section while recording the statement, this document is rendered invalid and inadmissible in evidence. Secondly, that the accused has categorically stated during the course of the trial that he was brought by the police to the Court of Sessions Judge for making this confession from his house in the morning of June 3, 1985 in their jeep and it was under the threat of the police that he had made this confessional statement and even on that count the confessional statement must be excluded from being used against the accused. He has also mildly contended that as the investigation of the case had already started when this confessional statement was recorded, the Sessions Judge was not competent to record the statement of the accused and that the Sessions Judge should have sent the accused to the competent Judicial Magistrate if at all the accused was inclined to make a confession. To support his

contention he has cited, *Nazir Ahmad v. King Emperor* 1936 PC 253 , (2) and some other rulings which are based upon this basic ruling, namely, *Rishi and Another Vs. State of Bihar*, *State of Uttar Pradesh Vs. Singhara Singh and Others*, and *Noor Uddin Vs. State*, .

17. In *Nazir Ahmad* (supra) the case before the Privy Council was that of a dacoity and murder while committing dacoity and when during the investigation of the case the accused were in the custody of the police an application was moved at the instance of the police before the District Magistrate that the accused intended to make confessional statements. One of the Magistrates 1st Class, Mr. L.D. Vasisht, was then directed by the District Magistrate to record the confessional statements of the accused. The Magistrate thereafter proceeded to the place of dacoity when the accused also were taken in handcuffs to that place in a separate car and the Magistrate there, after sending the police to some distance from the place of dacoity asked each of the accused as to his respective role in the commission of dacoity and they also pointed out the places where each one of them was standing while committing the offence. The Magistrate at that time prepared some rough notes which were destroyed by him after dictating a memorandum to his Steno on the basis of the notes. The Magistrate then went into the witness his to prove the confessional statements of the accused and stated the facts which were not even recorded in the memorandum and were being orally stated by the Magistrate with regard to the confessional statement of the accused. Their lordships of the Privy Council then held that it was no confession in the eyes of law as envisaged under the provisions of Section 164 read with Section 364 of the Code of Criminal Procedure (old) and as such was inadmissible in evidence and since the entire case of the prosecution was based upon the confessional statement of the accused, they were entitled to acquittal.

In that case it was held that where a power is given to do certain thing in a certain way the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden and that if the formalities are not observed in accordance with the procedure laid down u/s 164 read with Section 364 of the Code of Criminal Procedure (old) by the judicial officer purporting to record a confessional statement of the accused, it becomes inadmissible in evidence and this confessional statement cannot be proved even by any other means as that would render the whole provisions of Section 164 and Section 364 of the Code of Criminal Procedure including the safeguards contained therein for the protection of the accused person, nugatory.

18. In our opinion, the principle laid down in the Privy Council's case (supra) which has been approved even by the Hon'ble Supreme Court of India, if we may say so, with respect, is undisputed as it stands. There are however, certain fundamental requirements which must pre-exist before the principle can be attracted. They are (a), as Section 164 of the Code of Criminal Procedure in terms lays down, the confessional statement should be made either to a

Metropolitan Magistrate or to a Judicial Magistrate competent to record such confession and (b) it should be made during the course of an investigation under Chapter XI of the Code of Criminal Procedure or under any other law for the time being in force or at any time afterwards but before the commencement of an enquiry or trial. In the instant case however, it is clear that the statement, (Ex. PS) was made by the accused not to a Judicial Magistrate but to the Sessions Judge and obviously the Sessions Judge cannot be equated with a Judicial Magistrate nor can he by any stretch of imagination, be deemed under law to be acting as Judicial Magistrate. Section 6 of the Code of Criminal Procedure gives a hierarchy of the criminal courts besides the High Court and the Court of Session comes highest in the ladder of hierarchy. Obviously the powers of each judicial officer is also distinct and well defined and under these circumstances simply because a confessional statement is recorded by a Sessions Judge, it cannot be held that he shall be deemed to be acting as a judicial Magistrate. It is also pertinent to note that the accused presented himself in the Court of Sessions Judge at 10.10 a.m. at Dharamsala and after he was allowed to compose himself and was also warned by the Sessions Judge that such a statement could be used against him, when the accused still persisted that he wanted to make a confessional statement, his statement was recorded by the Sessions Judge at 10.40 a.m. and it is also clear that at that time no case had been registered against the accused. Admittedly the place of incident is at a substantial distance from Dharamsala. At the SIS X occurrence, obviously everybody seemed to be completely ignorant as regards the culprit who perpetrated the crime and even the information to the police with regard to the dead bodies of the two ladies S i? t? scene of crime was sent to the police post at Ranital through Ram Lal sometime after 9 a.m. However, although Shri Hira Lal ASI, Incharge Police Post, Ranital as also the S.I. Rikhi Ram, SHO Police Station Hanpur had reached the spot but they too were completely ignorant of the fact that the accused was the perpetrator of the crime till after his confessional statement he was handed over to Dharamsala police by the Sessions Judge and was brought in custody by Dharamsala Police to the place incident sometime in the afternoon. F.I.R. (Ex PY) was recorded in the police station Haripur at 12.15 p.m. on June 3, 1985 on the basis of rupa (Ex. PE) which was earlier sent to the police post Ranital by the Pardian Lal Chand. Thus it is clear that this confessional statement was made to any judicial Magistrate but to the Sessions Judge at Dharamsala and at a time when neither any case was registered against the accused nor had investigation ensued nor was he produced at the instance of the police. The confessional statement in our opinion, thus falls completely outside the purview of Sections 164 and Section 281 of the Code of Criminal Procedure and as such the principle laid down in the case of Nazir Ahmad (*supra*) is not attracted and the same, in our opinion, is admissible in evidence 19. Once it is held that this statement of the accused is not hit by the provisions of Sections 164 and 281 of the Code of Criminal Procedure it would be admissible in evidence u/s 21 of the Indian Evidence Act unless it again becomes inadmissible under Sections 24 and 25 of the Indian Evidence Act. Since, however, the statement in question was made

before a Sessions Judge there is no question of the provisions of Sections 24 and 25 of the Indian Evidence Act coming into play. On the other hand this statement apparently has been made before a judicial officer of high status and experience who, while recording the same, took all precautions to see that the statement was a voluntary one on the part of the accused, namely, he gave time to the accused to compose himself and also administered him the necessary warning as to the consequences of making such a statement. The statement in our opinion, therefore, carries all solemnity and sanctity so as to commend itself for placing reliance.

20. The accused, while in the witness-box has clearly admitted having made this confessional statement before the Sessions Judge. He has, however, made a volte-face qua this statement to this extent that he had made this statement under the threat of the police who had brought him in a jeep from the place of the incident in the morning of June 3, 1985. His narration is that on the night of June 2, 1985 he slept at his house in the same room in which his two deceased wives were sleeping. In fact according to him even his sister Chanchla (PW 10) was also sleeping in the same room that night. Next morning he was still sleeping when he was woken up by his sister Chanchla saying that his two wives had gone to answer nature's call at 4 a.m. and had not returned so far, while there was some noise of people at some distance from their house. On this he (the accused) went out of his house to the place where the people had gathered and found that his two wives were lying dead with cut throat injuries. He then carried each of them as a result of which his shirt became blood-stained. Meanwhile, police people, some in uniform and some in plain clothes came there and arrested him and they took him to a place known as "Bhatnala" where he was made to wash his blood-stained hands and to change his shirt which had blood stains and he was then made to put on some blackish clothes which the police carried with them and was brought to Dharamsala in a jeep and was sent to the Court of the Sessions Judge to make a confession under the threat that he would be shot dead in case he did not do so and after he made the confessional statement he was again taken and ultimately the blackish clothes he was made to put on, were burnt by the police and he was made to put on his own clothes which were brought at the instance of the police.

21. It is apparent that this story is highly improbable and is nothing but an issue of lies and an after-thought. It is impossible to imagine that just at the moment when the dead bodies of the two ladies were detected on the spot by the neighbours of the accused, the police people should have appeared in uniform and plain clothes out of nowhere even with the blackish clothes for the accused. Then it is also improbable that the accused should have attempted to carry the dead bodies of each of the ladies. In fact even when the police came there they were lying just at the places where they had fallen at the time when their murder was committed. This plea that the accused carried the dead bodies, he appears to have taken just to explain the stains of human blood on his Pyjama which he had handed over to the Sessions Judge along with his Parna at the time of

making his confessional statement His version that he was taken to the Court of the Sessions Judge by the police in a jeep and was compelled to make confessional statement before him under their threat is also set forth with an ulterior motive to nullify the effect of the confessional statement recorded by the Judge at his instance.

22. On the facts and in the circumstances of the case, however, it is clear that this statement was a voluntary and spontaneous act on his part when on realisation of the enormity of this culpable act, his soul started tormenting him.

23. No doubt his sister Chanchla has supported the accused on this version of his, but her statement cannot be relied upon on the facts and in the circumstances of the case. She being a sister is naturally interested in saving the life of her brother. From her statement in the witness-box it is clear that in the examination in-chief she has supported the prosecution version, namely, that the accused had slept with the two wives in a room in his house on the night of June 2, 1985 but in the morning while the two ladies were lying dead near his house the accused himself was missing. It is only in the cross-examination that this story of the accused is put in her mouth by way of suggestions to which she goes on replying in the affirmative.

26. Then the tenor and texture of this statement of the accused (Ex. PN) leaves no doubt in the mind with regard to its being voluntary and un-influenced by any extraneous agency. He has clearly stated therein that he had committed the murder of his two wives with a "darat" while they were going with him to fetch bamboo sticks for repairing the Charnai as the two wives were talking in a manner which enraged him.

25. Then he has given a graphic description as to what he did after committing this crime and also with regard to other members of his family and as to how he chose to come to the Court of the Sessions Judge to make a clean breast of the whole crime. We do not think that the accused would have chosen to make the statement of this type had he been under any outside scanning problem outside the scope of any such investigation, may be admissible in evidence notwithstanding non-compliance with Section 164, Code of Criminal Procedure. In that case the accused after killing a lady had gone to a judicial second class magistrate of his own accord and expressed his desire to make a statement which was accordingly recorded by the Magistrate and after reading it over to him the accused signed it. During the course of the trial the statement was sought to be proved as confessional statement of the accused which was opposed as being violative of the provisions of Section 164 read with Section 364 of Code of Criminal Procedure, and as antagonistic to the principles laid down in Nazir Ahmad's case. The learned Judges of the Bench, however, distinguished the facts in the case before them from those obtaining in Nazir Ahmad's case on the ground that the accused before them was not an accused when he went to the Magistrate of his own accord and he was not under arrest by the police and no investigation was going on under any crime registered against him at the time

when the Magistrate recorded the statement in question and as such it was admissible in evidence. The facts in the instant case before us are not only similar to those in Yendra Narasimha Murihy's case but rather stronger in the sense that Murthy had made that statement before a judicial Magistrate of second class who was even competent to record a confession in accordance with the provisions of Section 164, Code of Criminal Procedure. Whereas in the instant case the confessional statement was made not to a judicial magistrate but to a Sessions Judge and in our opinion, the trial court has rightly relied upon this ruling.

28. The matter, however, does not end here but there appear to be other insurmountable hurdles on the path of the accused. In the first place, there is reliable evidence on record that the accused before making this confessional statement before the Sessions Judge at Dharamsala had, after the Commission of this crime, gone to Panjab Singh (PW-20) whose house he had constructed, as stated earlier, and with whose daughter he was carrying on love affair, and made a confessional statement to him that he had murdered both the wives of his. The narration goes like this, that in the early hours of the morning round about 4 or 5 a.m. the accused came to the house of Panjab Singh and after calling him out of the house the accused blurted out to him that he had come there after committing the murder of his two wives and asked his advice as to what he should do. Said Panjab Singh then asked the accused to go and report the matter to the police but when the accused expressed apprehension that in that case the police was likely to torture him, he was advised by Panjab Singh to go to the court at Dharamsala and report the matter there and it was thereafter that he came to the court of Sessions Judge at Dharamsala and made the confessional statement. No doubt this confession is an oral one and the courts in this country have hitherto been considering this type of confession as a weak piece of evidence. However, even the apex court has now ruled that under certain circumstances an extra-judicial confession of this type alone can form the basis of conviction of the accused. For instance in *State of U.P. v. M.K. Anthony*, (6) the Hon'ble Supreme Court has observed that though extra-judicial confession is generally treated as a weak piece of evidence but that there is no rule of law or rule of prudence that it cannot be acted upon unless it is corroborated. If the evidence regarding the extra-judicial confession is given by a witness who is unbiased, who is not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing untruthful statement to the accused and if the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused was the perpetrator of the crime and nothing is omitted by the witness which may be in favour of the accused, this extra-judicial confession can be accepted and can be the basis of the conviction.

29. In the instant case there is no doubt that the accused considered Panjab Singh as his well-wisher. There is also no doubt that the accused had constructed the house of said Panjab Singh and while the construction work was going on,

the accused had been living in his house. Although according to the prosecution he had even developed love-affair with the daughter of Panjab Singh, Kumari Shashi alias Lalita, but this has been denied both by Panjab Singh and the accused. However, both of them claimed that said Shashi is God-sister of the accused as she tied a "rakhi" in the wrist of the accused. However, even if this claimed relation is accepted, it would not be improper to hold that the ties between the accused and Panjab Singh were quite close and in these circumstances it is highly probable that the accused would have taken said Panjab Singh into confidence and made this confession of his guilt to him. This Panjab Singh in these circumstances can be considered as not only un-biased but also not even remotely inimical to the accused and he has clearly stated that the accused had confessed to him that he had killed his two wives that night. The accused at that time even gave him four bottles of Rum and said Panjab Singh gave him Rs. 100 which was due on account of the wages of the accused at that time and the accused was even served a cup of tea by Panjab Singh before he left for Dharamsala as advised by Panjab Singh. Thus even this extra-judicial confession stands proved and free from any taint of bias or hostility.

30. It is clear that the entire edifice of the prosecution in this case is based on circumstantial and documentary evidence making a complete integrated chain and there is no eye-witness of the crime. However, as regards the circumstantial evidence, as the lower court has also rightly held, each link thereof is so strong that when considered as a whole one is impelled to conclude that it leads to no other inference but the one which is consistent with the guilt of the accused.

31. It appears that this crime was a result of a preconceived and well calculated plan on the part of the accused. Admittedly, prior to June 1, 1985, the deceased Resho, his first wife, had been living with her father Rajinder Singh (PW 12) in her parental house for one year, as the accused used to maltreat and neglect her while she was living in the matrimonial home. He, however, himself goes to the parental house of Resho on June, 1, 1985 and brings her to his house on the pretext that he intended to celebrate the birthday of his elder son and on the very second night she is done to death by him. On June 2, 1985 he is seen sharpening his "darat" during the day time as per the evidence of Ram Lal (PW 8). Although it has been admitted by Ram Lal that there was some dispute over the boundary line between him and the accused which was settled by the panchayat, but we do not think that this factor is sufficient to hold that said Ram Lal was inimical towards the accused and he being next door neighbour, it is quite natural that he should have seen the accused sharpening his "darat". Then in the evening his colleague Ramesh Kumar (PW 18) comes to invite him to attend the "jagrat" in his village and the accused accompanies him part of the way but then goes back home on the excuse that he would change his clothes and come thereafter but he never does so and remains at home. Even the accused has admitted that Ramesh Kumar had come to invite him to Jagrat that evening but has denied that he had gone with him part of the way and then come back home on the excuse that he would come only after changing his

clothes. Here again there is nothing on record to show that this Ramesh Kumar has any motive to depose falsely against the accused since they being both masons have been working together at various places and it was only on account of this friendship that said Ramesh Kumar had come to invite him for the "jagratta" he had arranged in his village. Then this Ramesh Kumar has also stated that the accused had confided to him while they were working together on the construction of the well of the brother of the accused, Prithi Singh that the accused was in love with Shashi the daughter of Panjab Singh and that said Panjab Singh was also nice to him and that everything was alright on that score.

32. Although the accused and his brother Prithi Singh had denied that Ramesh Kumar was working with the accused in the construction of the well but on the facts and in the circumstances of this case we have no doubt that this Ramesh Kumar was working with the accused on the construction of the well. Since said Prithi Singh had only limited time at his disposal as he had come home on leave from military, it was not improbable that he would have engaged at least two masons so that the construction work of the well could be carried out expeditiously and the choice must have fallen upon said Ramesh Kumar as he and the accused had been working together even in the past and in these circumstances it is also not improbable that the accused should have confided in Ramesh Kumar about his love affair with Shashi. It is also on record that for some time during the construction of the house of Panjab Singh, the accused had lived at his house for 4/5 days in a week and during the construction work his daughter Shashi was acting as a helper of the accused on the construction work. In these circumstances it is quite probable that the accused should have developed love affair with said Shashi as she was at that time aged about 20 years and had remained unmarried as she carried a stigma of having eloped with some gujjar earlier. No doubt, according to Panjab Singh and the accused said Shashi had made the accused as her god-brother by tying a rakhi" to him but it is also a notorious fact that such illicit relations are usually developed under a camouflage of this nature. Under these circumstances it is clear that the accused was torn between two situations. On the one hand he was smitten by the charms of Shashi and would naturally like to go closer to her whereas on the other there are his two wives and two children who would revolt against him in such a contingency. Further in such a situation he was also likely to become financially hard up as he had to maintain not only two wives and the children but also fulfil the demands of his beloved Shashi. In these circumstances it is not unlikely that he finally decided to do away with the lives of his two wives so that he may be free to marry Shashi.

33. As some legal luminary has said:

even devil knoweth not what is in the mind of a man and that is why the law also does not Insist that the prosecution should prove motive in every crime. In a case based on circumstantial evidence, however, motive does have its relevance and in these circumstances of this case we feel that this was the motive in the

mind of the accused to get rid of his two wives. The accused appears to be woman chaser. Even the father of the deceased Jiwna, Jaswant Singh (PW 1) has stated that he accused had developed illicit relations with said Jiwna even before marriage and in fact she was pregnant when the accused married her in a temple which was against his wishes.

34. Even the accused himself has admitted that he was with his two wives on the night of June 2, 1985, and they all had slept in the same room Next morning both his wives were found murdered in the fields near his house and he himself was missing. It is, therefore for him to explain as to how his wives met with this unnatural and chastly death at the same time and under what circumstances he was absent from his home next morning His version, however, as stated earlier, that he was taken away by some police people to Dharamsala by appearing all of a Sudden from nowhere, is nothing but a cock and bull story, wholly untrue and devoid of any semblance of credibility. Then there are his two confessional statements one to Panjab Singh and later on before the Sessions Judge at Dharamsala which prove beyond all shadow of doubt that it is the accused and accused alone who committed the murder of his wives. It is also on record that after the accused was brought by Dharamsala police to the place of incident, the "darat" ExP-1 was recovered at the instance of the accused hidden in the heap of "sanyadus" lying by the side of his house which was at that time blood stained. This has been amply proved by the witnesses like the Pardhan Lal Chand and Up-Pradhan Gian Singh and not a suggestion, has been against them on record, that they had any ill-will towards the accused so as to depose falsely against him. Thus with the recovery of this weapon the chain is complete. No doubt as per the report of the Serologist (Ex. PDD) the blood on the "dam" (Ex. P. 1) could not be identified as human blood on account of its disintegration but this is of no consequence since at the time of its recovery the witnesses have clearly deposed that there was blood on the "darat" and similar is the opinion of Chemical Examiner and Serologist with regard to the presence of the blood on the said weapon. The accused in his statement (Ex. PN) has stated that after perpetration of this crime he had washed that "darat" and it was probably on this account that the Seroloaist found the blood disintegrated for its identification as human blood. It is, however, clear that the Pyajama (Ex. P. 21) which he had handed over at the time of his confessional statement before the Sessions Judge Dharamsala" did contain human blood as per the report of the Serologist (Ex. PDD) and this the accused has tried to explain that this blood came on the Pyjama as he tried to lift each of the two dead bodies of his wives after he saw them lying murdered which explanation is ridiculous on the very face of it there was no occasion for him to lift the dead bodies and he did not do so. The evidence on record rather shows that both the dead bodies remained lying at places where they fell as victims to his "darat" blows.

35. The learned Counsel for the accused during the course of his arguments has also laid a great stress on the point that the prosecution has failed to prove that ruqa Ex. PE on the basis of which the F.I.R. was recorded in the police station.

Haripur was the same which the Pradhan Lal Chand (PW 3) had sent through Ram Lal (PW 8) to the notice cost Ranital and in fact the prosecution on this point is full of material contradictions which knock off the very basis of the prosecution case. There is no doubt that there is some substance in this contention to this extent that some contradictions have come on record with regard to this document but it is totally unacceptable to this Court that it affects the substratum of the case in hand. There is no doubt that Ram Lal (PW 8), the carrier of this ruqa Ex. PE from the Pradhan Lal Chand to the police post at Ranital, has deposed that he had delivered the same to Amar Singh, Head Constable and the A. S. I. at the police post Ranital in the verandah of the police post and that it was in Urdu. A. S. I. Hira Lal (PW 26) on the other hand has stated that this ruqa was handed over to him by Ram Lal at the T-chowk near the police post Ranital where he was on petrol duty in connection with "Ghallu Ghara" and thereafter he went to the police post to collect the necessary papers and rushed to the spot to verify the facts set out in the ruqa itself and it was after visiting the spot that he forwarded this ruqa to the Police Station Haripur through constable Partap Chand with his enforcement Ex. PE/1 thereon. Lal Chand Pradhan (PW-3) has however, stated that ruqa Ex. PE is the one which he had sent through Ram Lal to the police post Ranital. The ruqa Ex. PE is obviously in Hindi signed by Pradhan Lal Chand in Urdu. Of course, Ram Lal has later on corrected himself to say that the ruqa was in Hindi and signed in Urdu by the Pradhan Lal Chand and that he wrongly stated that it was in Urdu since he was not sure whether it was in Hindi or in Urdu as it was given to him by Lal Chand Pradhan for being taken to the police post Ranital in a folded condition. There is definitely a discrepancy with regard to the venue where the said ruqa was delivered by Ram Lal to the police at Ranital as according to him it was delivered in the verandah of the police post whereas according to ASI Hira Lal it was delivered to him at Tchowk while on duty. This, however, in our opinion, is not of much consequence. Pradhan Lal Chand was categorical on the point that ruqa Ex. PE is the one which he had sent to the police posts Ranital through Ram Lal under his own signatures. He is Pradhan of the Panchayat and as such a responsible and respectable man and there is no reason why his statement on this point be not given credence especially when there is not even a suggestion from the side of the defence that he had the slightest animus against the accused to depose falsely against him. It is apparent that this ruqa was delivered to the police by Ram Lal and whether it was delivered at T-Chowk near the police post or in the police post is of little importance. No doubt, whether it was delivered to Hira Lal ASI at T-Chowk or at the police post the proper thing for the said ASI should have been to make an entry thereof in the register of Roznamcha maintained at the police post and then forwarded the same to police station Haripur for registration of the case before his proceeding to the spot of occurrence for investigation. He, however, as per his statement, chose to visit the spot and verify the facts on the spot before forwarding this ruqa to the police station for registration of the case as he actually did. As we have already observed, however, this lapse on the part of the ASI Hira Lal (PW 26) does not in

our opinion, affect the substratum of the prosecution case at all. All that this ruqa contains is a bare information to the police that the dead bodies of the two wives of the accused were lying in the Nalia near his house while the accused himself was found absent at 8 a.m. on June 3, 1985 although the accused was present in his house with his two wives on the previous night which fact has also been admitted by the accused himself. Thus this document, in our opinion, is not of much importance on the facts and in the circumstances of the case.

36. In view of the above discussion, we have no doubt whatsoever that the case against the accused u/s 302 of the Indian Penal Code has been proved beyond all reasonable doubt and the trial Court has rightly convicted him thereunder.

37. Now the only question that remains for determination is whether the sentence of death by hanging as passed by the learned trial Court should be maintained or the same merits modification so as to reduce it to life imprisonment.

38. In *Bachan Singh v. State of Punjab*, their Lordships of the Supreme Court have given their deepest consideration to the question as to whether the capital punishment provided u/s 302 of the Indian Penal Code was offensive to any fundamental rights enshrined in Articles 19 and/or 21 of Constitution and if not, under what circumstances the death sentence be meted out by the Courts in India. The Hon^{ble} Court as per majority judgment after replying the first point in the negative has further ruled as follows:

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

Their lordships further observed:

...It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of

murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

39. Thus the law with regard to death sentence as it prevails today in view of this weighty pronouncement of the Hon'ble Supreme Court, is that no doubt the provisions in respect thereto incorporated in Section 302 of the Indian Penal Code do not violate any of the fundamental rights under Articles 19 and/or 21 of the Constitution, Yet, the Courts having regard to the legislative intent incorporated in Sub-section (3) of Section 354 of the Code of Criminal Procedure whereby special reasons are required to be set forth by the Court concerned while awarding death sentence, the sentence of life imprisonment u/s 302 of the Indian Penal Code is the general rule and death penalty an exception which should be resorted to in the rarest of rare cases when the alternative option is totally absent.

40. After giving our utmost and anxious consideration to the question keeping in view this aspect of the law, we are of the opinion that the case in hand falls in the category of those rarest of rare cases where there appears to be complete absence of the alternative option, namely, the circumstances justifying the passing of lighter sentence.

41. As we have already held the accused has committed this crime in a well pre-meditated and calculated manner. He, on June 1, 1985 brings his first wife from her parental house after she was there for one full year on account of estrangement between the two spouses on the pretext that he (accused) intended to celebrate the birthday of his elder son and on the very next night he not only murders her but also her co-wife Smt Jiwna. Both of them were admittedly in the prime of their life and in fact the latter that is, Smt. Jiwna has left behind two kids of 5 and 2 years respectively who had hardly learnt to lisp the word "mother". Then it is also clear that the accused perpetrated this crime in a most cruel and brutal manner by chopping of the heads of his victims. The postmortem report on the dead bodies of Resho shows that she had three incised injuries on her throat or the upper portion thereof while one fracture injury caused by blunt weapon at her right shoulder. This shows that the accused must have wielded his darat with a considerable impact while inflicting the first blow at her throat which must have made her fall on her back with a thud of such a force that it caused the fracture injury in the shoulder and also caused her instantaneous death. The story of the second victim Smt. Jiwna was no better. Photographs of their dead-bodies show that their bodies remained static and unmoved just where they fell down under the impact of darat blows at the hands of the accused which clearly shows with what force he must have delivered these blows to his victims.

42. The learned Counsel for the accused has stated that lenient view is merited in this case since, as per the confessional statement of the accused himself

before the Sessions Judge, the accused was under the influence of liquor when he committed this crime and that at that time he was provoked to commit the crime by the two ladies by having some improper talk. There is no doubt that the accused has stated so in the confessional statement he made before the Sessions Judge at Daramsala. But this cannot be accepted as correct. In the first place the accused has not stated as to what were the words uttered by any of the victims which provoked him to this extent as to murder them in that cold blooded and brutal fashion. Then the manner and the precision in which he had wielded his formidable weapon give a clear lie to the fact that he was under intoxication inasmuch as he purposely aimed his blows at such a delicate and vital part of the bodies of the unfortunate ladies and wielded the weapon with so much force as to rule out not only any possibility of their survival but also of any alarm being raised by any of them. We thus feel that in those scanning problem circumstances the culpability of the accused had assumed such proportions as to show extreme depravity and complete absence of humanity, mercy or compassion in him.

43. For the forgoing reasons, we are not inclined to take lenient view in this case. The appeal of the accused is, herefore, hereby dismissed while the conviction and sentence as passed by the trial court vide judgment dated January 17, 1987 are up-held and consequently the Reference made by the trial court in this case is accepted and the sentence passed by the trial court is confirmed which be now executed in accordance with law.