

A SHANKAR @ GAURI SHANKAR AND OTHERS

v.

STATE OF TAMIL NADU

APRIL 4, 1994

B [K. JAYACHANDRA REDDY AND G.N. RAY, JJ.]

Criminal Procedure Code, 1973—Section 354 sub-Sec. 3—Death sentence—When to be awarded—Rarest of rare crimes—Mitigating and aggravating circumstances—Brutal murder of six persons in an organised manner—
C *Dead bodies disposed of in a diabolic manner—Held, death penalty is justified—Mitigating circumstances—Indian Penal Code, 1860—Section 302.*

Evidence Act, 1872—Sections 133 and 114 illustration (b)—Approver's statement—corroboration of—Corroboration of material particular qua each accused required—Every material circumstance need not be corroborated—
D *Corroboration should show that the approver is speaking the truth—Code of Criminal procedure, 1973—Section 306.*

Words and Phrases—Accomplice—Meaning of.

E *Evidence Act, 1872—Section 24—Confession—Meaning of—Exculpatory statement not covered—Should be voluntary—Judicial confession—Meaning of—Retracted judicial confession—Extent of corroboration Material particulars should be corroborated—Each and every circumstance need not be corroborated—Criminal Procedure Code 1973—Section 164.*

F The appellants were charged of murder of six persons, D-1 to D-6. Both the Trial Court as well as the High Court had convicted them for murder of D-1 to D-6. According to the case of the prosecution, which was accepted by the Trial Court as well as the High Court, A-1 was the gang leader whereas A-2 to A-6 were his associates. Initially, A-1 used to drive auto rickshaw. Thereafter, he switched over to the business of arrack which
G he handed over to his brother (Mohan) and started the business of brothel. A-1 had married several times and it was alleged that he used to torture his wives by burning them with cigarette butts.

H The conviction of A-1 to A-6 was based on the evidence of P.W.1. (who was an accomplice and had turned into an approver), the retracted judicial

confessions of A-1 and A-2 and other corroborating evidence.

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P.W.1 stated in his deposition that D-1 was a prostitute and had intimate relationship with A-1 but later on she eloped with D-2 which incensed A-1, D-2 was taken to A-1's house; got him drunk and thereafter throttled him. A-1, A-2, A-3, P.W.1 and Mohan (absconding accused) were present there and D-2 was burnt in the room and the unburnt remains of his body were thrown away in the river.

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According to P.W.1, D-3 was killed as he was blackmailing A-1 in respect of the death of D-2, D-3 was brought in A-1's godown and after intoxicating him with liquor, A-1, A-2, A-3, P.W.1 and Mohan throttled him to death and buried the dead body in a pit. D-4 to D-6 were beaten and locked up in a store room in A-1's house, D-4 and D-5 died in the room whereas D-6 was throttled to death. The dead bodies were buried in the basement of a house under construction.

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In the retracted confession, A-1 and A-2 stated that D-1 was beaten by A-1, A-2 and Mohan and thereafter, throttled to death by A-1. Her body was buried in the liquor godown.

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The Trial Court found all the appellants as well as A-7 and A-8 to be guilty of offence under Section 120-B, r/w 302-201, 147, 304/34 and 404 of IPC. A-1 to A-3 were sentenced to death whereas A-4 to A-8 were sentenced to life imprisonment.

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The High Court confined the sentence awarded to A-1 to A-6 but acquitted them of offence under Section 120-B I.P.C. A-7 and A-8 were acquitted of all charges against them.

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Before this Court, the appellants contended that the evidence of P.W.1 was full of contradictions and discrepancies whereas the retracted confessions of A-1 and A-2 were uncorroborated and therefore reliance upon them for conviction of the appellants was not correct. It was also contended that the present case was not the rarest of rare cases and there were several mitigating circumstances and therefore, sentencing A-1 to A-3 to death was unjust.

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This Court confirmed the death sentence awarded to A-1 and A-2 and the life imprisonment awarded to A-4 to A-6; the sentence of A-3 was reduced to life imprisonment from death, and it was

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A HELD : 1.1. The choice as to which one of the two punishments
 provided for murder is the proper one in a given case will depend upon the
 particular circumstances of that case and the Court has to exercise its
 discretion judicially and on well-recognised principles after balancing all
 the mitigating and aggravating circumstances of the crime. The Court also
 B should see whether there is something uncommon about the crime which
 renders sentence of imprisonment for life inadequate and calls for death
 sentence. The nature of the crime and the circumstances of the offender
 should be revealing that the criminal is a menace to the society and the
 sentence of imprisonment for life would be inadequate. The sentence of
 death should be reserved for the rarest of rare cases after a due considera-
 C tion of both mitigating and aggravating circumstances. [344-B-C]

1.2. What circumstances bring a particular case under the category
 of rarest of rare cases vary from case to case depending upon the nature
 of the crime, weapons used and the manner in which it is perpetrated etc.
 [344-F]

D *Jagmohan Singh v. State of U.P.*, [1973] 1 SCC 20; *Bachan Singh v.*
State of Punjab etc. etc., [1980] 2 SCC 684; *Ediga Anamma v. State of A.P.*,
 [1974] 4 SCC 443; *Machhi Singh and others v. State of Punjab*, [1983] 3
 SCC 470; *Kehar Singh and others v. State (Delhi Administration)*, [1988] 3
 SCC 609; *Mangal Singh, v. State of U.P.*, AIR (1975) SC 76 and *Allaudin*
 E *Mian and Ors. v. State of Bihar*, AIR (1989) SC 1456, relied on.

Dudh Nath Pandey v. State of Uttar Pradesh, [1981] 2 SCC 166;
Suresh v. State of U.P., [1981] 2 SCC 569 and *Ummilal v. State of Madhya*
Pradesh, [1981] 3 SCC 574, distinguished.

F *Dalbir Singh and others v. State of Punjab*, [1979] 3 SCC 745 and
Rajendra Prasad v. State of Uttar Pradesh, [1979] 3 SCC 646, referred to.

2.1 Section 133 and illustration (b) to Section 114 of the Evidence
 Act deal with the law relating to evidence of an accomplice. An accomplice
 G namely a guilty associate in crime is a competent witness. The word
 'accomplice' has not been defined by the Evidence Act and it is generally
 understood that an accomplice means a guilty associate or partner in
 crime. Section 133 lays down that the conviction based on the uncor-
 roborated testimony of an accomplice is not illegal, but the rule of
 guidance indicated in illustration (b) to Section 114 has resulted in the
 H settled practice to require corroboration of evidence of or accomplice and

which has now virtually assumed the force of rule of law. [312-C]

Swaran Singh Rattan Singh v. State of Punjab, AIR (1957) SC 637; *Lachhi Ram v. State of Punjab*, AIR (1967) SC 792 and *Mohd. Hussain Umar Kochra v. K.S. Dalipsinghji*, [1969] 3 SCC 429, referred to.

2.2. An approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal and furnishing the need and assurance for acceptance of his testimony. The corroboration need not be of a kind which proves the offence against the accused and it would be sufficient if it connects the accused with the crime. What is required is that there should be sufficient corroborative evidence to show that the approver is speaking the truth with regard to the accused whom he seeks to implicate. Such corroboration should be on material particulars and qua each accused. But it is not necessary that there should be independent corroboration of every material circumstance and it need not consist of evidence which standing alone would be sufficient to justify the conviction. In other words, there should be additional evidence by way of corroboration rendering the story of an accomplice probably true and that it is reasonably safe to act upon such evidence. The corroborative evidence can be direct or circumstantial. Ultimately the question whether there is such sufficient corroboration or not depends upon the facts and circumstances of each case.

[312-F-H, 313-A-C]

Swaran Singh Rattan Singh v. State of Punjab, AIR (1957) SC 637; *Lachhi Ram v. State of Punjab*, AIR (1967) SC 792; *Mohd. Hussain v. State*, [1970] 1 SCR 130; *Ravindra Singh v. State of Punjab*, AIR (1975) SC 856; *Rameshwar v. State of Rajasthan*, AIR (1952) SC 54; *Tirubhawan Nath v. State of Maharashtra*, AIR (1973) SC 460 and *Vemireddy Satyanarayan Reddy and others v. State of Hyderabad*, AIR (1956) SC 379, referred to.

Wignore on Evidence, 7th Volume, 3rd Edn., referred to.

2.3. P.W.1's evidence is sufficiently corroborated by other evidence and establishes beyond all reasonable doubt that A-1 had the motive to do away D-1 and that A-1 to A-3 and P.W.1 alongwith the absconding accused committed the murders of D-2 and D-3 and all these appellants also committed the murders of D-4 to D-6. [328-D-E]

3. The confession is a form of admission consisting of direct acknow-

A ledgment of guilt in a criminal charge. It must be in express words by the accused in a criminal case of the truth of the guilt fact charged or some essential part of it and a statement that contains self-exculpatory matter can not amount to a confession. The confession should be a voluntary one, that means not caused by inducement, threat or promise. Whether a confession is voluntary or not is essentially a question of fact. The judicial

B confessions are those which are made before a Magistrate or in court in due course of legal proceedings and when such a confession is retracted, the courts have held that apart from the statement being voluntary it should be true and should receive sufficient corroboration in material particulars by independent evidence. The rule of prudence namely requiring

C corroboration does not mean that each and every circumstance mentioned in the confession with regard to the participation of the accused in the crime must be seperately and independently corroborated. It is sufficient if there is general corroboration of the important incidents, just like in the case of an approver's evidence and it is not necessary that the corroborative evidence itself should be sufficient for conviction. What

D amount of corroboration would be necessary in a case would be a question of fact to be determined in the light of the circumstances of the case.

[329-C-G]

E *Balbir Singh v. State of Punjab*, AIR (1975) SC 216; *Swarn Singh Rattan Singh v. State of Punjab*, AIR (1957) SC 637; *Ediga Anamma v. State of Andhra Pradesh*, AIR (1974) SC 799 and *State of Uttar Pradesh v. Boota Singh and others*, AIR (1978) SC 1770, referred to.

F 4.1. Individual part played may assume some importance in some cases, but in an organised crime that kind of enquiry may not be relevant for the purpose of finding out the special reasons. However, under the facts and circumstances of the case, the part played by the individual accused i.e. A-1 to A-3 may be relevant in weighing mitgating and aggravating circumstances in awarding death sentence, particularly in view of the fact that A- 4 to A-6 who were also associates of A-1 and who also participated in murders of D-4 to D-6 are awarded only imprisonment for

G life and also in view of the fact that the case mainly rests on the evidence of approver. [346-C-D]

H 4.2. The prosecution has satisfactorily proved that A-1 was the leader of the gang. It is also established that he used to be very cruel and he did not hesitate to burn young girls with cigarette buts and atleast one of them could not bear the cruel treatment and committed suicide. He used to keep

many good-looking prostitutes exclusively for himself and thus spoiled many girls. He alongwith A-2, A-3, Mohan and P.W.1 killed D-1 to D-3 in a very brutal and ghastly manner and disposed of the bodies. The way the dead bodies were disposed of would manifest his criminal state of mind which is diabolical and he, as a leader, could go to any extent to cause the disappearance of the dead bodies with a view to screen the offences of murders. He was of such a nature that he was prepared to eliminate anybody who came in his way and caused any hinderduance to the running of the business. When D-4 to D-6 threatened to his running of brothel business, A-1 obviously to prove his supremacy in the illicit business wanted to eliminate them and they were severely beaten and brutally murdered. D-6 was strangled in a cold-blooded manner and all the three bodies were buried. The public at large were agitated and in all the six murders, the victims were helpless and undefended. The murders committed in an organised manner were cold-blooded, gruesome in nature, diabolic in conception and extremely cruel in execution. A-1 has proved to be an ardent criminal and thus a menace to the society. It is an exceptional case where the crime committed by him is so gruesome, diabolical and revolting which shocks the collective conscience of the community. There cannot be any doubt that his case is one of the rarest of rare cases fully warranting the imposition of death sentence. [346-F, 347-A-D]

4.3. A-2 throughout actively associated with A-1. He participated in every crime. As a close associate of A-1 in every unlawful business activity, A-2 went on participating with him in these organised crimes. The reasons given in respect of A-1 for awarding the death sentence equally apply to the case of A-2 also. [347-E]

4.4. A-3 is not related to A-1. There is discrepancy in evidence of P.W.1 in so far as role of A-3 is concerned. There is no other evidence as to the actual participation of A-3 in the murders of D-2 and D-3 apart from that of P.W.1, though there is enough of corroborating evidence in general for the purpose of inferring common intention in respect of the offences punishable under Sections 302/34 I.P.C. In the case of A-1 and A-2 there are their own individual retracted confessions which can be acted upon regarding their individual roles. The retracted confessions of co-accused cannot be taken into consideration for assessing the nature of participation of A-3 for the purpose of deciding whether his case is one of the rarest of rare cases. [347-G-H; 348-E]

A *Dudh Nath Pandey v. State of Uttar Pradesh*, [1981] 2 SCC 166 and *Suresh v. State of U.P.*, [1981] 2 SCC 569, relied on.

B 5. The fact that A-1 liberally donated to the social organisations, the cruel treatment meted out to him by the police, forcing him to carry on the illicit arrack business and brothel business, and the likelihood of the films having remotely influenced the mind of A-1, cannot be "mitigating circumstances" for the purpose of awarding death sentence. [353-D-E]

C (This court observed that by exhibiting scenes of violence, sex, rape, bootlegging and drug trafficking etc. in such a manner which have propensities of disturbing and corrupting the mind of some viewers like children and particularly of those who are weak-minded, wayward, indisciplined, frustrated and likewise, who are very likely to become wicked and evil minded and ultimately end up as criminals indulging in organised crime, the avowed objects get frustrated. The films should be of educative value and then only they can play an important role in subserving the interests of the society. It is here that the Censor Board should step in firmly and insist that the film being released has a message meant to improve the values of life and should see that the film contains only such scenes which do not affect the value of life). [351-G]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 634 of 1992.

From the Judgment and Order dated 17.7.92 of the Madras High Court in Crl. A. No. 457 of 1991.

F S. Muralidhar and Ms. Shomona Khanna for the Appellants.

V.R. Reddy, Additional Solicitor General, K.V. Venkataraman, K.V. Vishwanathan, V.G. Pragasam and P. Subramaniam for the Respondents.

The Judgment of the Court was delivered by

G K. JAYACHANDRA REDDY, J. Shankar @ Gauri Shankar (original accused no. 1), Eldin @ Albert (original accused no. 2), Shivaji (original Accused no. 3), Jayavelu (original accused no. 4), Raman @ Raja Raman (original accused no. 5) and Ravi (original accused no. 6) are the appellants here. They alongwith four others; Palani (original accused no. 7), H Paramasivam (original accused no. 8) and two absconding accused Mohan

and Selvam @ Selvaraj were arrayed as accused. The case against the two absconding accused was separated. The gravamen of the charge against the accused was that all of them entered into a conspiracy and committed the murders of six deceased persons in the case namely Lalita (deceased no. 1), Sudalai (deceased no. 2), Ravi (deceased no. 3), Sampath (deceased no. 4), Mohan (deceased no. 5) and Govindaraj (deceased no. 6). The trial court found A-1 to A-8 guilty under Sections 120-B read with 302, 201 147, 302/34 and 404 I.P.C. In respect of the murder charges the trial court sentenced A-1 to A-3 to death and A-4 to A-8 to imprisonment for life under each count and various other terms of imprisonment for the other minor offences. The High Court acquitted A-7 and A-8 of all the charges and confirmed the convictions and sentences of the appellants. The High Court, however, acquitted them of the conspiracy charge punishable under Sections 120-B read with 302 I.P.C. So far as A-1 to A-3 are concerned, both the courts have concurrently held that this is one of the rarest of rare cases where the sentence of death alone will meet the ends of justice.

A-1 is said to be the leader of the gang consisting of other accused. He was originally driving an auto and subsequently he started business in illicit arrack. A-2 to A-6 were assisting him. Then he entrusted the illicit arrack business to his younger brother Mohan, one of the absconding accused and started brothel business and was running the same profitably by employing a number of prostitutes. A-1 is said to be a cruel and ruthless person and he would not hesitate to eliminate anybody who interfered and obstructed his criminal activities. According to the prosecution, six deceased persons incurred his wrath and were done away to death by A-1 and his associates and their dead bodies were either buried or were caused to disappear.

The prosecution sought to prove its case by the evidence of Babu, P.W.1, the approver in the case and the corroborating evidence as well as by retracted judicial confessions made by A-1 and A-2 and the necessary corroborating evidence to the same. The prosecution case in general as unfold by evidence adduced may be stated thus :

A-1 Shankar who originally was running an auto and thus earning livelihood, took to business in illicit arrack by transporting the same from Andhra, Thiruneermalai and other places. A-1 entrusted this business to Mohan, his young brother and started brothel business. A-2 Eldin married

- A** the younger sister of A-1. The first wife of A-1 is one Jagadeeswari, A-2 to A-6, the absconding accused Selvaraj, deceased nos. 2 and 3, P.W.32 Sasi and P.W.1, the approver were also assisting A-1 and Mohan in their illegal business activities.
- B** P.W.1, the approver was doing masonry work in the house of one Guraibabu at Thiruvanniyur previously and at that time he developed association with A-1. P.W.1 was prosecuted for the murder of one Natesa Nadar on 31.12.1985. However, he came out on bail. A-1 asked P.W.1 to assist his brother Mohan in his illicit arrack business and P.W.1 was accordingly assisting him. P.W.2 was running a firewood depot at L.B.
- C** Road, Thiruvanniyur. P.W.3 was residing at Gandhi Road, Periyar Nagar, Thiruvanniyur. P.W.4 was employed as the driver of the car of A-1. P.W.5 was an auto driver. P.W.7 was a Dhobi and he used to do ironing at 29th cross Street, Indira Nagar, Thiruvanniyur. All these witnesses knew that A-1 was doing brothel business and D-2, D-3, P.W. 32, A-2, A-3 and others
- D** were assisting him. They also knew that P.W.1 was assisting Mohan. P.W.1, A-1 and P.W. 56 encroached upon the poramboke land (Government waste land) at Periyar Nagar and there was a dispute in respect of that land and when it came for settlement, A-1 purchased the same from P.W. 56 for Rs. 10,000 in the name of his brother Mohan. A-1 gave Rs. 6,000 to P.W. 56 and agree to pay Rs. 4,000 to P.W.1 towards the expenses in the murder
- E** case against P.W.1. Thus P.W.1 became closer to him. In that poramboke land, A-1 put up a shed and was running the brothel house. P.Ws. 21, 51, 71 and 121, one Banu, Kundu Vijaya, Asthina, Begum, Viji and other ladies were prostitutes in the said brothel house. It is also stated that whenever good-looking and beautiful women came to the brothel house, A-1 used to
- F** set up a separate house for them and to keep them as his mistresses. In or about 1986, A-1 developed intimacy with P.W. 25, Sumathi and he married her. A-1 used to maintain a diary M.O. 20 and in that he made an entry about the factum of this marriage. Jagadeeswari, the first wife quarrelled with A-1 in respect of the second marriage and A-1 set up a separate residence for P.W. 25 at Marutheeswarar Nagar. D-2 was a close associate
- G** of A-1 and he celebrated the marriage of D-2 with one Durga on 9.7.1986. Thereupon D-2 and Durga were staying in the house of P.W. 25. P.Ws. 1 and 32 also knew about it. Two months later, A-1 brought a girl by name Vijaya to the house of P.W. 25 and also married her but Vijaya left him stealthily as she was tortured by him. P.W. 71, Madhu Alias Gowri came
- H** to join the brothel and A-1 took her to the house of P.W. 25 and married

her also on 14.3.87 in the presence of P.W. 25 and he also tattooed her name on his hand. Similarly P.W. 71 tattooed the name of A-1 as "Gowri Shankar" in her right hand. Since A-1 used to burn P.W. 71 with cigarette butts and she was unable to bear the ill-treatment, she ran away. Thereupon A-1 shifted the residence of P.W. 25 to the house of P.W. 34 in June 1987 and he also accommodated D-2 alongwith his wife Durga in another portion of the said house. A-2 and his wife Sandhi were also residing in the third portion of the said house. A-1 who had made good money from the brothel business, constructed a house at 142, Gandhi Road, Periyar Nagar and celebrated the house warming ceremony and M.O. 35 series and M.O. 36 series are the photo albums taken at the time of the house warming ceremony. In the photos, D-2, D-3, P.W. 32, P.W. 4 and some of the prostitutes who were the inmates of the brothel are found. P.W. 20 was the neighbour of A-1 at Gandhi Road, Periyar Nagar and she noticed that there were frequent quarrels between Jagadeeswari and one Sundari, who was brought by A-1 after marrying her into that house. It is stated that A-1 used to torture Sundari by burning her with cigarette butts and as she could not bear the same she committed suicide by setting fire to herself. P.W. 20 also purchased one of the autos from A-1 for the amount due to her. She further stated that A-1 brought 10 more prostitutes and was running another brothel. D-1 Lalita, a prostitute who came alongwith other prostitutes, developed intimacy with A-1 and Jagadeeswari used to complain to P.W. 20 that A-1 was giving away all his earnings to D-1. It appears at that stage D-1 who was not happy, eloped with D-2. A-1 was very unhappy and searched for D-1 and D-2 and ultimately D-1 was brought by Pallawaram police. Jagadeeswari told P.W. 20 that A-1 to A-3 and Mohan brought Lalita and murdered her and buried her somewhere. D-2 started brothel business separately and it is said that he used to take the customers of A-1 to his brothel house and he thus incurred the wrath of A-1. According to the prosecution, D-2 was brought into the house of A-1 and there he was killed and the body was burnt and the remnants of the burnt body were thrown away in the sea. Likewise it is alleged that Ravi, D-3, who was making enquiries about D-2 was also done to death and his body was buried in a pit dug in the house of A-1.

P.W. 32, Sasi who was assisting A-1 in running the brothel business was in charge of the collections. Deceased nos. 4, 5 and 6 who belonged to Mandhaveli area were the friends of P.W. 24. D-3 was the brother of P.W. 15 and D-5 was his relation. D-6 was also a friend of D-4. It is alleged

A that these people used to go to Taj Mahal Hotel where the prostitutes from A-1 brothel used to entertain the customers and make galata and the information was given to A-1 and he wanted to do something about that.

B On 29.5.88, P.w. 38 and his brother-in-law took a prostitute from the brothel of A-1 to V.G.P. Golden Beach. Again they approached P.W.32, the Cashier for another prostitute who sent P.W. 121, Anita and told them that she should be returned at about 3 P.M. At that time D-4, D-5 and D-6 were going in an auto fully drunk and they saw P.W. 121 getting down from another auto and they caught hold of her and pulled her and created galata. P.W. 7 was ironing the clothes at the street. At that time P.W. 32 and A-2 were standing and talking. P.W.21 also was there. P.W. 121 raised a hue and cry when the three deceased caught hold of her. A-2 questioned them but they threatened him. This was also witnessed by P.Ws. 7, 9, 11 and 32. At about 3.30 P.M., P.W.1, A-1 and A-3 were playing cards at the house of P.W. 25. A-7 and A-8 came there. A-6 who also came there informed D A-1 about the incident and also told him that A-2 was beaten by three persons of Mandhaveli and that they also misbehaved with P.W. 121. Thereupon P.W.1, A-1, A-3 and A-6 rushed to the 29th Cross Street alongwith A-7 and A-8 taking casuarina poles from the shed of the arrack shop of Mohan. Mohan, A-4, A-5 and Selvaraj also joined them carrying casuarina sticks. In the meantime, A-3 beat the auto driver P.W. 11 who E brought the three deceased. He, however, escaped with the auto. Thereupon A-1 had his associates encircled the three deceased and attacked them. D-5, however, escaped and started running. He was chased but he got into the firewood shop of P.W. 2 at L.B. Road, P.W. 1 and Mohan went into the shop and brought D-5 out and the same was witnessed by P.Ws. F 2 and 3. Meanwhile A-1 and others dragged D-4 and D-6 and brought them to the cement floor behind the illicit arrack shop and D-5 was also brought there and all of the three were beaten on the cement floor which is in front of P.W.8's house. This was witnessed by P.Ws. 3, 8, 89, 32 and 37. Meanwhile P.W.4 was asked to go to Mandhaveli to find out whether the three deceased persons were from Mandhaveli. P.W.6 was brought from G Mandhaveli to identify the three injured persons and on enquiring they told him that A-1 and his men have beaten them. P.W.6 was sent back. He, however, informed P.W. 13 as to what happened. P.W.24 coming to know about the occurrence went to 29th Cross Street and learnt from P.W.32 that all of the three were beaten. In the meantime A-1 decided to remove H the three injured persons to his house as he felt that the matter would

become serious. They were taken in an auto to the house of A-1 who went in advance. He also threatened the residents in the locality not to reveal to the outsiders. P.W.3, a neighbourer, standing in front of his house also noticed A-1 going away with blood stains all over his shirt and he also saw the auto carrying the three injured persons. The three injured persons were put inside the store room and it was locked. At about 10 P.M., P.W.1, A-1 to A-3 and the absconding accused Mohan opened the store room and found D-4 and D-5 already dead and D-6 groaning. A-1 felt that it was dangerous to leave D-6 alive. He was dragged from the store room and was throttled to death. P.W.1 gave the idea to bury the dead bodies in the basement of the building under construction belonging to P.W. 14 and the said house was being built by P.W.1 as contractor. P.W.9, a watchman, and another person were lying there. A-1 and others asked them to go away on the pretext that they wanted to play cards. P.W.9 expressed his inability to go to his house at that time and A-3 took him to his house where he slept. Thereupon the accused procured a spade and removed the sand in the trenches of the foundation at to places and buried two dead bodies at one place and the third one at another place. The accused came back and washed blood stains in the store-room. In the meantime since the three deceased did not return home, P.Ws. 15 and 17 and Puratchi Mani came to Periyar Nagar and enquired P.W.32 and they also later enquired A-1 who told them that the three deceased came and made galata and they were beaten and sent away. P.W.15 went to Thiruvanmiyur Police Station on 31.5.88 and orally reported about the missing persons. The Circle Inspector, P.W.133 sent them away saying that the constable told him that no such incident has taken place. Thereupon P.W.15 went to Abiramapuram Police Station and gave the complaint Ex. P.14. P.W.129, the Sub Inspector registered the case under the heading "Man missing" and took up the investigation. Inspector of Police, Thiruvanmiyur arrested P.W. 32 but he told him that the three deceased persons were sent back. On 7.6.88 P.Ws.11 and 15 reported about the missing of the three persons to the D.S.P., Parangimalai and on his instructions next day they went and made a complaint Ex.P.11 to P.W.98 sub Inspector of Police, Thiruvanmiyur who registered the crime. On 27.6.88 A-1 was arrested by P.W.98 but he was released on bail. P.W.132 Inspector of Police took up both the cases for investigation. On 6.7.88 he arrested P.W.1 at Tambaram Busstand and questioned him in the presence of P.W.126. P.W.1 gave a confessional statement and it was reduced to writing. The admissible

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A portions were marked as Ex. P.182 to P.186. On this information further investigation commenced and on being questioned A-1 also made a confessional statement and the admissible portion is marked as Ex. P.187. P.W.132 seized several articles and searched the house of A-1 at Gandhi Road. In pursuance of the information given by P.W.1 and A-1 and on being pointed out by them the dead bodies of D-4 to D-6 were exhumed as per the orders of P.W.108, the Tehsildar, and the same were identified by P.Ws. 15, 17, 18 and 19. The inquest was held over the three dead bodies and the same were sent for post-mortem. On the basis of the information given by P.W.1 and A-1 further investigation into the deaths of D-1 to D-3 took an active turn. However, the dead body of D-2 was not traced. The panchnama was made and several incriminating articles from the room of A-1 where the body of D-2 was burnt, were seized. The Inspector arrested Mohan and recorded his confession and under the orders of the Tehsildar they went to the place where the dead body of Lalita, D-1 was said to have been buried and the earth was dug out and the photo of the place was taken and the remnants of the body that were found and other articles like hair, broken bangles, blouse etc. were seized. The Inspector also recovered the dead body of D-3 from the back side of the house of A-1 and it was found decomposed and skeltonised. Likewise dead bodies of D-4 to D-6 were recovered. Post-mortem was conducted by P.W.122 on the dead bodies of D-3 to D-6. On the dead bodies of D-4 to D-6, P.W.122 found several injuries and opined that they died due to injuries caused by violence. P.W.122, who also conducted post-mortem on the dead body of D-3, Ravi opined that he died because of asphyxia due to strangulation.

On 15.7.88 P.W.122 went to the shed as per the requisition issued by the Tehsildar from which place the remnants of the dead body of Lalita, D-1 were dug out and she conducted post-mortem on the spot. She noted various details in the post-mortem report including the fracture of the bones. P.W.122 sent the skull and jaw bones to the Chemical Examiner and after receipt of the report P.W.122 gave her final report Ex.P.170. P.W.134, Inspector, C.B., C.I.D. took up the investigation on 15.7.88 and made a thorough search of the all the places and examined several witnesses. He also sent the skulls and bones of the deceased persons to the Forensic Science Department for super-imposition test. As P.W.1, A-1 and A-2 were in a mood to confess he gave the requisitions for recording their confessional statements. P.W.106, Judicial Magistrate, Thiruvanniyur recorded the confessional statement of A-1 after the necessary warnings and after

complying with the necessary formalities. Ex. P.100 is the confessional statement of A-1. On 15.8.1988, P.W. 134 arrested A- 2 and recorded his confessional statement and its admissible portion under Section 27 of the Evidence Act is marked as Ex. P.68. Later A-2 was produced before P.W.107, Judicial Magistrate, Ponneri who recorded his confessional statement and it is marked as Ex.P.106.

The confessional statement of P.W.1 was recorded by another Magistrate under Section 164. Inspector P.W.134 issued a requisition Ex.P.94 and P.W.105, Chief Judicial Magistrate, directed P.W.1 to be produced before him on 21.12.88 and on that date P.W.105 read over Ex.P.5, the confessional statement of P.W.1, who admitted it to be correct and also stated that he made the statement voluntarily and that he would depose in detail in court and also prayed for pardon. P.W. 105 accepted his statement and granted pardon.

P.W.118, the Assistant Director of the Forensic Science Department conducted the super-imposition test and sent his report. P.W. 120, the Director of Forensic Science Department sent his reports regarding the handwritings of A-1, A-2 and P.W.25 and after completion of the investigation, the charge-sheet was laid. However, meanwhile Mohan who was arrested escaped and another accused Selvaraj was found to be still absconding. The charge-sheet was laid against A-1 to A-8 as well as the two absconding accused. When examined under Section 313 Cr.P.C. the accused denied the prosecution case. A-1, however, gave a lengthy statement and we will refer to the relevant portions of the same at an appropriate stage while considering further details and the evidence.

From the above stated facts it can be seen that it is the attack on D-4 to D-6 that brought to light the whole case and the further investigation was conducted into the deaths of D-1 to D-3 also.

As mentioned above the prosecution sought to prove its case against these accused both by the evidence of P.W.1 alongwith corroborating evidence as well as the retracted judicial confessions of A-1 and A-2 and the necessary corroborating evidence to the same. Learned counsel for the appellants submitted that the evidence of P.W.1, the approver is full of contradictions and discrepancies and the version given by him goes not appeal to be true and in any event his evidence is not corroborated in material particulars by independent evidence. His further submission is

A that the other item of evidence namely the retracted confessions can not be relied upon since they do not appear to be true and voluntary and that in any event they are also not corroborated by independent evidence.

B It may not be necessary to refer to the various decisions of the courts laying down principles and guidelines regarding the appreciation of evidence of an approver.

C Section 133 and illustration (b) to Section 114 of the Evidence Act deal with the law relating to an accomplice evidence. An accomplice namely a guilty associate in crime is a competent witness. Section 133 lays down that the conviction based on the uncorroborated testimony of an accomplice is not illegal, but the rule of guidance indicated in illustration (b) to Section has resulted in the settled practice to require corroboration of evidence of an accomplice and which was now virtually assumed the force of a rule of law. The word 'accomplice' has not been defined by the Evidence Act and it is generally understood that an accomplice means a guilty associate or partner in crime. An accomplice by becoming an approver becomes a prosecution witness. In interpretation of Section 133 and illustration (b) to Section 114, the Courts have laid down that an approver's evidence has to satisfy a double test; (1) his evidence must be reliable and (2) his evidence should be sufficiently corroborated. It is enough if we refer to some of those decisions. (See *Swaran Singh Rattan Singh v. State of Punjab*, AIR (1957) SC 637; *Lachhi Ram v. State of Punjab*, AIR (1967) SC 792 and *Mohd. Husain v. State*, [1970] 1 SCR 130.

F Coming to the extent and nature of corroboration, the Courts have held that ordinarily the approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal and furnishing the need and assurance for acceptance of his testimony. The corroboration need not be of a kind which proves the offence against and accused and it would be sufficient if it connects the accused with the crime. What is required is that there should be sufficient corroborative evidence to show that the approver is speaking the truth with regard to the accused whom he seeks to implicate. Such corroboration should be on material particulars and qua each accused. But it is not necessary that there should be independent corroboration of every material circumstance and it need not consist of evidence which standing alone would be sufficient to justify the conviction. In other words, there should

be additional evidence by way of corroboration rendering the story of an accomplice probably true and that it is reasonably safe to act upon such evidence. The independent corroboration need not also cover the whole of the prosecution story or even whole of the material particulars, for that would amount to render the story of the accomplice itself superfluous. What is required is that the evidence in corroboration must be an independent testimony which affects the accused by connecting or tending to connect him with the crime. It is sufficient if there is corroboration as to the material circumstances and the crime and of the identity of the accused in relation to the crime. The corroborative evidence can be direct or circumstantial. Ultimately the question whether there is such sufficient corroboration or not again depends upon the facts and circumstances of each case. (See *Ravindra Singh v. State of Punjab*, AIR (1975) SC 856; *Rameshwar v. State of Rajasthan*, AIR (1952) SC 54; *Tirubhawan Nath v. State of Maharashtra*, AIR (1973) SC 450 and *Vemireddy Satyanarayan Reddy and others v. State of Hyderabad*, AIR (1956) SC 379.

It will be interesting to note an ideal instruction by a Judge to the Jury in a passage which occurs in *Wigmore on Evidence* (7th Vol.-Third Edn. at page 328) which reads as under :-

"It may not be unfit to observe to you here that the confirmation to be derived to an accomplice is not a repetition by others of the whole story of the accomplice and a confirmation of every part of it; that would be either impossible or unnecessary and absurd;..... and therefore you are to look to the circumstances to see whether there are such a number of important facts confirmed as to give you reason to be persuaded that the main body of the story is correct.....You are, each of you, to ask yourselves this question. Now that I have heard the accomplice and have heard other circumstances which are said to confirm the story he has told, does he appear to me to be so confirmed by unimpeachable evidence, as to some of the persons affected by his story or with respect to some of the facts stated by him, as to afford me good ground to believe that he also speaks the truth with regard to other prisoners or other facts, with regard to which there may be no confirmation? Do I, upon the whole, feel convinced in my conscience that his evidence is true and such as I may safely act upon?"

A Bearing these principles in mind we shall now proceed to consider the important aspects in the evidence of P.W.1 and also see whether his evidence satisfies the necessary requirements of law and whether the same is corroborated in material particulars?

B Before P.W.1 was arrested in this case, he was residing at Kottivakkam and became a mason by profession. As he could not get masonry job properly, he took to driving of auto which was given to him by his father. The same met with an accident. Thereafter he hired another auto bearing registration no. TNZ 7502 from his friends and later on purchased the same. But even that he sold and again he was unemployed for some time.

C At that time his father was constructing a house in Palavakkam Village where he worked as a mason. It is during that time that he became a friend of A-1 and also came into contact with Mohan, the absconding accused as well as Ravi, A-6, P.W.1 deposed that all the three of them were selling illicit arrack. After completing the construction work again P.W.1 became

D unemployed and he also started selling illicit arrack and a conflict arose between his men and A-1's men and both sides complained to the police. However, the matter was compromised. P.W.1 got married in 1984. On 31.12.85 he was prosecuted for the alleged murder of one Natesa Nadar and he was released on Bail. As he was unemployed at that time A-1 asked

E P.W.1 to assist his younger brother Mohan and to help Mohan in selling illicit arrack. P.W.1 also deposed that alongwith Mohan, Ravi, A-6, Rajaram, A-5 and Jayavelu, A-4 were there helping him. P.W.1 further deposed that Shankar, A-1 was actively carrying on brothel business and Eldin, A-2, Shivaji, A- 3, Selvaraj, the absconding accused, P.W.32 and Sudalai, D-2 were there helping A-1 in his brothel business. A-1 was doing

F brothel business in Periyar Nagar in Poramboke land on which they encroached and ultimately purchased the same and A-1 raised a shed. P.W.1 further deposed mentioning the names of several girls who were kept by A-1 for doing brothel business. Among them, he named particularly, P.Ws. 16, 21, 51, 71 and 121. It is also in his evidence that A-1 used to keep beautiful girls for himself among those coming for the brothel business.

G P.W. 1 gave further particulars about A-1's extra marital relations with Lalita, D-1 and Sunita, P.W.51 who joined his business. Since Lalita, D-1 was a beautiful girl, A-1 got a separate residence for her in the house of Bommiammal, P.W.34 at Kalashetra Road. P.W.1 also gave details of A-1's marriage with Jagdeeswari and where Jagdeeswari was residing etc. He

H also identified several photographs M.O.1 to 4. He next proceeded to state,

that Sudalai, D-2 used to send women to the customers and after getting the money from them he used to give it to A-1. D-2 got married to one Lata who was with A-1 but she ran away. D-2 was living very close to D-1's house and they came into contact with each other. According to P.W.1 they ran away taking Rs. 7300 and a camera belonging to A-1 who gave a complaint to the police and thereafter he made a hectic search for them. The car in which he, A-1 to A-3 and Mohan travelled in search of D-1 and D-2 was driven by Raghu, P.W.4. A-1 went to Bangalore. However, A-1 ultimately managed to secure D-1. P.W.1 gave details about the hunt for D-1 and D-2 by A-1 and his associates. In this context P.W.1 also deposed that P.W. 85, brother-in-law of P.W.133 Inspector of Thiruvanniyur was working as a Manager of Santhi Theatre at Padi and both of them were trying to screen the offenders involved in such offences. P.W.1 proceeded to state about the enmity between Rajendran who was carrying a brothel and D-2. Sudalai, D-2 was made to vacate the house. Thereafter D-2 with the help of D-3 used to pick up A-1's customers from Taj Mahal Hotel and take them in the auto with D-3 to Anna Nagar where prostitution was being carried on by commission. Because of this also A-1 became angry with D-2. P.W.1 further stated that one film actress Bhuvanewari, P.W.127 was residing at Valmiki Nagar in Thiruvanniyur and one Sathyaraj introduced her to P.W.1, A-1, A-2, A-3 and Mohan. These people used to go to Bhuvanewari's house to play Carrom Board now and then and she had a car M.O.7. Whenever she needed the car, she used to take it from A-1. Likewise A-1 also used to take the car from her.

P.W.1 proceeded to depose that in the last week of February, 1988, himself, A-1 and P.W.4 went to Bhuvanewari's house, took the car and roamed for some time and then they came to Taj Mahal Hotel and there they saw D-2 and D-3 talking. P.W.1 and A-1 stopped the car and A-1 asked P.W.1 to call D-2 saying that he should be finished. According to P.W.1, A-1 further told him that he would finish off anybody who comes in his way and that he would have peace of mind only after killing D-2. As directed by A-1, P.W.1 took D-2 alone and he was taken in the car and they went to Mohan's liquor shop at Periyar Nagar and from there they picked up Mohan, Eldin, A-2 and Shivaji, A-3 and all of them came to A-1's house at Periyar Nagar and entered the house and sat on the first floor and started drinking brandy alongwith D-2. They gave large quantities to D-2 to make him get drunk and they also gave him some food. After taking meals D-2 lit a cigar and was sitting in a slanting position at about

A 8.30 or 9 P.M. At that time A-1 questioned D-2 about all the places where D-2 had taken D-1. A-1 became angry and saying that D-2 has become a hindrance to his brothel business also beat him severely on his cheek and he also signalled P.W.1 to throttle the neck of D-2 with a towel. A-2 pulled the legs of D-2 who fell down and P.W.1 pulled the towel and throttled the neck of D-2 while Mohan pressed the nose and mouth of D-2 and A-3 caught hold of his hands. Then A-1 kicked on the vital parts of the body of D-2 who after some time died. (P.W.1 also identified the photograph of D- 2, M.O.8), A-1 suggested that they should burn the body of D-2 there itself and sent A-2 and Mohan to bring six litres of petrol. A-2 took TVS 50 belonging to Mohan and brought the petrol. The body of D-2 was placed

B on the first floor in a room facing east. A-1 removed a gold ring and a gold chain from the body of D-2 which was given by A-1 to D-2 at the time of housing warming ceremony. After petrol was brought, it was poured on the body of D-2 and A-1 after lighting a cigarette with a match stick, threw the burning stick on the body of D-2 which started burning. They closed all

D the windows and came out. After some time they heard some sounds indicating the burst of the stomach and the liver etc. of the burning body. After the fire started extinguishing A-2 asked Mohan to go down and bring kerosene and some planks. The kerosene was poured on the burning body and the body was lifted and placed on the planks. Then A-1 suggested the unburnt portions could be dropped at the Muttukadu Boat Yard. At about

E 2 or 2.30 A.M. the unburnt portion of the body and the planks were packed in a bed-sheet and when the car was brought by A-2 and Mohan, the body was kept in the dicky. The car was driven by A-1. On the way he saw P.W.32 Sasi and P.W.4, Raghu. A-1 also asked them to get into the car saying that they had to bring arrack and gave the driving to P.W.4. Before

F reaching the Boat Yard they dropped P.Ws. 4 and 32 since they should not know that they were dropping the body of D-2. A-2 also was dropped just to avoid any suspicion by them. Thereafter they went to Muttukadu Boat Yard and threw away the remnants of the dead body which were not traced. They came back at about 5 or 5.30 in the morning to the house. A-1 asked Mohan to bring Thoppai Mistry and Painter Munusamy, P.W.

G 68. Those two people came and they were told that the bed got fire in the night and that the paint has become black. As asked by A-1, P.W. 68 and Thoppai Mistry painted the room and also did the other repairs. P.W.1 was there throughout. After two days when A-1 and Mohan were talking, D-3 came and said that D-2 is not to be seen and that A-1 took him and asked

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A-1 why D-2 was not found for nearly two days and it appears D-3 also asked A-1 for some money. A-1 suspected that D-3 was often enquiring about D-2 and ultimately planned to put an end to him. A-1 told P.W.1 that Ravi, D-3 should be finished off. In the month of March, 1988, A-1, Mohan, A-2, A-3 and P.W.1 were drinking in the house of Mohan at Ranganathapuram where he also used to keep girls involved in the prostitution and it was called a godown. At about 9 or 9.30 P.M. D-3 came and A-1 asked him to take drink. A-1 gave Rs. 100 to buy whisky. While D-3 went to bring whisky A-1 told P.W.1 and others that if after coming back D-3 asks anything about D-2, he should be finished. Meanwhile D-3 brought whisky and all of them started drinking. After a little while D-3 in the effect of the drink started saying that A-1 has finished Lalita, D-1 and also has finished Sudalai, D-2 and he also threatened A-1 that if he informs the same to Inspector of Thiruvannamiyur, what would be his fate. So saying he asked A-1 to buy an auto for him. Then Shivaji, A-3 questioned D-3 as to why he was demanding an auto for which D-3 retorted him to keep quiet. Then A-3 slapped D-3 and all of them planned to finish him off. A-2 was at the door and he caught hold of D-3's hairs and dragged him and made him sit near the wall of the bath-room. A-3 picked up a towel with which he strangulated D-3's neck. A-1 closed his mouth and nose and pressed. P.W.1 sat on his chest. Mohan caught hold of Ravi's hands and A-3 caught hold of Ravi's legs. After his death they decided to bury the body there itself. A-1 asked A-2 to bring P.W.68 and Thoppai Mistry and when they came A-1 told them that some arrack barrels have come and they have to be buried and a pit has to be dug. Accordingly the pit was dug by P.W. 68 and Thoppai Mistry and the accused gave a false alarm that police are coming so that P.W. 68 and Thoppai Mistry could leave the place immediately. After that P.W.1, Mohan and A-1 to A-3 put the body in the pit and closed it. They also placed the clothes which were worn by D-3 in the pit. A-1 warned all the accused who participated in the murders not to tell anybody and also threatened them with dire consequences if they would reveal the same to anybody.

P.W.1 proceeded to depose about D-3's mother coming and asking A-1 regarding the whereabouts of D-3 quite often. Then Mohan wrote a letter Ex.P.1 purported to have been written by D-3 stating that he had gone to Bombay and the same was given to his mother.

Then P.W.1 deposed about the murders of D-4 to D-6 for which

A there is direct evidence of other witnesses also. He deposed that on 29.5.88
in the noon when he himself, A-1 and A-3 were playing cards in the house
of P.W. 25, A-1's concubine, A-7 and A-8 came there. A-6 and Mohan also
came there. Mohan told A-1 that three persons from Mandhaveli were
beating A-2. Then P.W.1 has given all the details about the attack on the
B three persons and how they were buried in the trenches of the foundation
of a building which was under construction. These details have already
been set out while stating the prosecution case.

From the above resume of the prosecution case as well as the
evidence of P.W.1, it can be seen that murders of D-1 to D-3 from one
C transaction in the sense that A-1 did not tolerate the betrayal by D-1 and
D-2 and finished them off and since D-3 was trying to blackmail him in
respect of murders of D-1 and D-2, he was also finished off. The murders
of D-4 to D-6 also in a way are connected with the brothel business which
was being run by A- 1 and others. P.W.1 was also associated actively in all
D the activities of A-1 to A3 and Mohan. Therefore the prosecution first
sought to prove the background and the motive behind the commission of
these murders namely the illicit arrack business and the brothel business
and how D-1 to D-3 happened to come into picture and got thus
eliminated. P.W.1, as stated above, has deposed about the murders of D-2
to D-6. So far the murder of D-1 is concerned, P.W.1 only spoke about the
E association and the relationship between A-1 and D-1 and about the
elopement of D-1 and D-2. As to the actual murder of D-1, we have the
retracted confessions of A-1 and A-2 and we shall examine at a later stage
whether the retracted confessions as corroborated by other evidence suffi-
ciently establish the prosecution case regarding the murder of D-1.

F Now we shall consider the important aspects in the evidence of P.W.1
and see whether there is enough of corroboration? So far as the murder
of D-1 is concerned, P.W.1 did not participate in the actual occurrence of
causing the death. He however, deposed about the association of A-1 and
D-2 with D-1 and about the illicit business activities of A-1 and Mohan and
G about the motive. His evidence shows that he was a close friend and
associate of A-1 and the same is beyond dispute. As a matter of fact, A-1
in his written statement under Section 313 Cr.P.C. admitted that he was a
close friend of P.W.1. P.W.1 has also given the details as to how he became
an associate of A-1 and Mohan and also as to how A- 2 to A-6 and he
H himself were helping A-1 and Mohan in carrying on the said business

activities. P.W.1 also has spoken about the brothel business. He further A
deposed that D-1 and Sunita, P.W.51 who were in the brothel tent of
P.W.50 were brought to the brothel den of A-1 by P.W.52. It is stated that
several girls including P.Ws. 21 and 71 were prostitutes in A-1's brothel
den. He has also stated that D-1 was beautiful and that A-1 kept her at
Kalashetra Road in P.W.34's house while he was living with his legally B
wedded wife Jagdeeswari in Periyar Nagar. It is also in his evidence that
D-2 used to collect money from the customers and give it to A-1 and that
D-2 married one Lata who was kept in the next room of D-1 who fell in
love with D-2 and both of them eloped with cash of Rs.7,300 and a camera
belonging to A-1. He has also stated about the arrest of D-2 at Thiruvan- C
miyur Police Station. So far as D-1's murder is concerned, the evidence of
P.W.1 is relevant to this extent regarding motive. This part of his evidence
is amply corroborated by the evidence of other witnesses. That A-1 was
carrying on brothel business, is clearly established by the evidence of the
prostitutes P.Ws. 21, 51, 71 and 121 besides the evidence of P.W.22, a
neighbourer, P.W.31, P.W.32, his own employee and P.W.25, his mistress D.
and also by the evidence of P.Ws. 50, 51 and P.W.4, his own driver. Here
we may briefly refer to the evidence of P.W. 25. It is in her evidence that
while she was staying in a shed at Kalashetra Road, she became friendly
with A-1 who was indulging in brothel business. He expressed his desire
to marry her on 20.2.86 and took her to his step-mother and married her
by tying a thali. P.W.25 also deposed that A-1 used to write a diary M.O. E
20 wherein there is an entry about his marriage with P.W.25. Because of
this marriage there was a quarrel between him and his first wife Jagdees-
wari and he took her and kept her separately in Marudeeswarar Nagar.
P.W.25 also deposed about the cruel acts of A-1 namely that he used to
burn the girls with lighted cigarette butts and because of that Vijaya, one F
of the girls brought by him, ran away. P.W.52 corroborated the evidence
of P.W.25 in respect of the marriage of A-1 and herself. P.W.34 cor-
roborated her evidence and stated that A-1 kept her and one Lata, who
married D-2 at Kalashetra Road in P.W. 34's house. P.W.25 also stated
about elopement of D-1 and D- 2. According to P.W.25, A-1 used to ask
her to right in the diary M.O. 20 and that he also confessed to her about G
the murder of D- 1. P.W.1's evidence also affirms that P.W.25 was the kept
mistress of A-1. P.W.31 corroborates the evidence of P.W. 1 regarding the
Grah Pravasam of A-1's newly built house. P.W.32 is yet another important
witness who corroborates the evidence of P.W.1 as well as that of P.W.25

A regarding the running of the brothel house. P.W.37's evidence also corroborates namely that he and A-1 went to Pallavaram and brought D-1. Then P.W.35, who is the mother of D-1, deposed about A-1 approaching her and enquiring about D-1. P.W.35 also identified A-1 and A-3 as the persons who came to enquire. Then we have the evidence of P.W.43, the Inspector attached to Thiruvanmiyur Police Station who informed A-1 that he brought D-2 from Meenabakkam and kept him in the Police Station. P.W.98, Sub-Inspector of Thiruvanmiyur deposed about A-1's preferring a complaint in September, 1987 against D-2 alleging that he abducted his wife and took away cash and camera. P.W.133, is the Circle Inspector of Thiruvanmiyur who directed to book a case against D-2 under Section 75 of the City Police Act. So the evidence of the above witnesses amply corroborates the evidence of P.W.1 on the above aspects and the same establishes that A-1 had strong ill-feelings towards D-1 and D-2. Apart from this evidence there is the evidence of P.W.4 who was originally a driver in Mohan Raj Travels and who later joined the service of A-1. He deposed that he alongwith A-1 went in search of D-1 to Kottupuram and other Places. He has given details about going to Bangalore etc.

So far as the murders of D-2 to D-6 are concerned, P.W.1 was a direct participant. First we shall consider the evidence of P.W.1 in respect of the murder of D-2 and the corroborating evidence. The persons involved in this murder are A-1 to A-3, absconding accused Mohan and P.W.1, the approver. P.W.1 has given the details of the occurrence namely as to how D-2 was done to death and how they set fire to the dead body in the room of the house of A-1 and how the remnants of the dead body were thrown in Muttukadu Boat Yard. As regards the motive for this murder, we have already pointed out that P.W.1's evidence is corroborated fully. The prosecution further relied on the evidence of P.Ws. 4, 5, 20, 25, 32, 34, 35, 37, 39 to 43, 46, 51, 55, 58, 64, 67, 68, 69, 121, 126, 131 and 134. We do not propose to give the details of evidence of each of these witnesses. Learned counsel appearing for the appellants, however, contended that A-1 had no motive to kill D-2 inasmuch as D-2 was helping him in all respects and A-1 also got him married and presented a gold ring and a gold chain. But the evidence of P.W.1, which is supported by other evidence, would show that A-1 was very much aggrieved and infuriated because of the betrayal of D-2 by eloping with his beloved wife D-1. He had also grievance against D-2 as he was weaning away the customers of A-1. There is nothing to show that A-1 condoned the acts of D-2. To some extent the evidence of P.W.25

also supports the prosecution case that A-1 had strong ill-feelings towards D- 2. Both the courts below have accepted the above mentioned evidence after discussing in great detail and held that the prosecution established the motive for the murder of D-2. A

So far as the actual occurrence is concerned, we have got the evidence of P.W.1 which is corroborated by other evidence independently apart from the retracted confessions of A-1 and A- 2. While extracting P.W.1's evidence we have already given the details spoken to by him regarding the murder of D-2. P.W.1's evidence is corroborated by the evidence of P.W.4 to the extent namely that on that day at about 4.30 P.M., D-2 and D-3 were seen conversing in the tea stall near Taj Mahal Hotel and P.W.4 and A-1 stopped the car and A-1 asked P.W.1 to bring D-2 and how D-2 was brought. Then P.W.1 has given the details of various acts committed by A-1 to A-3, Mohan and himself as well as bringing the petrol and pouring the same on the dead body of D-2 and setting fire to the same. P.W.1 has also given the details of the remnants of the burnt body being kept in the car and taken to Muttukadu Boat Yard. P.Ws. 4 and 32 deposed that they were also asked to get into the car and A-1 asked P.W.4 to drive the car and on the way just before reaching the Boat Yard. A-2 and P.Ws.4 and 32 were asked to get down so that P.Ws. 4 and 32 may not suspect and the rest proceeded in the car. The evidence of P.W.68 Painter Munusamy and P.W. 69 Subbaiah Mistry is very important. P.W.68 was sent for by A-1. He deposed that he went to the house and having seen the room noticed that the wall was black and on being asked A-1 replied that he had dropped a lighted cigarette on the bed and it got burnt and P.W.68 was asked to paint the room and that P.W.1 was there throughout the day when the painting was going on. He also noticed a crack in the wall and he was asked to bring a mason. P.W.68 asked P.W.69 Subbaiah Mistry to do the work and P.W.69 put new cement flooring and he also noticed fresh white-washing and painting inside the room. P.Ws. 65 and 67 are the persons who supplied the materials for painting. P.W.65 deposed that he was having a hardware shop and used to supply materials and on that day A-2 came and asked for supply of lime and brown colour paint. He further deposed that A-1 already instructed him to supply the materials and accordingly he supplied. He produced the bill also. P.W.67 is another witness running hardware shop. He deposed that on 1.3.88 P.W.68 came to his shop and purchased colour and paint. The evidence of P.Ws. 68 and 69 coupled with the evidence of P.Ws. 65 and 67 lendsample corroboration to the evidence B
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A of P.W.1 namely that the burning took place in the room. Learned counsel, in this context, however, submitted that there is no corroborating evidence regarding the actual burning of the dead body of D-2 in the room. What we are seeking by way of corroboration is whether the version of P.W.1 stands fortified and whether such corroborating evidence lends assurance to his version. The evidence of these witnesses particularly that of P.W. 68
B establishes that only in that particular room there were dark particles and smoke and bad smell were emanating. Therefore the evidence of P.W.1 that D-2 was done to death in that room and that his body was burnt, is amply corroborated. Apart from this, the prosecution also relied on the evidence of P.Ws. 88, 113, 128 and 134. P.W.128 is the Assistant Director of Forensic
C Science Department and he scrapped the wall and after examining the contents stated that there was black deposit. Learned counsel, however, submitted that it is not conclusively established that the presence of carbon particles in the room were due to the burning of the body. But, as mentioned above, there is overwhelming evidence which corroborates the
D version of P.W.1.

The prosecution also relied on the recovery of jewels namely ring and gold chain worn by D-2 at the time of occurrence. At the instance of A-1, the gold chain M.O. 13 was recovered from the possession of P.W.25 alongwith some other articles. The panchnama was attested by P.W.31 as
E well as by P.W.25. There is also recovery of M.O. 12, gold ring, at the instance of A-2 from his mother-in-law. P.W.1 identified both these jewels and stated that they were presented to D-2 at the time of Grah Pravasam of his house and that they were removed from the body of D-2.

F We have also the evidence of P.Ws. 25, 32 and 55 that D-2 was last seen alive in the company of A-1 to A-3, Mohan and P.W.1. Thus there is enough of corroboration to the evidence of P.W.1 regarding the murder of D-2. The same has been accepted by both the courts below and the same establishes that A-1 to A-3 alongwith P.W.1 committed the murder of D-2.

G Now coming to the murder of D-3, Ravi, P.W.1 has given details as to how he was done to death and how the body was buried near the bathroom at 120-A, Ranganathpuram, Thiruvanmiyur. As far as the motive aspect is concerned, P.W.1 has given the details as to how D-3 used to come to A-1 and demand money. He also deposed that A-1 told him that
H D-3 is making frequent enquiries about D-2 and that he may tell something

to the Inspector of Thiruvanniyur who has been using D-3's auto often. Here again we have the evidence of P.W.68, Painter Munusamy who deposed that as directed by the accused, he dug a pit and thereafter A-1 gave him Rs. 100 and asked them to go away saying that police was coming. Then P.W.1 deposed that he and absconding accused Mohan and A-1 to A3 brought the dead body of D-3 from the room and buried it in the pit. For the purpose of corroboration of the version of P.W.1 the prosecution relied on the evidence of P.Ws. 25, 31, 32, 33, 45, 56, 59, 60 to 63, 68 and other witnesses apart from the evidence regarding the recovery etc. It is in evidence that D-3 was a close friend of D-2 and when he found that D-2 was missing, he suspected that he might have been murdered. The motive part, as far as the murder of D-3 is concerned is that A-1 suspected that D-3 was trying to blackmail him. The mother of D-3, P.W.59, deposed that she went and questioned A-1 about the whereabouts of D-3 and A-1 told her that D-3 has gone to Bombay and ultimately she gave a complaint. She further deposed that she got an inland letter Ex.P.1 purported to have been written by D-3 and she stated that the same was not in his handwriting. As already mentioned this letter is written by Mohan who tried to mislead P.W.59. P.W.59 also identified the clothes which were worn by D-3 i.e. M.Os. 16 to 18 and M.O. 111 and which were recovered from the pit at the time of exhumation of the body. P.W.60, the wife of D-3, also supported the evidence of P.W.59. Learned counsel contended that the evidence of P.W.120, Hand-writing Expert on the question of hand-writing in Ex.P.1 is not conclusive. We think we need not go into the details of the evidence of P.W.120 because there is other ample evidence. P.W.25 also supported the evidence of P.W.1 on some material aspects. The evidence of P.W.68, who dug the pit, is very important and P.W.69 deposed that at the instance of absconding accused Mohan, he did the plastering near the bath room where there were cracks in the cement floor. Next we have got the evidence regarding the recovery of the body. According to the prosecution, pursuant to the confession made by A-1, the body was recovered. Learned counsel submitted that this recovery can not be treated under Section 27 of the Evidence Act since it is not clear whether the recovery was effected at the instance of P.W.1 or A-1 or at the instance of both. Even assuming that it can not be brought within the ambit of Section 27, yet it is a circumstance which shows that body was buried there and the same was exhumed. Regarding the exhumation, we have the evidence of P.W.108, Tehsildar and P.W. 109 Photographer. Then there is evidence of P.Ws. 59, 60, 62 and 63

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- A who also attested the inquest report. The dead body was identified by the relatives of D-2 with reference to M.Os. 16 to 18 and 111, the clothes worn by D-3. The recovery of the same from the pit is spoken to by P.W.108 and other witnesses. Apart from that there is evidence of P.W.118, Assistant Director of Forensic Science Department who did the super-imposition
- B test in respect of skull and jaw recovered and gave the opinion that the skull and jaw belonged to D-3 with reference to M.O. 19, a photograph. Therefore there is no doubt about the identity of the deceased. There is also the evidence of P.W.122, a Doctor, who conducted the autopsy and she gave the opinion that D-3 appeared to have died of sudden violent unnatural cause of death namely asphyxia and strangulation. She has also
- C noted that there was a fracture of hyoid bone. Therefore the cause of death also is clear and the same corroborates the evidence of P.W.1.

- Both the courts below also relied on the evidence of P.W.25. She deposed that on 14.3.88 D-3 came to her house and enquired about A-1 and on 15.3.88 at about 8 A.M. A-1 came to her house and consumed
- D brandy and on being questioned as to why he was taking brandy in the morning, he told him that he was very happy on that day. He also confessed as to how D-3 was done away with. Her evidence was challenged on the ground that she was the wife of A-1 and such evidence in view of Section 122 of the Evidence Act can not be used against A-1 namely the husband
- E and on a consideration of the entire evidence, both the courts, as a question of fact, held that P.W. 25 was not the legally wedded wife of A-1 and that his marriage with Jagdeeswari was subsisting and that P.W. 25 was a Christian and she was living only as his mistress and therefore Section 122 of the Evidence Act is not attracted and on the facts this appears to be a
- F correct view. Thus P.W.1's evidence in respect of murder of D-3 is amply corroborated by the evidence of the abovementioned witnesses.

- Regarding the murders of D-4 to D-6, apart from the evidence of P.W.1, there is evidence of some more eye-witnesses and other corroborating evidence and the recoveries. We have already given the details of the
- G conduct of these three deceased persons, as deposed by P.W.1. By way of corroboration the prosecution relied on the evidence of P.Ws. 2 to 30, 32, 33, 37, 38, 45, 47, 53, 54, 72 to 76, 89, 91, 98, 112, 114, 117, 118, 119, 121 to 123, 130, 132, 133 and 134. The case of the prosecution is that D-4 to D-6 (Mandhaveli people) were creating trouble and also threatened the
- H Managers of the place not to allow prostitution in the lodges. The pros-

titutes who were in the business of A-1 complained to him and it was the beating of A-2 that aggravated the whole situation. P.W.121 deposed that she joined the brothel of A-1 in 1987. P.Ws. 4, 9 and 32 and D-2 were assisting A-1. A-3, A-5 and A-6 and Selvaraj, the absconding accused were assisting Mohan in the illicit arrack business. Her further evidence is that on 23.5.88 the three deceased and others created galata and she informed A-1. On 27.5.88 also there was some such trouble. P.W.121 further deposed that when she was returning from the Golden Beach after spending time with the customers, she was assisted and she was pulled by the three deceased from the auto and when A-2 intervened he was also assaulted and coming to know of this, A-1 came with other associates including P.W.1 and attacked the three deceased. The auto driver, P.W.11 also corroborates the evidence of P.W.1 as well as that of P.W.121. The prosecution thus has established that there was sufficient motive. Regarding the actual beating, apart from the evidence of P.W.1, there is the evidence of P.W.2 fire-wood shop owner. He deposed that D-5, Mohan entered his shop being chased and he requested P.W.1 and Mohan, the absconding accused not to attack the deceased in the shop but to take him out and accordingly they took him out. Then we have the evidence of P.W.4 who deposed that he brought F.W.6 from Mandhaveli who affirmed that all the three deceased persons belonged to Mandhaveli and thus they were identified. Then there is evidence of P.W.32 who also informed A-1 about the earlier attack by the three deceased person. P.W.3 is a member of Vanniar Sangam and on that day at about 3.45 P.M. he came in front of P.W.2 shop. He noticed a person entering into the shop being chased by P.W.1 and Mohan and also saw P.W.1 beating him. While going he also saw A-1 standing armed with a casuarina stick. By then all the accused had assembled and he noticed P.W.1 and Mohan and other accused beating the three deceased persons. P.W.3 was threatened by A-1 that if anybody interferes with his affairs, he would meet the same fate. Thereafter P.W.3 went to his house. P.W.3's house is quite nearby and a little later he saw A-1 with blood stains clothes entering into his own house and followed by P.W.1, Mohan and A-3 who were bringing the three deceased in the auto to the house of A-1. P.W.3 is a person living very close to the place of occurrence and there is no dispute that he knew the identity of these accused. Both the courts have discussed his evidence and found to be trustworthy which corroborates the evidence of P.W.1 in respect of actual occurrence also. Next we have the evidence of P.Ws. 7,8,9 and 89 besides

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A that of P.Ws. 4, 32 and 37. P.W. 7 is a dhobi. He knew the accused as well as P.W.1. He deposed that on the date of occurrence he was in front of the house of one Ramalingam on 29th Cross Street attending to his work and he saw an auto coming from which P.W.121 got down. He further deposed that the three deceased persons, obviously referring to D-4 to D-6, pulled her and quarrelled with her and when A-2 came he was also

B beaten by the three deceased. Then P.W.32 came and took the girl. He further deposed that the accused came from the side of the arrack shop of Mohan armed with sticks and started beating the three deceased. P.W.11, the auto-driver was driven away, P.W.7 has been cross-examined at length. We find that he is a local witness who knew all the accused and his

C evidence regarding beating of the three deceased persons on 29th Cross Street by the accused is trustworthy and the same corroborates the evidence of P.W.1 amply. P.W.32 also corroborates the evidence of P.W.7 to the extent namely that he came and took away P.W.121 who was being

D ill-treated by the three deceased on the road. Next important witness is P.W.8 who also resides in the same street namely 212, Gandhi Road, Periyar Nagar where A-1 is residing. He knew the accused though he did not know their names. He fairly stated that he did not know the names of A-2 and A-8. It is in his evidence has on the day of occurrence at about 4

E P.M. he heard a voice from the cement floor opposite to his house. He came out and saw the three young persons being beaten indiscriminately all over the body with casuarina sticks and he identified A-1 to A-4, Mohan and P.W.1 beating with casuarina sticks and A-6 with a wooden reaper. P.W.8 further deposed that he was called by A-1 and threatened not to

F disclose the incident to anybody and also asked him to wash the cement floor. Accordingly he washed the same. He further deposed about the recovery of dead bodies on being pointed by A-1 and P.W.1 from the basement of the building under construction belonging to P.W.14. P.W.8 is a competent witness. We have also seen his cross-examination and the discrepancies pointed out are of minor nature. His evidence amply corroborates the evidence of P.W.1 in respect of attack from the beginning upto the beating on the cement floor. Next comes the evidence of P.W.9

G who is a resident of Thiruvanmiyur. He deposed that on the day of occurrence at about 4.45 P.M. he was talking with A-2 and P.W.32 on 29th Cross Street. He deposed about the three deceased person pulling P.W.121 from the auto etc. He also deposed that he was sleeping on the basement of P.W.14's building and that at about 1 or 1.30 A.M., P.W.1, Mohan, and

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A-1 to A-3 came and asked them to vacate the place as they were going to play cards and when he expressed that he can not go to his house at that time, A-3 took him to his house and asked him to lie there. However, he once again came to the basement and he saw A-3 alongwith A-1 and P.W.1 digging the pits in the basement. P.W.9 also is cross-examined at length. As a matter of fact he did not even mention the names of A-7 and A- 8. However, his evidence corroborates the evidence of P.W.1 to that extent namely that pits were dug on the basement of the building of P.W.14. P.W.11 also corroborates the evidence of P.W.1 as well as that of P.W.32 to the extent of three persons coming in the auto and manlanding P.W.121. He also deposed that A-2 came there and he was also beaten and therefore he left the place. P.W.121 also corroborates the same. P.W.37 is another witness who is a resident of Periyar Nagar and he also deposed about the accused beating the three deceased persons with casuarina sticks on the cement floor opposite to the house of P.W.8. He did not attribute any overt act to A-7 and A-8. Then regarding the later part of the occurrence, we have the evidence of P.W.89 who is running a shop. He knew all the accused and P.W.1. His shop is located opposite to the arrack shop of Mohan and while he was in his shop, he saw the three deceased persons in an auto and A-2, A-3 and others beating them. He also deposed that at about 5 or 6 P.M. the victims were taken in an auto towards Gandhi Road. Both the courts have found his evidence to be natural and probable. His evidence also corroborates the evidence of P.W.1 on this aspect namely the three deceased persons were beaten on the cement floor and were taken towards Gandhi Road i.e. to the house of A-1. Then there is evidence of P.Ws. 4, 5, 6 and 17. We have already referred to the evidence of P.W.4 on other aspects. He corroborates the evidence of P.W.1 on the earlier aspects namely identification of the three deceased and P.W.6 coming and identifying them. He did not see the actual beating but deposed that he saw that the three deceased persons were detained with injuries. Then we have the evidence of P.W.12, who deposed that on that night A-3 came to his house and asked him to give his spade saying that it was needed for burying the arrack barrels. The prosecution also relied on the evidence of P.Ws. 10, 25 and 32 to whom A-1 is said to have confessed about the occurrence. We have already referred to the evidence of P.W.25 on certain aspects. With regard to this occurrence, she deposed that when A-1 was in her house A-6 came and told him that the three deceased persons from Mandhaveli have waylaid P.W.121 and were quarrelling with her and when

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A A-2 intervened he was beaten. She further stated that a little later P.W.37 came and told that all the three deceased were on the cement floor and were being beaten by A-1 and others. A little later A-1 came to her house and she found that his clothes were blood-stained and the other accused brought the three deceased persons in an auto. A-1 also asked her not to remain in the house and he took her to the nearby house of P.W.31.

B Sometime later when she asked A-1, he told her that they have beaten all the three deceased and locked them inside the room and that later they found that D-4 and D-5 dead and D-6 alone murmuring and thereafter they also strangled him to death. Thus, so far as the murders of D-4 to D-6 are concerned, P.W.1's evidence is amply corroborated by other evidence and apart from this evidence, there is other evidence namely that of P.Ws. 7, 8 and others which also establishes that the accused persons alongwith P.W.1 committed their murders. The High Court, however, acquitted A-7 and A-8 since their names were not specifically mentioned and for other reasons. Any way we are not concerned with them.

D From the above discussion it emerges that P.W.1's evidence which is sufficiently corroborated by the other evidence establishes beyond all reasonable doubt that A-1 had the motive to do a way D-1 and that A-1 to A-3 and P.W.1 alongwith the absconding accused committed the murders of D-2 to D-3 and all of these appellants also committed the murders of D-4 to D-6.

F At this juncture, we would like to advert to a submission of the learned counsel for the appellants. He pointed out that the High Court has used the retracted confessions for the purpose of corroborating the evidence of P.W.1 which is not permissible. We have gone through the judgment of the High Court carefully. No doubt, here and there it is mentioned that the retracted confessions also corroborate the evidence of P.W.1 on certain aspects but a careful scrutiny would show that the learned Judges were pointing out that the version given by P.W.1 and the one found in the retracted confessions are consistent with each other. However, we have considered them independently and have given our own reasons for acting upon these two items of evidence.

H The prosecution also sought to prove its case by the retracted judicial confessions made by A-1 and A-2 and corroborated by the other evidence. We may mention at this stage that the version given in the retracted judicial

confessions is one and the same as the one given by P.W.1 except in respect of the murder of D-1 about which P.W.1 does not speak as he was not present. Therefore most of the corroborating witnesses would be the same whose evidence was relied upon, as mentioned above, for the purpose of corroborating the evidence of P.W.1. However, we shall deal with the murder of Lalita, D-1 in detail and then briefly refer to the other parts of the version and the extent of corroboration rendered to the retracted confessions.

At this stage we may usefully refer to the principles governing the evidentiary value of retracted confession. The confession is a form of admission consisting of direct acknowledgment of guilt in a criminal charge. It must be in express words by the accused in a criminal case of the truth of the guilt fact charged or some essential part of it and a statement that contains a self-exculpatory matter can not amount to a confession. The confession should be a voluntary one, that means not caused by inducement, threat or promise. Whether a confession is voluntary or not is essentially a question of fact. The judicial confessions are those which are made before a Magistrate or in Court in due course of legal proceedings and when such a confession is retracted, the courts have held that apart from the statement being voluntary it should be true and should receive sufficient corroboration in material particulars by independent evidence. The rule of prudence namely requiring corroboration does not mean that each and every circumstance mentioned in the confession with regard to the participation of the accused in the crime must be separately and independently corroborated. It is sufficient if there is general corroboration of the important incidents, just like in the case of an approver's evidence and it is not necessary that the corroborative evidence itself should be sufficient for conviction. It may not be necessary to refer to remaining aspects governing the use of retracted confession for the purposes of this case. Suffice it to say that it is also laid down that it is not illegal to base a conviction on an uncorroborated confession of an accused person but as a rule of prudence which has sanctified itself to the rule of law, the Courts do look for corroboration before acting upon and accepting the retracted confession and what amount of corroboration would be a question of fact to be determined in the light of the circumstances of the case. (See *Balbir Singh v. State of Punjab*, AIR (1957) SC 216, *Swaran Singh Rattan Singh's case* (supra), *Ediga Anamma v. State of Andhra Pradesh*, AIR (1974) SC 799 and *State of Uttar Pradesh v. Boota Singh and others*, AIR (1978) SC 1770).

A Bearing these principles in mind, we will first examine the confessions. P.W.106, Judicial Magistrate, Thiruvanniyur deposed about the proceedings of recording the confession of A-1. His evidence shows that he has taken all the precautions including sufficient time for reflection.

B Both the courts after considering the evidence have held that the confession was voluntarily made by A-1. The confessional statement of A-1 is marked as Ex.P.100. Likewise, P.W.107, Judicial Magistrate, Ponneri recorded the confessional statement of A-2 which is marked as Ex.P.106. P.W.107 has deposed about all the details of the proceedings and both the courts have accepted his evidence and held that the confession was voluntary.

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D The confession of A-1 contains wealth of details. As regards the first three murders he has implicated himself, A-2, A-3 and Mohan and he has given all the details as to how all the deceased were killed. He also referred to the extra-judicial confession made by him later to his wife P.W.25. He has made a lengthy statement about his early life and how later he took to the business of illicit arrack and the brothel business. He has also stated that he married Jagdeeswari. He also mentioned about Sumati, Anita and other girls whom he inducted into the brothel business. He has also given details as to how he used to send the girls to the customers to Taj Mahal Hotel. He has also mentioned about his association with other accused as well as with D-1 to D-3. Regarding D-1's death he stated that D-2 deceived him and took away Lalita and he made a search. Ultimately on 27.10.87 he learnt through Inspector Hari that D-2 was caught by the police and was kept in that lock-up and that he went to Pallavaram to the house of relatives of D-2 and there he found D-1 and brought her. He has also given details as to how he ultimately managed to take her to his house and how he bribed the Constable and sent him away. Coming to the actual occurrence he brought brandy and they both drank it and when they were talking, A-2 brought Mohan in the auto. They went to his house at Periyar Nagar in the auto. A-1 took D-1 on the first floor after collecting the key from his wife. A-2 and Mohan also followed him. Then he questioned D-1 as to why she betrayed him when he was giving so much to her. Then both of them had indulged in sexual intercourse and he stated that Lalita told him that D-2 was his partner. This enraged A-1 and he slapped D-1 and she got angry and started scolding him. At that time A-2 and Mohan also came to the first floor and A-1 asked them to beat her and Mohan ran towards her and pulled her by hairs and A-1 sprang on her and caught hold of her neck and A-2 caught hold of the hands of D-1 from behind and A-1 continued

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to crush the neck of D-1 and in the process she died. Then they decided to dispose of the body and Mohan suggested that the body could be buried in the garden itself. A-1 removed the ear studs and chain from the body of Lalita. After some time A-2 and Mohan came along with A-3. All of them lifted the body, took it into an auto and went to Kuttumadu. There they buried the body near the north entrance of the liquor godown. He jacket also was thrown into the pit and they filled it up. He has also given all the details regarding the murders of D-2 and D-3. In his confession he has also mentioned about P.W.1's participation in these two murders as well as the murders of D-4 to D-6. Likewise he has also given all the details regarding the murder of Ravi, D-3 and about burying his body in the back yard. He has also mentioned about utilising the services of P.W. 68 and Thoppai Mistry, both on the earlier occasion namely when D-2's murder was committed and also later when D-3's murder took place and D-3's body was buried in the pit dug by P.W. 68 and Thoppai Mistry. Now coming to the death of D-4 to D-6, A-1 has stated that they were trying to interfere with his business and creating unseemly situations by harassing and teasing the girls belonging to his brothel. Then he has given all the details as to how they beat all the three deceased who attacked A-2 and also the initial quarrel that took place in the firewood depot. He has also given details of beating these three deceased and how they were locked up in the store room and how D-6 was throttled to death and how the bodies were buried in the trenches of the foundation of a building under construction. At the instance of A-1 some recoveries were effected. Likewise at the instance of A-1, a gold ring belonging to D-2 also was recovered and A-1 further showed the pits where the dead bodies were buried.

A-2 was with A-1 throughout and according to the prosecution, he participated in all the murders. In his retracted confession, Ex.P.106, A-2 has stated that he married the sister of A-1. Then he has given all the details about their business activities and about D-1's murder. Then so far as the murders of D-2 to D-6 are concerned, he has also stated that P.W.1 participated along with him and other accused. Now we shall consider whether there is sufficient corroborating evidence to the versions given in these confessions regarding the murder of D-1. As already noted, the charge is that A-1 to A-3 and absconding accused committed the murder of D-1 on 28-10-87 at 142, Gandhi Road, Periyar Nagar. So far as the motive behind this murder is concerned, we have already referred to the evidence of P.Ws. 25, 40, 43, 46, 66, 98, 121 and 134. A-1 as well as A-2 in their confessions have given the details about the misbehaviour of D-2 and

A his elopment with D-1 and how they went in search of them to Bangalore and other places and how ultimately they could trace them and brought them back. So far as D-1 is concerned, it is in the confessional statement of A-1 that since she was beautiful, he was keeping her exclusively for himself. He has also mentioned about his marriages with Jagdeeswari as well as P.W.25. There is also enough of corroboration from the evidence of P.Ws. 21, 51, 71 and 121 besides the evidence of P.W.22, the neighbourer, P.W.1 and P.W.32, his own employee and also the evidence of P.Ws. 25 and 50. In addition there is the evidence of P.Ws. 46, 48 and P.W.4, his own driver. Their evidence, to which we have already referred to, amply corroborates the retracted confessions on several aspects particularly that of running brothel business. P.W.25 in her deposition referred to M.O.20, a diary maintained by A-1 and also the extra-judicial confession made by him. There is the evidence of P.W.66, the Constable No. PC 176 who, as directed by P.W.133, the Inspector, accompanied D-1 to the Central Station as she refused to live either with D-2 or with A-1. It is also in his evidence as to how on the way A-1 met D-1 and how they went to the house of A-1. He also deposed that A-1 bribed him by giving Rs. 100 and sent him away saying that he would send Lalita himself to Bangalore. Thus there is ample corroboration so far the motive aspect is concerned. Then there is evidence of P.Ws. 32 and 48 who last saw D-1 in the company of A-1 to A-3 and absconding accused Mohan. P.W.48 was residing in the house belonging to A-1 behind Puthukoil at Periyar Nagar and her husband was working in A-1's brothel house. P.W.49 is yet another witness who was living in the adjoining house of P.W.48. P.W.48 deposed that on the day of occurrence at about 10 P.M. he saw accused A-1 and A-3 talking together after coming in an auto driven by A-2 opposite to the arrack shop of Mohan and thereupon A-1 alongwith A-3 and D-1 proceeding to the house of A-1 in the same auto driven by A-2. Both the courts below have accepted the evidence of P.W.48 as fully reliable. Then as to the actual murder of D-1, we have already referred to the details as found in the confessional statements of A-1 and A-2. Then there is evidence of P.W.61. He was asked to dig a pit under the guise of concealing arrack barrels. It is in his evidence that he was called by Mohan, the absconding accused at about 2.30 A.M. while he was sleeping and he was asked to assist A-2 and A-3 in digging the pit and he dug a pit of the size of 5 feet length and 3 feet depth and thereupon he was asked to go away. The evidence of P.W.61 is important. It is also in the evidence of P.W.61 that he was taken again at 8 A.M. and he alongwith one Sumathi plastered the portion where the burial was made. Both the courts after considering the same found it to be reliable and

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rendering sufficient corroboration on a very important aspect. P.W.25 also A
deposed about the diary and also the confession made by A-1 stating that
he alongwith A-2 and A-3 and Mohan strangled her neck and murdered
her and buried her and she wrote in M.O. 20, 28.10.87 as the date of death
of D-1 as directed by A-1. M.O. 20 also contained another entry made by
A-1 in his own handwriting to the effect that D-1, his beloved wife and
himself separated permanently. Learned Counsel submitted that these B
entries appeared to be artificial and at any rate Section 122 of the Evidence
Act makes them inadmissible. We have already referred to this aspect and
held that she is only a mistress and not a legally wedded wife and Section
122 does not in any manner come in the way. Both the courts have also
relied on the evidence of P.W.25 on other aspects and after going through
her evidence, we have no grounds to come to a different conclusion. C

Then there is evidence of P.W.32 who had also last seen D-1 in the
company of the accused. Learned counsel submitted that P.W.32 stated
that it was 8 P.M. whereas P.W.48 stated that he saw them at 10 P.M.
Therefore their evidence should not be accepted. We do not think there is
much variation. At any rate if there is some difference as to the actual time
in their versions, that is not a ground to reject their evidence. The next
important circumstance relied on by the prosecution is the recovery of the
body of D-1, the jewels and other articles belonging to her in pursuance of
the confession made by A-1. P.W. 132 arrested A-1 and A-4 at 11 P.M.
and A-1 gave the statement, admissible portion of which is Ex. P.187. After
giving requisition by the Inspector and in the presence of P.W. 108, the
body of Lalita was exhumed and M.Os. 86 to 88 were recovered from the
pit. The Doctor, P.W. 122, who conducted the post-mortem, found the
body to be of a woman. the police also recovered M.O. 100 series of
bangles pieces, M.O. 101 series of blouse pieces and M.O. 134 series of
hair pieces. P.W. 48 has also deposed about the digging of the place where
ultimately the body of D-1 was said to have been buried and recovered. D
Learned counsel, however, submitted that there is no positive proof that
the remnants of the body and recovered articles were that of Lalita, D-1
and the prosecution has not proved *corpus delicti*. But that by itself is not
a ground to doubt the murder of D-1 and burial of her body in the manner
confessed by the accused. However, the prosecution also relied on the
evidence of P.W. 118, Assistant Director of Forensic Science Department
who was asked to give his opinion about sex, age and stature of the
deceased and about the identity with reference to the photograph and it is
in his evidence that they examined the skull and the photograph by video
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- A super-imposition technique and in all probabilities the same are the skull and mandible of the individual marked as Item (L) namely the photo M.O. 19 which is that of Lalita. The said report was signed by P.W. 120, the Director. He has also deposed in his evidence about the super-imposition device. Added to this P.W.122 also gave opinion that body was that of a lady and she has also given the cause of death namely that it was homicidal.
- B Therefore there is ample corroboration to the retracted confessions of A-1 and A-2 in respect of murder of D-1. One more circumstance relied upon by the prosecution is the recovery of the jewels belong to D-1 in pursuance of the confession made by A-1. P.W.98 as the panch witness in whose presence P.W.132, Investigating Officer examined A-1 and the admissible portions are marked as Ex. 66 and Ex.P.67. A-1 took P.W.134, Inspector, C.I.D. to a house in Tirumalai Nagar, Perungudi and there he directed his wife Jagdeeswari to hand over the articles entrusted to her and M.Os.22, 23 and 73 to 76 were seized. Likewise M.Os. 35 to 37 and 77 to 83 were recovered after search of the house of Jagdeeswari. A-1 led them to P.W.25's house and he asked her to produce the articles entrusted to her.
- D Accordingly P.W.25 produced M.Os.10, 13, 20 and 83. The attesting witnesses were also examined. They also recovered M.O.99 and 133 at the instance of Mohan. M.O.99, a gold chain is said to be belonging to D-1. Then there is evidence of P.W. 35, mother of D-1 and she has identified all the articles. P.W.42, brother of D-2 deposed that he has seen D-1 wearing M.Os. 73 to 76 and 99. In his retracted confession, A-1 has also mentioned about the recoveries. This is yet another strong circumstance which amply corroborates the retrated confessions. The prosecution by these retracted judicial confessions duly corroborated has proved the participation of A-1 and A-2 in the murder of D-1.
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- F So far as the murders of D-2 and D-3 are concerned, the prosecution case is that A-1 to A-3 and absconding accused Mohan and P.W.1, the approver participated. We have given the details of the prosecution case in this regard and we have also referred to the deposition of P.W.1, the approver. The versions in the retracted confessions of A-1 and A-2 are the same as the one given by P.W.1. There is absolutely no difference. The same witnesses, whose evidence was relied upon for the purpose of corroboration of the evidence of P.W.1, would be again the relevant witnesses for the purpose of corroborating the retracted confessions given by A-1 and A-2. The evidence of P.Ws. 21, 51, 71 and 121 as well as that of P.Ws. 31, 32 and P.W.25 coupled with the evidence of P.Ws. 50, 51 and P.W.4 corroborate the retracted confession about A-1 running the brothel busi-

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ness and the motive aspect. So far as the actual occurrence is concerned, the details given in the confessional statements are one and the same as given by P.W.1 and we need not refer to them again. Now coming to the burning of the body and throwing away the remnants of the burnt body of D-2, the evidence of P.Ws. 67, 68 and 69 coupled with the evidence of P.Ws. 4 and 32 lends sufficient corroboration. On examination of the evidence of these witnesses we are also satisfied that the version given by A-1 and A-2 is a true one. The recoveries of M.O. 13 at the instance of A-1 and M.O.2 from the mother-in-law of A-2 lend further corroboration. Then there is the evidence of P.Ws. 25, 32 and 55 who speak to the circumstance that D-2 was last seen alive in the company of A-1 to A-3, Mohan and P.W.1 and this evidence also has been accepted by both the courts below. Likewise regarding the murder of D-3, there is evidence of P.Ws. 25, 31, 32, 33, 45, 56, 59, 60 to 63 and 68 which lends ample corroboration to the retracted confessions. That apart there are recoveries also. P.W. 59, the mother of D-3, has identified the clothes worn by Ravi, D-3 and P.W.60, the wife of D-3, also supported the evidence of P.W.59. There is discovery of the body at the instance of A-1. Even assuming that the same is not admissible under Section 27, yet as a circumstance the same can be relied upon, which is very important. Then we have the evidence of P.W.25 about the diary M.O. 20 and its contents which also lends assurance to the retracted confessions.

Regarding the murders of D-4 to D-6, apart from the retracted confessions, there is also the evidence of other eye-witnesses as well as those who speak to certain important circumstances. By way of corroboration the prosecution relied on the evidence of P.Ws. 2 to 30, 32, 33, 37, 38, 45, 47, 53, 54, 72 to 76, 89, 91, 98, 112, 114, 117, 118, 119, 121 to 123, 130, 132, 133 and 134. The evidence of P.Ws. 7, 8 and 9 lends ample corroboration to the retracted confessions of A-1 and A-2 regarding the initial part of this occurrence. P.W.37 has actually seen the beating of the three deceased persons by the accused on the cement floor. There is also the evidence of P.W.89. It may not be necessary to again refer to the details of their evidence since we have already discussed the same while considering the evidence of P.W.1 and we have found that the evidence of these witnesses is reliable and that both the courts below have rightly relied upon the same.

Therefore the retracted confessions of A-1 and A-2 have been amply corroborated on all material aspects by the evidence of these witnesses as

A discussed above and the prosecution has satisfactorily established that the retracted confessions are true and voluntary and the same are sufficiently corroborated on all material particulars establishing the guilt of A-1 and A-2 independently apart from the evidence of P.W.1 whose evidence also has been found to be reliable. Thus cumulatively, as held by both the courts below, the guilt of A-1 to A-6 under Sections 302/34, 201, 404 and 147 I.P.C. has been satisfactorily proved in respect of the murders of D-1 to D-6 and the trial court as well as the High Court have sentenced A-1 to A-3 to death and A-4 to A-6 to imprisonment for life.

C Learned counsel on behalf of A-1 to A-3 submitted that they were victim of circumstances. According to him, D-1 and D-2 betrayed A-1 and D-3 tried to blackmail him and their murders by the accused, even if held to be proved, can not bring the case of A-1 to A-3 in the category of rarest of rare cases and that the attack and the fatal blows inflicted on D-4 to D-6 were of the ordinary type of rioting cases and the tests adopted by the courts below for awarding death sentence do not apply to the facts of this case. Learned counsel further submitted that by hanging A-1 to A-3, the type of crime in which they were said to have indulged can not be wiped out and if they have taken to that type of business in illicit arrack and running brothel, the police, who are supposed to maintain law and order and prevent the crime, have themselves been to a great extent responsible for A-1 taking to that kind of businesses. Therefore A-1 to A-3 cannot be pictured as men of heinous character who would be menace to the society if allowed to survive. We shall now consider these submissions.

F From the above discussion the prosecution has satisfactorily proved that A-1 was the leader of the gang. He was originally driving an auto and was earning livelihood. Subsequently he indulged in illicit arrack business and A-2 to A-6 and his younger brother Mohan were assisting him in the said business. Subsequently he entrusted the said business to his brother Mohan and started brothel business and employed a number of prostitutes. He used to keep any good-looking prostitute exclusively for himself and thus spoiled many girls. It is also established that he used to be very cruel and he did not hesitate to burn young girls with cigarette butts and at least one of them could not bear the cruel treatment and committed suicide. Lalita, D-1 who could not live with him, eloped with D-2 and that was the motive for A-1 to commit the murders of D-1 and D-2 with the assistance of the other accused particularly A-2, A-3, Mohan and P.W.1. He alongwith them killed D-1 to D-3 in a very brutal and ghastly manner and

disposed of the bodies. The way dead bodies were disposed of would manifest his criminal state of mind which is diabolical and he, as a leader, could go to any extent to cause the disappearance of the dead bodies with a view the screen the offences of murders. He was of such a nature that he was prepared to eliminate anybody who came in his way and caused any hindrance to the running of the business. The murders of D-4 to D-6 would show that he would not tolerate anybody interfering with his brothel business and would not hesitate to go to the extent of completely wiping them out. The public at large were agitated and in all the six murders, the victims were helpless and undefended. The murders committed in an organised manner were cold-blooded, gruesome in nature, diabolic in conception and extremely cruel in execution.

Learned counsel for the appellants, however, submitted that the concept of rarest of rare cases in the matter of awarding death sentence as held in some of the decisions, requires something more and that the courts must be satisfied that the accused does not deserve to live as a member of the society and that society would not be safe if he is allowed to live.

At this juncture, we would like to refer to some of the decision of this Court on these aspects. In *Jagmohan Singh v. State of U.P.*, [1973] 1 SCC 20, one of the propositions laid down is that the discretion in the matter of sentence is to be exercised by the Judiciary after balancing all the aggravating and mitigating circumstances of the crime. In *Bachan Singh v. State of Punjab etc. etc.*, [1980] 2 SCC 684, the Constitution Bench of this Court after considering this proposition as well as other propositions laid down therein held that the soundness or the application of the propositions and the premises on which they rest were not affected in any way by the legislative changes since effected. While agreeing with the observations in *Jagmohan Singh's* case that "standardisation" of the sentencing process is well nigh impossible" this Court observed as under:

"In *Jagmohan*, this Court had held that this sentencing discretion is to be exercised judicially on well recognised principles, after balancing all the aggravating and mitigating circumstances of the crime. By "well recognised principles" the Court obviously meant the principles crystallised by judicial decisions illustrating as to what were regarded as aggravating or mitigating circumstances in those cases. The legislative changes since *Jagmohan* - as we have

- A discussed already - do not have the effect of abrogating or nullifying those principles. The only effect is that the application of those principles is now to be guided by the paramount beacons of legislative policy discernible from Sections 354(3) and 235(2), namely; (1) The extreme penalty can be inflicted only in gravest cases of extreme culpability; (2) In making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender, also."
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- In *Jagmohan Singh's* case it was also reiterated that if a murder is diabolically conceived and cruelly executed it will justify the imposition of the death penalty on the murderer. In *Ediga Anamma v. State of A.P.*, [1974] 4 SCC 443 Justice Krishna Iyer, speaking for the Bench reiterated that "The weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of the law for a sterner sentence." In *Bachan Singh's* case, after referring to these passages, it was further observed as under :
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- D "As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors; depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight 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."
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- In the above case, the Court also agreed that the following constitute the
- H aggravating circumstances :

"Aggravating circumstances : A court may, however, in the following cases impose the penalty of death in its discretion : A

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or B

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed-

(i) while such member or public servant was on duty; or C

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or D

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code." E

However, it is cautioned that :

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

In the same case (*Bachan Singh's case*), the Constitution Bench after examining various decisions of courts in U.S. observed that : G

"But this much can be said that in order to qualify for inclusion in the category of 'aggravating circumstances' which may form the basis of 'special reasons' in Section 354(3), circumstances found on the facts of a particular case, must evidence aggravation of an abnormal or special degree." H

A Likewise, this Court also noted that the following constitute mitigating circumstances :

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

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(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

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(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated.

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The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

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(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

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Finally, the Constitution Bench held thus :

"There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society". Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ

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large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme frequency - a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, 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 in unquestionably foreclosed.*"

(emphasis supplied)

In *Machhi Singh and others v. State of Punjab*, [1983] 3 SCC 470, a Bench of three Judges this Court having noted that a synthesis emerged in *Bachan's Singh* case wherein the 'rarest of rare cases' formula for imposing death sentence in a murder case has been evolved by this Court, considered the guidelines indicated in *Bachan Singh's* case and observed that the guidelines indicated therein will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. It was further stated thus :

"In order to apply these guidelines *inter alia* the following questions may be asked and answered :

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weight age to the mitigating circumstances which speak in favour of the offender?

A If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

B In *Kehar Singh and others v. State (Delhi Administration)*, [1988] 3 SCC 609 this Court held as under :

C "This takes me to the question of sentence. Section 354(3) of the Code, 1973 marks a significant shift in the legislative policy of awarding death sentence. Now the normal sentence for murder is imprisonment for life and not sentence of death. The court is required to give special reasons for awarding death sentence. Special reasons mean specific facts and circumstances obtained in the case justifying the extreme penalty. This Court in *Bachan Singh v. State of Punjab*, [1980] 2 SCC 684 has indicated certain guidelines to be applied to the facts of each individual case where the question of imposing death sentence arises. It was observed that in cases where there is no proof of extreme culpability the extreme penalty need not be given. It may be given only in rarest of rare cases, where there is no extenuating circumstance. In *Machhi Singh v. State of Punjab*, [1983] 3 SCR 413, this Court again indicated some principles as to what constitute "the rarest of rare cases" which warrant the imposition of death sentence. The High Court has carefully examined these principles and given reasons why in this case, the death sentence alone should be awarded."

F In *Mangal Singh v. State of U.P.*, AIR (1975) SC 76, the appellant was convicted and sentenced to death for the murder of one defenceless woman who was all alone in the house by inflicting as many as seven injuries on the face and neck with a gandasa. It was noted that the number of injuries showed the brutal nature of assault and in the absence of mitigating circumstances death sentence was awarded and the same was upheld by this Court.

At this stage it is also necessary to note some further observations in *Bachan Singh's* case where the Constitution Bench observed thus :

H The present legislative policy discernible from Section 235(2) read

with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302, Penal Code, the court should not confine its consideration "principally" or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal."

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The Constitution Bench re-affirmed the view taken by this Court in *Jagmohan Singh's* case i.e. "If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence".

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In a recent decision of this Court in *Allauddin Mian and others v. State of Bihar*, AIR (1989) SC 1456, this view has been reiterated thus :

"However, in order that the sentences may be properly graded to fit the degree of gravity of each case, it is necessary that the maximum sentence prescribed by law should, as observed in *Bachan Singh's* case (AIR 1980 SC 898 (supra)), be reserved for the rarest of rare cases which are of an exceptional nature. Sentences of severity are imposed to reflect the seriousness of the crime, to promote respect for the law, to provide just punishment for the offence, to afford adequate deterrent to criminal conduct and to protect the community from further similar conduct. It serves a three-fold purpose (i) punitive (ii) deterrent and (iii) protective. That is why this Court in *Bachan Singh's* case observed that when the question of choice of sentence is under consideration the Court must not only look to the crime and the victim but also the circumstances of the criminal and the impact of the crime on the community. Unless the nature of the crime and the circumstances of the offender reveal that the criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the Court should ordinarily impose the lesser punishment and not the extreme punishment of death which should be reserved for exceptional cases only. In the subsequent decision of *Machhi Singh v. State of Punjab*, [1983] 3 SCC 470 = AIR 1983 SC 957 this Court, after culling out the guidelines laid down in *Bachan Singh's* case, observed that only in those exceptional cases in which

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A the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community, would it be permissible to award the death sentence."

B It can therefore be seen that the choice as to which one of the two punishments provided for murder is the proper one in a given case will depend upon the particular circumstances of that case and the Court has to exercise its discretion judicially and on well-recongnised principles after balancing all the mitigating and aggravating circumstances of the crime. The Court also should see whether there is something uncommon about crime which renders sentence of imprisonment of life inadequate and calls for death sentence. The nature of the crime and the circumstances of the offender should be so revealing that the criminal is a menace to the society and the sentence of imprisonment of life would be inadequate. The sentence of death should be reserved for the rarest of rare cases after a due consideration of both mitigating and aggravating circumstances. In *Ediga Anamma's* cases, Justice Krishna Iyer observed thus :

D "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death cannot be left for *ad hoc* mood or individual predilection and so we have sought to objectify to the extent possible, abandoning retributive ruthlessness, amending the deterrent creed and accenting the trend against the extreme and irrevocable penalty of putting out life."

E Therefore what circumstances bring a particular case under the category of rarest of rare cases vary from case to case depending upon the nature of the crime weapons used and the manner in which it is perpetrated etc.

F Learned counsel for the appellants, in the instant case, however submitted that the offences were committed under extreme mental and emotional distresses and therefore there are mitigating circumstances for awarding lesser sentence of imprisonment for life. He relied on the decisions of this Court in *Dudh Nath Pandey v. State of Uttar Pradesh*, [1981] 2 SCC 166, *Suresh v. State of U.P.*, [1981] 2 SCC 569 and *Ummilal v. State of Madhya Pradesh*, [1981] 3 SCC 574. We have gone through these judgments. In *Dudh Nath Pandey's* case, the accused was a motor driver and he developed fancy for one of the sisters of the deceased and he murdered him because the deceased was trying to wean away his sister from the hands of the accused. This Court while considering whether death

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sentence should be awarded, noted that on the previous evening the deceased retorted the accused that he was a worthless man and he can not dare to marry his sister and that he would break the hands and feet of the accused and the said dispute assumed the proportion of a feud over social status. This Court noted that the mental turmoil and the sense of being wronged through which the accused was passing, can not be overlooked while awarding the sentence.

In *Suresh's* case, the primary evidence was that of a five years old son of the deceased, recorded 20 days after the incident. This Court having noted the same as well as the fact that a sudden impulse of theft could have made the accused momentarily insensible, held that the death sentence was not warranted. In *Ummilal's* case there was a quarrel over the grazing of the cattle and this Court noted that the appellant seems to have been incensed by the treatment accorded to him by his brother in committing the murder and in those circumstances, the death sentence was not warranted. Thus the Court in these, cases found some mitigating circumstances.

Learned counsel also relied on the judgments of this Court in *Dalbir Singh and others v. State of Uttar Pradesh*, [1979] 3 SCC 745 and *Rajendra Prasad v. State of Uttar Pradesh*, [1979] 3 SCC 646. It may not be necessary to refer to these cases in view of the decision of the Constitution Bench in *Bachan Singh's* case on the question of courts' discretion in awarding proper sentence in a given case.

However, we shall refer to some of the observations made in *Dudh Nath pandey's* case and *Suresh's* case on the question of quality of evidence for awarding death sentence, while considering the individual case of A-3.

The learned counsel also submitted that in awarding the death sentence case of each of the accused has to be considered by the Court and examine whether there are special reasons for awarding the death sentence and for that purpose the Court has to examine the part played by each one of them and the quality of the incriminating evidence in that respect. The learned counsel strongly contended that as to the actual participation of the individual accused in the murder of D-1, there is no other evidence except the retracted confessions of A-1 and A-2 and that regarding the murders of D-2 and D-3 and the individual participation, again there is only tainted evidence of P.W.1 and the retracted confessions of A-1 and A-2 and that on the basis of such evidence they cannot be

A sentenced to death. We have already held that P.W.1's evidence which is corroborated by other independent evidence on all important aspects establishes that A- 1 to A-3 participated in the murders of D-2 and D-3 and that all, namely A-1 to A-6, participated in the murders of D-4 to D-6. So far as the murder of D-1 is concerned there is retracted confession of A-1 which has been found to be true and voluntary and the same has been corroborated on material aspects. Likewise, there is retracted confession of A-2 also which has been corroborated on material particulars. Both these items of evidence fully establish the common intention to commit those murders. Now coming to the individual part played it may assume some importance in some cases, but in an organised crime that kind of enquiry may not be relevant for the purpose of finding out the special reasons. However, under the facts and circumstances of this case, the part played by the individual accused i.e. A-1 to A-3 may be relevant in weighing mitigating and aggravating circumstances in awarding death sentence, particularly in view of the fact that A-4 to A-6 who were also the associates of A-1 and who also participated in committing the murders of D-4 to D-6 are awarded only imprisonment for life and also in view of the fact that the case mainly rests on the evidence of approver.

Bearing the principles particularly those in *Bachan Singh's* case, in mind, we shall now proceed to consider whether in the instant case the imposition of death sentence against A-1 to A-3 is warranted as held by both the courts below.

It has been established by the evidence discussed above that A-1 was the leader of the gang indulged in illicit arrack and brothel businesses which are unlawful and most harmful to the society. He was responsible for spoiling the life of many girls. He used to keep some of the girls for himself by setting up a separate residence. He used to be very cruel to them and used to burn the young girls with cigarette butts and as a result one of them committed suicide. Latila, D-1 who could not adjust herself to live with him was brutally murdered and in order to screen the said offence he got the body buried. Having successfully committed the murder of Lalita, he planned to murder Sudalai, D-2 obviously apprehending that he may cause some trouble. He was also angry with him because he was interfering with his business. D-2 was also brutally murdered and what is more, in a diabolical manner the body was burnt in A-1's house. Thereafter the remnants of the body were taken and thrown in the Boat Yard. Then D-3

who was the supporter of D-2 was also brutally murdered since it was apprehended that he may expose them with regard to the murders of D-1 and D-2. D-3 was also brutally murdered in the same manner in which D-1 and D-2 were murdered and his body was also buried. When D-4 to D-6 threatened to his running of brothel business, A- 1 obviously to prove his supremacy in the illicit business wanted to eliminate them and they were severely beaten and brutally murdered. D-6 was strangled in a cold blooded manner and all the three bodies were buried. Thus it can be seen that A-1 indulged in these crimes in an organised manner. His own confession, though retracted, which is found to be true and voluntary gives the details of the diabolical and cruel manner in which he participated in killing D-1 to D-3 as well as D-4 to D- 6. The crime indulged was gruesome, cold blooded, heinous, atrocious and cruel and he has proved to be an ardent criminal and thus a menace to the society. It is an exceptional case where the crime committed by him is so gruesome, diabolical and revolting which shocks the collective conscience of the community. There cannot be any doubt That his case is one of the rarest of rare cases fully warranting the imposition of death sentence.

A-2 throughout had been actively associated with A-1. He participated in every crime. So far murders of D-1 to D-3 are concerned A-2 played an active role in a most cruel and diabolical manner as we find from his own retracted confession. As a close associate of A-1 in every unlawful business activity, A-2 went on participating with him in these organised crimes. The reasons given above in respect of A-1 for awarding the death sentence equally apply to the case of A-2 also. Apart from their own retracted confessions, the evidence of P.W.1 as corroborated by the other evidence as discussed above, also independently establishes the active participation of A-1 and A-2 in the murder of D-2 to D-6.

So far as A-3 is concerned, he is not related to A-1. Learned counsel for the appellants submitted that his case is in no way different from that of A-4 to A-6, who have been awarded imprisonment for life. Learned counsel for the State, on the other hand, submitted that A-3 has also participated in the murders of D-1 to D-3 alongwith A-1 and A-2 and his case also stands on the same footing in awarding death sentence. But one other aspect which has been highlighted by the learned counsel for the appellants is that the quality of the evidence relied upon for holding A-3 guilty of murder charge also has to be taken into account in awarding death sentence and his further submission is that so far as the individual par-

A participation of A-3 in the murders of D-2 and D-3 is concerned, there is only the evidence of P.W.1 and in respect of murders of all the three i.e. D-1 to D-3, the retracted confessions of A-1 and A-2 are there but one can not be used for corroborating other mutually and therefore the quality of evidence is not of such high degree in respect of the nature of participation by him to which the Court can give that high value to impose death sentence. We see force in this submission. We may at this juncture refer to a discrepancy in the evidence of P.W.1 who deposed about the murders of D-2 and D-3 only. In the chief-examination, P.W. 1 deposed that A-3 tightened the neck of D-3 with a towel and held his legs. But in the cross-examination, when confronted, he stated that A-3 did not hold the legs of D-3. We are only pointing out this discrepancy in the evidence of P.W.1 who is an accomplice in view of the fact that his evidence alone qualitatively has to be taken into consideration in respect of the nature of individual participation of A-3 for awarding death sentence. There is no other evidence as to the actual nature of participation of A-3 in the murders of D-2 and D-3 apart from that of P.W.1, though there is enough of corroborating evidence in general for the purpose of inferring common intention in respect of the offences punishable under Section 302/34 I.P.C. In the case of A-1 and A-2 there are their own individual retracted confessions which can be acted upon regarding their individual roles. They no doubt involve A-3 also but attribute actual participation only in the murders of D-1 to D-3 and in general, alongwith others in the murders of A-4 to A-6. However, we are of the view that those retracted confessions of co-accused can not be taken into consideration for assessing the nature of participation of A-3 for the the purpose of deciding whether his case is one of the rarest of rare cases.

F This Court in *Dudh Nath Pandey's* case while reducing the death sentence to imprisonment for life observed thus :

G "If witnesses on whose evidence the life of an accused hangs in the balance, do not choose to reveal the whole truth, the Court, while dealing with the question of sentence, has to step in interstitially and take into account all reasonable possibilities, having regard to the normal and natural course of human affairs.

Likewise in *Suresh's* case, taking into account the quality of evidence, this Court observed thus :

H "The extreme sentence cannot seek its main support from evidence

of this kind which, even if true, is not safe enough to act upon for putting out a life." A

From this point of view we think it is not safe to confirm the death sentence of A-3.

Learned counsel for the appellants pointed out that there is evidence to show that A-1 liberally donated to the social organisations and contended that he is not a hardened criminal and not a menace to the society and at any rate by wiping out him the crime cannot be wiped out. This submission only manifests a state of despondency which can not gain the place of relevancy in the matter of judicial adjudication of crimes of this nature involving "organised criminal activity." In large urban areas this kind of organised crime has taken deep roots. It has become the way of life of these organised criminal groups particularly indulging in underground unlawful activities. Eventually the underground economy has entered on the vitals of the society gradually rendering it malignant. The organised crime has profit its primary goal to be achieved at any cost. The potential for criminal violence in such crimes is inherently present in an organised crime group. The activities such crime groups indulge in may numerously vary. Prostitution is an activity bad in social sense as witnessed and is prohibited legally. Yet for many potential buyers the services of prostitutes are goods in the strict economic sense of the term "goods". The buyers are willing to pay for these goods in the market transaction. It is these monetary values, though illegal, underlying that eventually lead to growth of these organised crimes and further criminal specialization whose only common aim is attainment of wealth primarily, of course and then if possible power and influence by illegal means. It has thus become an enterprise not infrequently aiming at purchase of respectability. After all money is money and that which is illegally gained can seemingly be legally spent to achieve social status. That kind of criminally acquired social status is completely out of place and forlorn as to come anywhere near the concept of "mitigating circumstances." Learned counsel submitted that if the retracted confession of A-1 is taken as a whole, it would reveal that the cruel treatment meted out to him by the police forced him to carry on the illicit arrack business and brothel business and therefore he was only a victim of circumstances and the police should be blamed for that. No doubt in his confession A-1 has come out with various allegations against the police stating how he has been paying the bribes to them regularly. However, we

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- A can not express any opinion on the conduct of the police in this case on the basis of the allegations made by him though they do not appear to be far from truth. However, that by itself cannot be a mitigating circumstance. Assuming what he alleges is true that would only show that A-1 used corruption for carrying out his organised crime to gain a competitive edge or to protect themselves from police interference. It is usually and implicitly assumed that such corruption is always involved in these kind of crimes and how such corruption should be eradicated is a different and everlasting question. That cannot, however, be a mitigating circumstance for the purpose of awarding death sentence. When once a criminal becomes an organiser of such crimes the reasons for his entry can not have mitigating effect nor his plea of repentance which inherently is evasive to avoid sentence can be same as a biblical repentance.

- Yet another submission of the learned counsel is that there is no strict compliance of Section 235(2) Cr.P.C. inasmuch as the accused were not questioned on sentence. According to the learned counsel, the trial court has not made genuine efforts to elicit from the accused all information which would have a bearing on the question of sentence and on the other hand, the questioning was in the form of a mere formality. A perusal of the judgment of the trial court shows that the learned trial Judge after recording the convictions, specifically questioned each of the accused under Section 235(2) Cr.P.C. regarding the sentences and recorded their answers. Thereafter the learned trial Judge proceeded to consider the answers given by them. The learned trial Judge, as a matter of fact, thereafter referred to all the decisions on the question of awarding death sentence and also part played by each of the accused and considered mitigating and aggravating circumstances and then decided to award death sentence to A-1 to A-3 and life imprisonment to others. Therefore we see no force in the submission that there is no compliance of Section 235(2) Cr.P.C.

- It is, however, pleaded that by imposing death sentence, it may be possible to get rid of the criminals but not the crime of this nature which has become an integral part of the urban life where the modernization particularly the type of films exhibited and the books published, have their own impact. Learned counsel drew support for this submission from the records in the case which show that the crimes committed by the appellants are somewhat similar as shown and exhibited in some films locally. However, to counter the same, it is suggested by the other side that modern-

ization is a form of development and the violence or sex exhibited in films and depicted in the books in our country are very much mild as compared to the same in the developed countries and therefore modernised urban way of life can not be treated as the sole reason for prevalence of such crimes. There cannot be any dispute that modernization is an important factor and needed very much in a developing country; but this makes us ponder over whether the voyage we have undertaken on the basis of the principles enshrined in the Constitution, is carried on right lines, for it is not the distance we have travelled that matters, but it is the direction in which we have travelled that really matters. Are we merely moving or truly advancing? Are we merely changing or effectively progressing and whether we are aware of the significant difference between moving and advancing and between changing and progressing? These are all aspects of great importance and wider amplitude involving socio-political issues to be considered at a different level. We do not propose to deliberate on the same in this case and say whether we have truly advanced and effectively progressed by embracing the so-called modernization and whether the so-called progressive relaxations are true in spirit or self deceptive by and large? It is for those who are really concerned in their wisdom to take a deep look into these issues and do the needful.

Shri S. Murlidhar, learned counsel for the appellants, who has made an intensive study of the records in this case, in the end pleaded or rather lamented that A-1 having seen such films depicting sex, violence and illicit business etc. got misguided and ended up as a criminal and therefore the makers of such films are also vicariously responsible. The lamentation appears to be justified. We are at a loss to know whether it is compulsory that a heroine should invariably appear on the screen with accentuated angularities, deepened depressions and exaggerated protuberances of the body? Is it an irrevocable convention that the violence unleashed by the wicked or the evil-minded villain or that the hero's valour in punishing those wicked and the villain must only be shown in such cruel, gruesome and diabolical manner. When promotion of art and culture is the primary underlying object, how can obscenity, cruelty and many such wicked things can be depicted and shown in such blown-up and magnified manner leaving an impression that the film is meant only to depict such things. It is here that the Censor Board should step in firmly and insist that the film being released has a message meant to improve the values of life and should see that the film contains only such scenes which do not affect the values of life. By exhibiting scenes of violence, sex-rape, bootlegging and drug trafficking etc. in such a manner of manners which have the propensities of

- A disturbing or corrupting the minds of some viewers like children and particularly of those who are weak-minded, wayward, undisciplined, frustrated and likewise, who are very likely to become wicked and evil-minded and ultimately end up as criminals indulging in organised crime, the avowed object gets frustrated. The films should be of educative value and then only they can play an important role in subserving the interests of the society. No doubt, entertainment is one of the important underlying objects but it is mainly meant to make the viewers mentally relax and enjoy and not to render them heavy-hearted, sensually aroused and mentally disturbed which may lead them to indulge in frivolities, perversions and dangerous addictions, which ultimately are likely to pave the way to end up themselves as criminals.

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It is interesting to note certain aspects in this regard as highlighted by the Khosla Committee in the year 1968. The Committee consisted of several eminent persons from the Parliament as well as from the film field and the Committee made extensive survey and made an intensive study of the film subjects that are likely to be objectionable. The Committee has listed out as many as 42 such objectionable subjects which in general are connected with sex, immorality, prostitution, drug habit, drunken scenes and gruesome murders etc. While dealing with the audience reaction the Committee observed that children retain 70% of what the adults retain upon seeing a film and some of the impressions become mature and clearer with the passage of time and a scene in a film shapes the attitudes and social values of children and any kind of medium which employs visual or aural communication makes a deep and lasting impact upon an impressionable mind. The Committee also pointed out that the mental make up of the criminals and the part played by them in films make an impression in the mind of the audience particularly the young. The Committee on this aspect summed up by saying that films do make a deep impression upon young minds and also on the minds of the unsophisticated, un-educated and simple adults and the continual viewing of such films in which details of crimes, violence and cruelty are vividly shown, makes them insensitive to cruelty and violence and they become prone to inflict violence on others.

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In the last decade mass media has grown Worldwide to be more larger, more influential and more powerful. The TV media is the most powerful. Quite a few films are shown on TV. The constraints that are applicable to film media equally apply to TV media also and the concerned authorities must exercise proper discretion in selecting the films to be telecast. Therefore among the available sources movie and TV have key

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roles in modifying human behaviour and one can easily observe the effect of movie and TV that day-to-day affects all children, adolescents and youths in dress, action and expression etc. and even the *modus operandi* adopted by some criminals to commit the crime has been found to be akin to be that of the hero or villain in a particular movie. This subject because of its importance has been attracting the attention of the eminent people including Psychologists, Doctors and Professors who have written several books after intensive study and we do not want to have a detailed discussion on this subject in this case. However, we sincerely hope that all those concerned, in whose wisdom we have faith, would act timely and promptly to set right this scenario. We may add that we should not be understood to mean that all films are of that nature but in the context some of that nature are enough to cause the damage and the Censor Board is dutifully expected to stop such films from being released in an earnest manner.

Now, confining ourselves to the issues relevant in this context for the purpose of this case, we cannot hold that the likelihood of the films having remotely influenced the mind of A-1, can be a mitigating circumstance particularly when he had already become a hardened criminal and committed the murders in such cruel, gruesome and diabolical manner without any compunction or any regard for the value of human life. However we are unable to agree that since it may not be possible to eradicate the crime itself, the criminals cannot be awarded death sentence though warranted by law.

In the result the convictions of A-1 Shankar @ Gauri Shankar and A-2 Eldin @ Albert and the sentence of death awarded against them for the offence of murders are confirmed. The other convictions and sentences awarded against A-1 and A-2 are also confirmed. All the convictions and sentences awarded against A-3 Shivaji are confirmed but sentence of death awarded for the offence of murders is reduced to one of imprisonment for life. All the convictions of A-4 Jayavelu, A-5 Raman @ Raja Raman and A-6, Ravi and the sentences awarded against them are confirmed. Accordingly the appeal is dismissed so far as A-1 Shankar @ Gauri Shankar, A-2 Eldin @ Albert, A-4 Jayavelu, A-5 Raman @ Raja Raman and A-6 Ravi are concerned and is partly allowed so far as A-3 Shivaji is concerned to the extent of modification of sentence from death sentence to imprisonment for life as indicated above.