

murdered there persons at Bombay. P.W. 8 was accosted by the police and the accused was arrested before panch witness and several valuable articles were recovered from him. Rs.2,000 were recovered from his mother under Panchnama. His clothes were found blood stained by the Forensic expert and Chemical Examiner.

He was chargesheeted. The prosecution examined 14 witnesses. He denied the crime but accepted that he was employed as a domestic servant of the deceased. He claimed that he left the job and reached his village where P.W.8 picked up a quarrel with him and he beat P.W.8. Therefore, he was arrested by the police and brought to Bombay.

He also stated that the recovery of the articles from him was a fabricated one and the articles were planted on him. Trial Court as well as the High Court accepted the prosecution case, convicted and sentenced him to death.

On appeal to this Court it was contended for the appellant that many of the circumstances relied upon by the prosecution are not proved by reliable evidence and most of the witnesses are put up witnesses and that the recoveries were foisted on the accused. It was further submitted that he left the service of the deceased some days earlier to the incident. It was also contended for the appellant that conduct of PW-2 in not searching for the family members on the night of incident itself is highly suspicious and that he had made the accused a scape-goat. Evidence of P.W.3 (maid servant of the deceased) was also criticised on the ground that she could not have noticed the accused when he was in the bathroom and she has given a false version.

On the question of sentence it was contended for the appellant that the extreme penalty of death sentence should not be imposed in the facts and circumstances of the case. Reliance was placed on the recovery of 4 knives and also 3 pairs of male dresses which could have been worn by three people and also on the large number of injuries found on the three deceased persons and it was contended that the possibility of more than one person having participated in the occurrence cannot be ruled out and that with certainty it cannot be said that the part played by the appellant was so cruel and diabolical as to bring his case within the category of rarest of rare case's warranting death penalty.

A Dismissing the appeal, this Court

B HELD : 1. Having gone through the evidence of these two witnesses, this Court agrees with the courts below that the accused was in the flat on that fateful day till 3 P.M. The evidence of P.W.2 establishes that he came back at 8 P.M. and found the door locked. In this context it is important to note that the medical evidence shows that the deceased persons met their deaths two hours after taking meal and this coupled with the evidence of P.W.3, who left the flat at about 3 P.M., would show that the murders have taken place between 3 to 5 P.M. Therefore, the prosecution has established that the accused was very much in the flat at the time of occurrence and this is a very vital circumstance. [519-H, 520-A, 520-C]

D 2. Both the courts below having examined the evidence of P.Ws. 7, 8, and 13 categorically held that their evidence does not suffer from any infirmity and the suggestion in the cross-examination that they deposed under the pressure of police is nothing but a figment of imagination. [522-D]

E 3. Both the courts belows have carefully analysed the evidence and the circumstances established by independent evidence have rightly been held to be sufficient to bring home the guilt to the accused beyond all reasonable doubt. Since this is a case of death sentence, this Court again carefully scrutinised the entire evidence and is satisfied that the circumstances which are established are more than sufficient to establish the guilt of the accused. [524-B, C]

F 4. The attack on the deceased was so brutal and the same establishes that the accused left no chance for anybody's survival lest they may figure as a witness. This heinous crime has been committed in that cruel and diabolical manner only with a view to commit robbery. The subsequent conduct and his movements would show that the accused is a clever criminal prepared to go to any extent in committing such serious crimes for his personal gain and the murders committed by him manifest an exceptional depravity. [525-F, G]

H 5. The circumstantial evidence in this case cannot at all be said to be qualitatively inferior in any manner. It is well settled that if there is clinching and reliable circumstantial evidence, then that would be the best evidence to be safely relied upon. [526-B]

6. Bearing these principles in mind and after having given its anxious consideration, this Court is of the firm opinion in view of the above circumstances that the case of the appellant comes within the category of 'rarest of rare cases' and the two courts below have rightly awarded the death sentence. [527-C, D]

7. Assuming something happened between deceased no.1 (the master) and the accused, (the servant at the time of occurrence) there was no reason as to why the accused killed him as well as deceased no. 2 and even deceased no. 3, a child aged about three years in such a merciless, brutal and diabolical manner. It is obvious that only with a view to commit robbery, he committed these ghastly murders. The motive is heinous and the crime committed is cold-blooded, cruel and diabolical. There are absolutely no mitigating circumstances relevant for awarding a lesser sentence. Consequently there are no grounds at all to interfere with the sentences awarded by the courts below. [528-B, C]

Convictions and death sentence confirmed. [528-D]

Shankar @ Gauri Shankar and Ors. v. State of Tamil Nadu, JT (1994) 3 SC 54; Allaudin Mian and other v. State of Bihar, JT (1989) 2 SC 171 = [1989] 3 SCC 5; Machhi Singh and others v. State of Punjab, [1983] 3 SCC 470 and Bachan Singh v. State of Punjab etc. etc., [1980] 2 SCC 684, relied upon.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 87 of 1994.

From the Judgment and Order dated 25.10.93 of the Bombay High Court in Confirmation Case No. 3/92 & Crl. A.No. 655/92.

K.V. Venkataraman and K.V. Vishwanathan for the Appellant

The Judgment of the Court was delivered by

K. JAYACHANDRA REDDY, J. The sole accused in the case is the appellant. He being a domestic male servant namely a cook working in a Sindhi family living in a flat in Bombay City, is alleged to have committed three murders of the members of that family by causing multiple stab injuries by means of a big knife. The motive for the crime is alleged to be the gain of the property consisting of cash, jewellery and other valuable

A goods worth Rs. 2,06,000. The case rests mainly on the circumstantial evidence. The trial Court accepted the prosecution case and convicted the appellant under Section 302 I.P.C. in respect of each of the murder and sentenced him to death, subject to confirmation by the High Court and also convicted him under Section 394 I.P.C. and sentenced to imprisonment for life. The High Court confirmed the death sentence and also dismissed the criminal appeal filed by the appellant. Hence the present appeal. The facts giving rise to the prosecution case are as follows :

Parsharam Sadarangani (deceased no. 1) aged about 77 years was residing in Flat No. 602, Link Apartment, Plot No. 357, 13th Road, Khar (West), Bombay alongwith his son-in-law Chandru Mirchandani, P.W.2, his daughter Hema, (deceased No. 2) aged 32 years namely wife of P.W.2 and his grand-daughter Vaishali, (deceased no. 3) aged about 3 years. The flat consists of two bed-rooms, one with an attached bath-room and w.c., a drawing-room, a kitchen and a bath-room and toilet block. Deceased no. 1 retired from service and one of his daughters, Rukmini, was married to Kishan Ramachandani, who at the relevant time, was working in Hong Kong. Rukmini alongwith his two children had come down to Bombay and stayed with deceased no.1 for few days and thereafter proceeded to Baroda from where her husband hailed. P.W.2 was serving as an Executive in M/s Libbas Impex Pvt. Ltd. situated at Nariman Point. He used to leave the flat at about 10.30 in the morning and return late in the evening. A month before the date of the incident, his wife (deceased no.2) had given birth to their second child. The accused was employed three months prior to the date of the incident to work as domestic servant and cook by deceased no. 1 on a salary of Rs. 300 per month. The accused used to reside in the flat and had his belongings and the bedding kept in the flat. Deceased no. 1 also engaged the services of a maid servant Parvatibai, P.W.3, who used to visit the flat for cleaning the utensils in the morning and in the afternoon.

On the date of the incident i.e. August 4,1987 P.W. 2 left for his office by about 10 O'clock and at that time deceased nos. 1, 2 and 3 and the month old infant child alongwith the accused were in the flat. P.W.3 came to wash the utensils by about 3.00 in the afternoon and at that time she also saw the accused in the flat and deceased no. 1 was resting in one bed-room and deceased nos. 2 and 3 and the infant child were in the other bed-room resting after having their mid-day meals. P.W.3 left the flat after cleaning the utensils. At about 5 P.M. the accused is alleged to have come

down from the flat alongwith three or four suitcases and one Ramabhadur A
 Singh, a Watchman of the Apartment saw him and the accused told the
 Watchman that he was carrying the suitcases to the airport and some
 articles to the residence of one Ambrish Sanghavi, a friend of Rukmini who
 had come down from Hongkong. At about 8 P.M., P.W.2, returned from
 the office and rang the door bell but did not receive any response finding B
 the door to be locked. On enquiry, the Watchman told him that the accused
 had left in the afternoon with suitcases and some articles tied in a bed-
 sheet. The watchman, however, could not tell him as to where the other
 family members had gone. P.W.2 went to the flat of his neighbour Balani
 and waited there till late at night expecting the members of his family to
 come and as they did not come till next day morning, he telephoned to C
 Savita sanghavi to enquire as to whether deceased nos. 1 and 2 had come
 to their residence. Having received the negative reply he also enquired
 Rukmini at Baroda. Thereafter P.W.2 searched for a keymaker and got a
 duplicate key made and with that he opened the flat and found that
 deceased no.1 was lying dead on the bed with multiple injuries and his wife, D
 deceased no. 2 and daughter, deceased no. 3 lying dead in the other
 bed-room multiple injuries and the infant child was lying on the ground.
 He also found that the whole flat was ransacked and the cupboards were
 opened and valuable articles were missing and he noticed that the accused
 was not seen in the flat or anywhere in the building. He lifted the infant
 child and handed over to his neighbour Mrs. Arora. P.W.2 was in a great E
 shock and a neighbour telephoned to the Police Inspector Thakur, P.W.11
 attached to Bandra Police Station. P.W.1 made an entry in the diary,
 proceeded to the flat with other officers and prepared a panchnama at the
 scene of occurrence including the things which were missing as stated by
 P.W.2. P.W.11 recorded the F.I.R. and issued the same. P.W.2 noticed that F
 apart from the various article missing, a sum of Rs. 92,000 kept in the
 cupboard also was taken away. P.W.11 noticed that a trunk and a bedding
 belonging to the accused were lying in the flat. He also seized some of the
 clothes which were hung for drying. He also recovered four knives, one of
 which was quite large and stained with blood. Thereafter an intensive
 search was made to find out the whereabouts of the accused. G

According to the prosecution, the accused left the flat with several
 suitcases and proceeded in a taxi to State of Gujarat wherefrom he hailed.
 On the morning of 5th August, 1987, a Bombay taxi in which the accused
 was travelling was found waiting at Shamlaji Junction in the State of H

- A Gujarat. Zahir Hussain, P.W.7, the driver of a jeep which was used as a taxi in the State of Gujarat, was enquired by the driver of the Bombay taxi in which the accused was travelling, as to whether it was possible to take the accused to Ambaji Temple to which Temple the Bombay taxi could not go. P.W.7 agreed and thereafter the accused shifted his luggage consisting
- B of four suitcases etc. and that the accused also told P.W.7 that he comes from Hongkong and runs a factory of manufacturing transistors at Pune and the accused claimed that his name was JitenderKumar. The jeep reached Ambaji Temple at about 3.30 P.M. and the accused requested P.W.7 to arrange a guest house for his stay and on recommendation of
- C P.W.7, the accused proceeded to Yavlabidi Guest House and booked a room for a duration of three days. The accused also informed P.W.7 that he was desirous of travelling in the area and agreed to pay a sum of Rs. 300 per day for the taxi. According to the prosecution the accused hails from Village Debhari and some of his relations were residing in the adjoining Village Wadgaon. The accused proceeded in the jeep to Village
- D Wadgaon and contacted some persons and also took some photographs. Thereafter P.W.7 requested the accused to give him some time to proceed to his own Village Prantij. On reaching Village Prantij, the accused expressed his desire to stay in the house of P.W.7 and accordingly a room was made available to him. On the next day the accused proceeded in the
- E jeep of P.W.7 to Village Wadgaon again and P.W.8, a close relation of the accused accompanied them. The accused alongwith P.Ws.7 and 8 returned to Village Prantij where he made some purchases for himself and P.W.8. Thereafter they went again in the jeep to Ambaji and stayed overnight in the Yavlabidi Guest House. Then they returned with P.W.7 to Village
- F Prantij and the accused expressed his desire to stay in a new house constructed by P.W.7 and his father. P.W.7 permitted him to stay in the room in the new house on payment of rent of Rs. 80 per month. The accused then suggested to P.W.7 that he was desirous of carrying the business of running a taxi and wanted to purchase the same from PW.7. P.W.7 stated that the value of the taxi (jeep) is Rs. 80,000 and the accused
- G suggested for entering into a partnership by paying an amount of Rs. 40,000 and promised to pay Rs. 30,000 forthwith and Rs. 10,000 after a couple of days. An agreement of partnership was also drawn up on a stamp paper, Ex. P. 68 The accused made payment of Rs. 30,000 in cash, consisting of three bundles of Rs. 100 denomination. Two bundles out of the three
- H had a label of Hongkong Bank and United Bank, Bombay. The accused

had several articles in the suitcases including video cassettes and the V.C.P. A
 As the V.C.P. was not working, he with the assistance of P.W.7 got a
 mechanic who informed them that a convertor was necessary and P.W.7
 went to Ahmedabad and secured a convertor. It is alleged that the accused
 told P.W.8 that he should proceed to Village Debhari and ascertain B
 whether the police was searching for him since he has murdered three
 persons at Bombay. Earlier the accused also sent a sum of Rs. 2,000 to his
 mother residing at Village Debhari through a messenger. P.W.8, at the
 instance of the accused, went to Village Debhari on the next day and when
 he was resting under a tree in Village Babalia, the police accosted him and
 enquired about the whereabouts of the accused and coming to know from C
 P.W.8 that the accused was residing in Village prantij, the police party
 proceeded to that Village and in the presence of P.W.4, a panch witness,
 arrested the accused and recovered several valuable articles which were in
 the suitcases and interrogated the accused and coming to know that he had
 paid Rs. 30,000 to P.W.7, the police recovered the said amount. The jeep
 also was attached. The police also proceeded to Village Debhari and D
 recovered Rs. 2,000 from the mother of the accused under panchnama, Ex.
 P. 26.

During the investigation, the clothes of the accused which were found
 in the flat were forwarded to Forensic Expert and the Chemical Examiner's
 report discloses that some of them had blood marks. After completion of E
 the investigation the charge-sheet was laid.

To prove the incriminating circumstances against the accused, the
 prosecution examined 14 witnesses. The plea of the accused was one of
 denial. He, however, did not dispute that he was employed as a domestic
 servant in the flat of deceased no. 1 for a salary of Rs. 300 per month. F
 He stated that he was not paid the salary till August, 1987 and therefore he
 complained to Gopal and Ghanshyam who had introduced him to deceased
 no. 1. The accused further stated that P.W. 2 threatened him that he would
 not be permitted to leave the service unless a substitute was provided for. G
 The accused therefore left the place leaving behind all his belongings. Then
 he visited Juhu Chowpatty and a person who was doing business on a
 four-wheeler cycle cart of selling snakes gave him a job at the rate Rs. 25
 per day. The accused stated that he addressed a letter to his father
 informing him that he has left the job of deceased no. 1. The accused
 further claimed that he left Bombay on 14th August, 1987 and reached H

A Village Debhari on the next day where P.W.8 picked up a quarrel with him and he beat P.W.8. Therefore, he was arrested by the police and was brought to Bomaby. He also stated that the recovery of the said articles was a fabricated one and the articles were planted on him.

B The learned trial Judge accepted the prosecution case that the accused was employed as a domestic servant and that he was in the flat at the relevant time and various circumstances mainly the recoveries would go to show that he and he alone committed the murders of the three deceased persons for gain and absconded carrying away the stolen property including cash and the learned trial Judge accordingly convicted him. The
C High Court entirely agreed with the findings of the trial court and confirmed the convictions and the sentences.

Learned counsel for the appellant submitted before us that many of the circumstances relied upon by the the prosecution are not proved by reliable evidence and that most of the witnesses are put-up witnesses and
D that the recoveries were foisted on the accused. He further submitted that the explanation given by the accused namely that he left the service of deceased no. 1 some days earlier to the incident appears to be true and on mere suspicion the police have pitched upon the accused and fabricated evidence to implicate him.

E Though the two courts below have concurrently found the accused guilty, since this is a case death sentence mainly based on circumstantial evidence, we have carefully gone through the evidence of all the witnesses once again. As already mentioned the fact that the accused was working as a cook in the flat on being engaged by deceased no. 1, is not in dispute.
F In the said flat at the relevant time, the three deceased persons, the infant child and P.W.2 were the only inmates. Though the accused stated that he left the service some days earlier, the evidence of P.Ws. 2 and 3 is to the effect that on the fateful day also the accused was still working as a domestic servant. P.Ws. 2 and 3 spoke about this important circumstance and the evidence of P.W.3, a part-time maid servant, is to the effect that
G after finishing her work and while leaving the flat, he asked the old man, deceased no. 1 to close the door and just before leaving she also saw the accused in the general bath-room. The evidence of P.W.2 is to the effect that he left the flat at about 10 A.M. to go to his office and at the time the accused was there in the flat. Both the courts have discussed the evidence
H of P.Ws. 2 and 3 in detail. We have also gone through their evidence and

nothing significant has been elicited in the cross-examination. The learned counsel, however, pointed out that P.W.2's conduct in not searching for the family members on that night itself is highly suspicious and that he had made the accused a scape-goat. We see absolutely no reason whatsoever as to why P.W.2 should foist the case on the accused if really the accused was not working as domestic servant on that day in his flat. It is beyond dispute that the three deceased persons were brutally killed in the flat. Most of the valuable articles were missing including cash. Therefore, it is established beyond all doubt that they were murdered for gain. In such a situation we cannot attributed any motive to P.W.2 and it is highly unfair to suggest that P.W. 2 could have also had a hand in the crime. P.W.2 as usual left the flat in the morning to go to his office and returned in the evening and found the flat locked. Naturally he would have expected that the inmates might have gone somewhere and would return. Therefore there is nothing unnatural about his waiting in a neighbour's flat. When they did not return next day, he made enquiries and then he became anxious and got the door opened through another key made by the locksmith. He noticed the three deceased persons lying with injuries and many valuable articles and cash missing. He has mentioned quite a number of articles that were missing at the earliest moment. That apart the evidence of PW.2 namely that the accused was in the flat gets ample corroboration from the evidence of P.W.3. There is no reason whatsoever to doubt her evidence when she deposed that she was working as a part-time maid servant in the flat to wash utensils etc. and this is a common feature in all these multi-storey buildings. she was not a stranger to the accused who was also working as a full-time domestic servant and staying in the flat. P.W.3 has categorically stated that the accused was in the flat on that day working as a domestic servant and while leaving the flat after finishing her work, P.W.3 saw the accused in the bathroom. Learned Counsel, however, criticised the evidence of P.W.3 by pointing out that she could not have noticed the accused when he was in the bathroom and she has given a false version. P.W.3 never said that the accused in the bath-room having closed the door. That was a general bath-room and the accused might be cleaning something. Having gone through the evidence of these two witness, we agree with the courts below that the accused was in the flat on that fateful day till 3. P.M. The evidence of P.W.2 establishes that he came back at 8. P.M. and found the door locked. In this context it is important to note that the medical evidence shows that the deceased persons met their deaths two hours after taking meal and this coupled with the evidence of P.W.3, who left the flat at about 3 P.M., would show that the murders have taken

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A place between 3 to 5 P.M.

It is not in dispute that the accused was not seen in the flat thereafter. While it is the case of the prosecution that the accused absconded having committed the crime sometime after 5 P.M. on the fateful day, the case of the accused is that he left some days to the date of occurrence, as mentioned above. This explanation is obviously false in view of the positive evidence of P.Ws. 2 and 3. Therefore the prosecution has established that the accused was very much in the flat at the time of occurrence and this is a very vital circumstance. During the inspection of the scene of occurrence Police Inspector Thakur, P.W.11 on August 5, 1987 prepared a panchnama under which a pillow, two chaddars, a suit-case and a bedding belonging to the accused which were lying in the flat, were seized. The accused, however, stated under Section 313 Cr. P.C. that on August 2, 1987 he went to P.W.2 to demand these articles and P.W.2 refused to give them and threatened him that if he dares to visit the flat again he will be put behind the bars. Therefore, on his own admission, his belongings were in the flat but his explanation that he left these articles behind when he left the flat two days earlier is obviously a false one.

Another circumstance relied upon by the prosecution is that the accused was seen leaving the building at about 5.30 P.M. by the Watchman alongwith three suitcases and a slinging bag on his shoulder and some other articles tied in a bed-sheet. The statement of the Watchman was recorded by the police but he could not be examined as he left the service and was not traceable. P.W.2, however, deposed that on return from the office, inspite of the knocks at the door, it was not opened and he climbed down from the staircase and on enquiry the Watchman told him that he had no knowledge as to where his family members had gone. He, however, stated that at about 5.30 P.M. he had noticed the accused leaving the flat carrying three suitcases and other articles and on being asked the accused told the Watchman that he was carrying the suitcases to the airport. The High Court has noted that this part of the evidence of P.W.2 was not even challenged in the cross-examination and observed that his circumstance namely that the accused was seen leaving the flat by the Watchman with the articles established that he had committed the robbery in the flat after committing the murders. Learned counsel for the appellant, however, submitted that in the absence of the evidence of the Watchman what he told P.W.2 is in the nature of hearsay evidence and is not admissible. This contention was not raised before the High Court and in any event this need

not detain us since there are many other strong circumstances which fully establish the guilt of the accused. A

The next incriminating circumstance against the accused is his movements after he left the flat and the recoveries. The testimony of P.W.7 is very important. He deposed that the accused came in a taxi driven by a Bombay taxi driver who enquired P.W.7 whether he would be able to take the passenger to Ambaji Temple. P.W.7, who runs a jeep, agreed to take the passenger who is no other than the accused and who shifted his luggage to the jeep of P.W.7 which consisted of three suitcases and other articles. P.W.7 also deposed about the size and colour of the suitcases. From the evidence of P.W.7 it is clear that the accused was noticed at shamlaji Junction in a Bombay taxi and later he got into the jeep driven by P.W.7. The accused engaged the taxi of P.W.7 at the rate of Rs. 300 per day and at the instance of accused, P.W.7 took him to Village Wadgaon which is at a very short distance from Village Debhari from where the accused hails. In that Village the accused contacted some of his relations, took photographs and also handed over Rs. 2000 for transmitted the same to his mother at Village Debhari. The accused become friendly with P.W.7 and decided to stay in his house at Village Prantij to which P.W.7 agreed. P.W.7 further deposed that the accused was desirous of entering into a partnership in respect of running the taxi business with P.W.7 and agreed to pay Rs. 40,000. P.W.13, Kazi Ahmed, the father of P.W.7, deposed that a partnership agreement, Ex.P.68 was entered into with the accused and the accused paid a sum of Rs. 30,000 to P.W.7. The evidence of P.Ws. 7 and 13 further discloses that the accused gave a false name to them namely that his name was Jitendrakumar Someshwar Joshi. Ex.P.68 which has come on record also shows that the accused signed the document as Jitendrakumar Someshwar Joshi. It is very important to note the fact that the accused signed the document was not disputed in the cross-examination but it was claimed that P.W.13 and his son P.W.7 were deposing falsely due to threats given by the police which was denied. The evidence of P.Ws 13 and 7 coupled with the contents of Ex.P.68 would show that the accused who was only a domestic servant on a salary of Rs. 300 per month engaged a taxi by payment of Rs. 300 per day and also entered into an agreement with P.W. 7 on payment of Rs. 30,000 in cash and it is a telling circumstance to indicate that the accused was liberally spending the money which was obviously stolen from the flat of the deceased. B
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The evidence of P.W.7 further shows that when the accused opened H

- A his bag he noticed several articles like video cassettes, a V.C.P., a two-in-one, a walkman, a camera and calculator etc. The accused also sought the services of P.W.8 to whom the accused gave Rs. 2000 to deliver to the mother of the accused. P.W.8 stayed alongwith the accused and P.W.7 in the Guest House at Ambaji. P.W.8 also deposed that the accused was carrying suit-cases and had a tape-recorder and other articles and that the accused tried to use cassettes to watch the film but since the video was not working, the accused went alongwith P.W.7 to Ahmedabad to purchase a convertor but even then the V.C.P. did not work. The evidence of P.W.8 coupled with the evidence of P.W.7 would show that the accused was in possession of a large number of electronic articles which he could not have purchased and possessed by being merely a domestic servant. P.W.8 also deposed that the accused advised him to proceed to Village Debhari to ascertain whether the police were on the look-out for him and when P.W.8 having reached Village Debhari was resting under a tree he was accosted by the police who found out from him the whereabouts of the accused and the accused was arrested later. Both the courts below having examined the evidence of P.Ws. 7, 8 and 13 categorically held that their evidence does not suffer from any infirmity and the suggestion in the cross-examination that they deposed under the pressure of police is nothing but a figment of imagination.

- E The next important circumstances is the finding of large property with the accused at the time of his arrest. He was arrested at Village Prantij and the property found with him was seized under Ex.P.23. P.W.4, the panch witness, speaks to the same and he deposed that five bags were found with the accused and they were identified and marked and on opening of the bags, V.C.P., cassettes, pocket radio and other articles were found. The cash amount consisted of currency notes valued at more than Rs. 40,000 and a small purse was also found in which there was a foreign currency. In one bag, four bangles and a gold-chain were found and also a Walkman tap-recorder. The contents of the bags also included baniyan, underwear, saree, and photo albums etc. including a ladies umbrella. There were some other articles like ladies folding umbrella, hair dryer, several wrist watches of foreign make, bottles of perfume and loose coins etc. which by no stretch of imagination, could be the property of the accused. Some of the articles included imported camera, imported transistor, Cadbury tin box containing gold bangles and gold chain etc. which were obviously left in the flat by Rukmini who came from Hongkong and left for

Baroda. It is also important to note that P.W.2 has mentioned in his earliest report about some of the missing articles. It may be that P.W.2 did not mention all the articles but one can understand that in that state of worry and confusion P.W.2 might not have mentioned all the missing articles but that does not in any way affect the prosecution case. P.W.2 identified quite a large number of articles that were seized as those belonging to him and his family members and it is not necessary to give all the details. In the cross-examination it was suggested to P.W.2 that his father-in-law had advanced a loan of Rs. 25 lacs to Ambrish Sanghavi to which P.W.2 replied that he was not aware. On the basis of this suggestion, the learned counsel feebly contended that an agreement must have been entered into in respect of this amount and with a view to steal the said document it is quite possible that the said Ambrish Sanghavi might have hired some assassins who for certain unknown reasons might have committed the murders while attempting to steal the document. We see absolutely no basis for such a theory which is rather fanciful on the face of it and this argument is to be mentioned only to be rejected. The evidence of the Police Inspector coupled with the evidence of P.W.4, the panch witness establishes that three articles were with accused at the time of his arrest and therefore the only irresistible inference that can be drawn is that the accused having committed the murders walked away with these properties.

The police also recovered the clothes of the accused with blood stains in the flat and also four blood-stained knives. The Chemical Examiner's report shows that the articles namely two pants, three bush-shirts, underwear and banian (Articles at Sr. Nos. 10 to 17) which appeared to be washed, contained blood stains of 'B' and 'O' groups. The Chemical Examiner's report also shows that three out of the four knives were stained with blood which disintegrated and therefore the blood group could not be determined. Apart from the group of the blood, the condition of the clothes would show that there was an attempt to wash the same. Learned counsel, however, submitted that the fact that there were more than two pants, two bush-shirts which were hung for drying coupled with the facts that four knives also were found and that there were multiple injuries on the three deceased persons, would show that more than one or two persons must have participated. Assuming that there is scope to argue that more than one person might have participated, we fail to understand as to how that in any manner minimises the guilt of the accused.

In view of the clinching evidence discussed above, the plea of the

A accused that he left the service on 1st August, 1987 is obviously false. In his statement under Section 313 Cr. P.C. he came forward with a story that henchmen of Ambrish Sanghavi might have entered the flat to steal the mortgage deed in respect of loan of Rs. 25 lacs and might have committed the murders. The courts below have rightly held that this is a worthless plea without any foundation whatsoever and it is highly imaginative.

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Both the Courts below have carefully analysed the evidence and the circumstances established by independent evidence have rightly been held to be sufficient to bring home the guilt to the accused beyond all reasonable doubt. Since this is a case of death sentence, we have again carefully scrutinised the entire evidence and we are satisfied that the circumstances which are established, as mentioned above, are more than sufficient to establish the guilt of the accused.

C

Now coming to the question of sentence, the learned counsel submitted that the extreme penalty of death sentence should not be imposed in the facts and circumstances of the case. In support of his submission, learned counsel relying on the recoveries of four knives and also three pairs of male dresses which could have been worn by three people and also on the large number of injuries found on the three deceased persons, contended that the possibility of more than one person having participated in the occurrence cannot be ruled out and that with certainty it cannot be said that the part played by the appellant was so cruel and diabolical as to bring his case within the category of 'rarest of rare cases'. We see no force in this contention. As already mentioned, these knives were found on top of the refrigerator. It cannot be said with certainty that all the knives were used in the crime. Dr. Karve, P.W.6, conducted the post-mortem on the three dead bodies. The knife, Article No. 104, which was recovered, was shown to him when he was in the witness box and he deposed that the injuries could have been caused by that knife. In the cross-examination, no doubt, he stated that some of the injuries could be caused by two other knives. However, this is only an opinion evidence and from this alone it cannot be said that more than one person could have participated in the occurrence. Merely because there were a number of injuries on the deceased persons, that by itself cannot lead to a conclusion that more than one person could have caused those injuries. In respect of the male dresses namely the shirts and pants found, the accused himself has admitted that

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some of his belongings were left behind and there is no basis whatsoever

to contend that the clothes recovered from the flat belonged to some outsiders. In this context it is relevant to mention that almost all the stolen properties including electronic items were recovered only from the accused. Therefore, there is no basis whatsoever to contend that more than one person could have participated in the occurrence. On a careful consideration of the entire material both the courts below have categorically found that the accused and accused alone committed the murders for gain. Even assuming for argument's sake that more than one person could have participated, we are unable to see as to how in the facts and circumstances of the case, participation by the accused does not warrant imposition of death sentence. He was working as a domestic servant staying alongwith the family members in the flat who trusted him. The accused having become extremely greedy cleverly pre-planned the commission of the crime at a time when P.W.2 was not in the flat and when only the old retired person, a helpless lady and a child were in the flat. The knife used is a big knife which he must have procured and he killed the three deceased persons at the time when they were resting after having their meals. He did not even spare the young girl Vaishali, deceased no. 3, aged about three years. P.W.6, who conducted the post-mortem, found five incised injuries on the child. He found 32 incised injuries on deceased no. 1 Shri Parsharam Sadarangani and the Doctor opined that many of the injuries individually were necessarily fatal. On deceased no. 2, Hema Mirchandani, the Doctor found 12 incised injuries and the Doctor opined that injuries nos. 2, 3 and 7 were singularly sufficient to cause death in the ordinary course of nature. The medical evidence shows that some of the injuries found on the three deceased person were very serious and would show that the assailant practically butchered them. The attack was so brutal and the same establishes that the accused left no chance for anybody's survival lest they may figure a witness and this heinous crime has been committed in that cruel and diabolical manner only with a view to commit robbery. The subsequent conduct and his movements would show that the accused is a clever criminal prepared to go to any extent in committing such serious crimes for his personal gain and the murders committed by him manifest an exceptional depravity.

Learned counsel for the appellant further submitted that the case rests entirely on the circumstantial evidence and the quality of the evidence adduced is not of that high order and therefore it is not safe to impose death sentence. In this context he relied on a judgment of this Court in

- A *Shankar @ Gauri Shankar and others v. State of Tamil Nadu*, JT 1994 (3) S.C. 54. We have gone through that judgment and it is only indicated there that the quality of evidence also would be a factor to be taken into consideration. The circumstantial evidence in this case cannot at all be said to be qualitatively inferior in any manner. It is well-settled that if there is
- B clinching and reliable circumstantial evidence, then that would be the best evidence to be safely relied upon. As observed in *Bachan Singh v. State of Punjab etc. etc.*, [1980] 2 SCC 684, there may be many circumstances justifying the passing of the lighter sentence as there are countervailing circumstances of aggravation warranting imposition of death sentence. In
- C *Machhi Singh and others v. State of Punjab*, [1983] 3 SCC 470, a Bench of three Judges of this Court having noted the principles laid down in *Bachan Singh's case* (supra) regarding the formula of 'rarest of rare cases' for imposing death sentence, observed that the guidelines indicated in *Bachan Singh's case* 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
- D was further observed as under :

"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."

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Likewise in *Allauddin Mian and others v. State of Bihar*, [1989] 3 SCC 5 the same view has been reiterated thus :

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"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

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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."

Bearing these principles in mind and after having given our anxious consideration, we are of the firm opinion in view of the above circumstances that the case of the appellant comes within the category of 'rarest of rare cases' and the two courts below have rightly awarded the death sentence.

The last plea of the learned counsel for the appellant is that master-servant relationship traditionally has certain values and that in the case of the accused it cannot be said that he acted at any time in a manner affecting such values and that asking for more salary at the most may indicate that the relations were not cordial and that is the absence of direct evidence as to what led to the occurrence and the nature of his participation in the crime, such depravity on his part warranting death sentence, cannot be inferred. This argument is based on the assumption that such values of life still remain unchanged. It is true that the relationship between master and servant like other human relationships has certain values. But in the modern times they like other values of life have receded. Obedience which is the first and greatest requisite is the first casualty. It is true that obedience is not truly performed by the body with a dissatisfied heart. The master is, therefore, equally expected to strengthen this relationship and this can be by many ways. The sanctity of such relationship has much to do with their hearts and sentiments and has become one of the rarest of rare things in these days. Leave alone the values, the usual cordiality has become unusual. It is said, "If thou art a master sometimes be blind; if a servant sometimes be deaf." This gentle adjustment is also fast disappearing. The situation is bad as is evidence from the numerous crimes of this nature that are being reported. If this situation continues, life, particularly in urban areas becomes miserable. It is high time that the State and social

- A organisations should rise to the occasion and do something in the interest of the society. The issues involved in these aspects may be multi-faced e.g. social, economical etc. and the ways to resolve have to be worked out with a practical approach. However, in the instant case, the strained feelings, if any, between master and servant did not constitute the motive. Assuming something happened between deceased no. 1, the master and the accused, the servant at the time of occurrence, there was no reason as to why the accused killed him as well as deceased no. 2 and even deceased no. 3, a child aged about three years in such a merciless, brutal and diabolical manner. It is obvious that only with a view to commit robbery, he committed these ghastly murders. The motive is heinous and the crime committed is cold-blooded, cruel and diabolical. There are absolutely no mitigating circumstances relevant for awarding a lesser sentence. Consequently we see no grounds at all to interfere with the sentences awarded by the courts below.
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- D In the result, the convictions and the sentences awarded against the appellant Amrutlal Shomeshwar Joshi, by the courts below, are confirmed. Accordingly the appeal is dismissed.

A.G.

Appeal dismissed.