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DEEPAK KUMAR

v.

RAVI VIRMANI AND ANR.

FEBRUARY 1, 2002

B

[UMESH C. BANERJEE AND K.G. BALAKRISHNAN, JJ.]

Criminal Trial:

C

Murder case—Examination of witnesses—Trustworthiness—Witnesses though interested can be relied upon provided the evidence available on record leads to the guilt of the accused—Independent witness—Availability or non-availability needs to be recorded—Reason has to be furnished for non-examination of independent witnesses.

D

Appreciation of Evidence—Article 136—In the event of winks of doubt, the Court in the interest of justice, can re-appraise evidence before recording its concurrence with the findings, challenged in the appeal under Article 136 of the Constitution—Held, Burden of the prosecution to prove beyond all reasonable doubts has not been discharged, there are lacunae in the evidence and in the totality of circumstances, the prosecution case raises a definite doubt

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in the matter of involvement of accused—Hence accused acquitted—Penal Code, 1860—Sections 302, 452, 386 and 324, Code of Criminal Procedure, 1973—Section 313.

F

According to the Prosecution, respondent-complainant when returned to his house in the night, found the door of his house closed from inside. As there was no response even after knocking the door, he peeped through the glass pane and saw the body of his father lying smeared with blood. Therefore he knocked the door with force when accused came towards the door with 3 months' old child of the complainant in one hand and knife in the other hand. Accused opened the latch fitted inside the

G

door to come out, respondent entered the room and shouted at him. On seeing the respondent inside the room, accused bolted the door again and demanded a sum of Rs. 5 lacs as ransom failing he will kill the child. While complainant was grappling with accused, his child fell on the ground. At that moment, younger brother of the complainant pushed the door forcibly and opened it.

H

Accused allegedly injured the complainant and his younger brother. A
Complainant's younger brother snatched the dagger type hacksaw blade
from accused to save the life of his brother. At that time complainant
shouted "Mar Diya Mar Diya", the accused inflicted injuries on the
younger brother of the complainant and getting himself freed, ran away.
However, on hearing the noise of 'S' one of the residents of the colony, B
arrived at the gate of the house and caught hold of the accused. In the
meanwhile complainant and his younger brother went inside the room and
found their parents and wife of the complainant lying dead and another
brother lying seriously injured in a pool of blood, who died subsequently.
Accused immediately informed the police over phone.

On receiving information, police reached the spot and accused along C
with blood stained weapon was handed over to police. Police recorded the
statement of complainant and registered F.I.R. at 9.15 a.m. on the same
day. The prosecution alleged accused as the murderer. The prosecution's
definite evidence was that one part of the hacksaw blade was used in the D
commission of crime whereas other part was recovered on the basis of
disclosure statements.

Accused faced trial along with his father before the Sessions Court
under Section 302, 452, 386 and 324 I.P.C. in Sessions Case No. 3/96. The
Sessions Court found accused guilty of offence under Ss. 452, 324 and 302 E
I.P.C and sentenced him to death. It, however, acquitted father of the
accused. The death reference came before the High Court for
confirmation. High Court upon consideration of material declined to
confirm the death sentence and modified the same to life imprisonment
under Section 302 I.P.C. Aggrieved, the accused moved this Court in
appeal against the order of conviction and sentence. Complainant and the F
State have also preferred appeals against the order of acquittal/
modification of sentence.

It was contended for the appellant-State that complainant and his
younger brother had a providential escape and in the event of accused G
being let off he would not only be a meance but a danger to complainant
and his family, as also to the Society; that the recovery of blood stained
clothes from the body of the accused and the fact that the accused left his
car at a distance and came to the place of occurrence on a rickshaw, and
the discovery of a piece of sharpening stone which was said to have been
used to sharpen the blunt edges of the hacksaw blade, which looked like H

A a knife highlight and emphasise the deliberate motive and the intent to commit the offence of murder.

Dismissing the appeals filed by the complainant and the State and allowing the appeal filed by the accused the Court.

B HELD : 1. Weapons used (as the prosecution case depicts) has been part of hacksaw blade one end of which was wrapped with a piece of cloth. Total length of the weapon would be 2½ feet, which was broken into two pieces and the piece which was said to be used for the murder of four persons was about 1½ feet. An industrial hacksaw blade admittedly was in use, which is to be screwed and bolted to the machinery for cutting steel and sharpened through the medium of sharpening stone and the hacksaw blade looked like a knife. Significantly, in the FIR, it has been recorded that a knife was used by the murderer. [802-G-H; 803-A-B]

C 2. Introduction of the concept of ransom, however, went totally hayward. Four persons are already dead, three months' old baby was available to be a prey of accused. If the prosecution case is to be accepted, there is no reason why the accused spared the child and after having spared the child, killed four persons. The High Court, however, accepted the fact of sparing the child as an instance of human conduct and the same stands out to be a factor for transforming the death penalty to that of life imprisonment. [803-G-H; 804-A]

D 3.1. It shakes the confidence of the Court as regards trustworthiness of the witness as to the admissibility of evidence of such witness. Witness though be interested, can be relied upon provided however the evidence available on record is trustworthy and creates a confidence in the mind of the Court that the scrutiny entails only pointing out of commission of an offence by the accused persons and that scrutiny in totality leads to an inevitable conclusion of the guilt of the accused. [805-D-E]

E 3.2. Availability or non-availability of independent witness has not even been referred to, neither there is available on record any explanation as to the reason of non-examining the independent witness 'S' before the Court. 'S' had captured the accused, and hundreds of people gathered at the cry of complainant, but neither 'S' nor anyone of the people who gathered there were examined. 'S', an independent witness, who would have been a completely independent witness or anyone of the persons who gathered when the accused being caught, would have been examined. The

veracity of complainant's evidence could have founded corroboration and obviously would have laid acceptance of the same without a hitch anywhere. This is however not done. [806-F] A

4.1. In the absence of any justifiable reasons, a doubt crept in the mind of this Court as to whether appropriate justice has been made available to the accused in the justice delivery system of the country. It is on this score this Court found it essential to have a re-look or a further scrutiny of the available evidence on record. [808-B-C-D] B

4.2. It is true that in the normal course of events in an appeal under Article 136 of the Constitution, the apex Court would not open the concurrent finding relating to appreciation of evidence, but this does not preclude this Court from re-appraisal of the evidence in the interest of justice, in the event of there being some winks of doubt as to the reliability of evidence of the prosecution. It is thus not a rule steadfast but depends on the concept of justice and the question of availability of acceptance of evidence on record. [806-D-E] C D

Malempati Pattabhi Narendra v. Ghattamaneni Maruthi Prasad and Ors., [2000] 5 SCC 226, relied on.

4.3. The prosecution sought to prove before the trial Judge that accused has been the murderer and to bring home the charge, examined eight witnesses of which three are doctors, one was draftsman, one Photographer, the Investigating Officer and the complainant and his younger brother. However, when questioned under Section 313 Cr.P.C. accused, apart from generally denying the allegations and pleading false implication, stated that he had good relations with the family of the complainant, with whom he had no business rivalry and deceased brother of the complainant was his classmate and they were intimate. According to him on that day after closing his shop, he went to Gurudwara. When returned, his car did not start, therefore, he hired a rickshaw to bring a Mechanic. There he heard about the murder of brother and wife of the complainant. So he went to their house. He charged complainant as being instrumental for the same and stated that he neither made a disclosure statement nor any article was recovered at his instance and claimed false implication at the instance of a Minister in the State. [795-C-E] E F G

4.4. As regards complainant's version that his younger brother H

A entered into the house and snatched the hacksaw blade from the accused, there is no definite evidence available as to its occurrence. [794-C]

B 4.5. Four adult persons were killed, none of them were ill or was of very advance in age, and yet there was no effort on their part to resist. An outsider unknown to the family enters the bed room with a hacksaw blade and kills some persons without there being any sign of any protest or resistance. This raises undoubtedly a doubt in the available evidence. [807-A-B]

C 4.6. If the intent was to kill, the accused would have brought a chopper so as to get rid of the persons in one go and not a blunt edged weapon like hacksaw blade. Burden of the prosecution to prove beyond all reasonable doubts has not been discharged. There are lacunae in the evidence and the totality of the circumstance raise a definite doubt in the matter of involvement of accused. [807-D]

D 5. In the instant case, on proper perusal of the evidence on record, it is expedient to record that both the Sessions Court as also the High Court have not been able to appreciate the evidence in its proper perspective by reason wherefor they have in fact failed to appreciate evidence in its correct perspective and have thus committed a manifest error in coming to the finding. [808-D-E]

E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 927-928 of 2000.

F From the Judgment and Order dated 10.8.98 of the Punjab and Haryana High Court in M.R. No. 5 of 1998.

WITH

Cr. A. Nos. 929-930 and CrI.A. No. 931 at 2000.

G U.R. Lalit, Sushil Kumar (NP), M.N. Krishnamani Ambhoj Kumar Sinha, Anish Ahmed Khan, J.P. Dhanda, K.P. Singh, Anil Hoda, S. Pani, S. Borthakur and Raj Rani Dhanda for the appearing parties.

The Judgment of the Court was delivered by

H BANERJEE, J. The appellant in Criminal Appeal No. 931/2000 faced trial along with his father Hari Chand before the learned Additional Sessions

Judge, Faridabad under Sections 302, 452, 386 and 324 IPC in Sessions Case No. 3 of 1996. The learned Sessions Judge whereas recorded a finding of guilt as against Ravi Virmani under Sections 452, 324 and 302 IPC and sentenced him to death under Section 302 IPC and for a period of imprisonment already undergone by him under Sections 452 and 324 IPC. The learned Judge, however, acquitted Hari Chand, the father of the present appellant being, the other accused.

Subsequently, the death reference came up before the High Court for confirmation and by a detailed Judgment, the High Court, however, upon a consideration of the materials declined the death reference and modified it to life imprisonment under Section 302 IPC and the appellant herein (Ravi Virmani), however, aggrieved thereby moved this Court in appeal against the Order of conviction and sentence. Complainant, Deepak Kumar, has also moved this Court in appeal against the modification of sentence and thus is the appellant in Criminal Appeals No. 927 and 928 of 2000. State of Haryana has also preferred an appeal against the Order of acquittal of Hari Chand as also the modification of sentence in Criminal Appeal Nos. 929 and 930 of 2000. All these appeals, since directed against the same Judgment, stand consolidated and being disposed of by a common Judgment as more fully discussed herein after.

The facts depict the gruesome murder of four persons : the father aged 50 years, the mother aged 45-46 years, the wife aged 25-26 years and the brother aged 24-25 years of the appellant Deepak Kumar (in Criminal Appeal Nos. 927-928 of 2000) : the prosecutor alleged Ravi Virmani is the murderer : date of occurrence being 8th January, 1996 at about 8.15 p.m. and the place of occurrence being the residence of the victims. The prosecutor's definite evidence is that one part of hacksaw blade was used and the other part was recovered on the basis of a disclosure statement said to have been effected after three days. Fortunately, a three months' old child, however, was safe. It has been the prosecutor's case throughout that whereas three persons, namely, the father, the mother and the wife had an instantaneous death, the brother survived for some time and died shortly thereafter. Mr. Sushil Kumar, the learned Senior Advocate appearing in support of the appeal of the State contended that two brothers, who were not in the house, namely, Deepak (being the appellant in the other appeal) and Sanjay had a providential escape and in the event the accused is let off, he would not only be a menace but a danger to Deepak and other members of the family - society cannot and ought not to be submitted. Mr. Sushil Kumar accept such an offender back into the society, therefore, the High Court was wrong in the modification of

A the sentence from death penalty to life imprisonment : we shall deal with the issue in detail in this Judgment but presently two other incidental facts may be noticed, the first being recovery of blood stained clothes from the body of the accused and secondly it is strong piece of evidence, which according to Mr. Sushil Kumar, stand un-contradicted to the effect that the accused left his car at a distance and came to the place of occurrence on a rickshaw - this piece of evidence stands highlighted to emphasis the deliberate motive and the intent to commit the offence of murder.

C The narration above has given us the details of the persons, who suffered an unfortunate end in a very gruesome way : the body of the father was found in the drawing room in a pool of blood whereas that of the mother and wife were found in one of the bed rooms and that of the brother, though not dead at that point of time, was also found in the same room along with the mother and the sister-in-law and as noticed above a three months' old child escaped the wrath of the murderer. The prosecution sought to prove before the trial Judge that Ravi Virmani has been the murderer and to bring home the charge, examined eight witnesses of which three are doctors (PWs 1,3 and 7), one was the draftsman for drafting the site plan (PW-4) : one photographer (PW-5), the investigating officer and the two brothers Deepak and Sanjay (PWs 2 and 6 respectively).

E Let us also at this juncture note the observations of the High Court in the matter of modification of sentence from death penalty to that of life imprisonment. The High Court observed as below:

F "Further, we find that despite killing the four deceased, appellant - Ravi Virmani did not even cause any injury to the three months' old child of PW-2, even though he had the opportunity and the time to do so, but of course no motive to do so. This is one of the mitigating circumstances against him. But after killing the four persons, he had to escape and before he could do so, PW-2 had come there and knocked the door. Therefore, appellant - Ravi Virmani had used the child only as a shield or even a weapon to save himself. Even when he was confronted by PW-2 and then by PW-6 appellant did not kill the child. This shows that the feelings of sympathy had not completely dried up in him. We also find from the evidence that after the occurrence he was found to talk irrelevantly. All these go to show that something had suddenly happened or something he had seen or discovered which led to the commission of the crime. Of course, he had gone to the house of the complainant with the hacksaw blade but

still, in view of the fact that none had seen the occurrence actually, A
one cannot be sure whether he wanted to kill one or more or all of
them. Naturally when he wanted to escape, he had to cause three
injuries to PW-2 and one injury to PW-6, but they are not of serious
nature. It has been shown by the defence that he is an educated
person and has even donated blood while in prison. It has not been
shown by the prosecution that he is such a dangerous or desperate B
person who will prove to be a menace to the society so as to invite
the extreme penalty of death. The fact that he had been talking
irrelevant after the occurrence, though may not amount to a mentally
derangement, it shows that he has been mentally shaken by what had
happened. This shows that he cannot be equated with the category of C
hardened criminals, whose conduct and behaviour after the occurrence
would not be remorseful. Therefore, taking into consideration the
aggravating as well as mitigating circumstances, we are of the view
that this is not one of the rarest of rare cases where the appellant -
Ravi Virmani should be awarded death penalty.

On the analysis of the entire materials we are of the view that the
murder reference has to be declined and the death penalty awarded
to him has to be modified. D

Resultantly, the murder reference is declined and the death
sentence awarded to appellant - Ravi Virmani is set aside/modified. E
He is sentenced to life imprisonment under Section 302 IPC."

It is at this juncture the case of the prosecution ought to be noticed and
the same runs as below:

On 8.1.1996 at about 8 p.m. Deepak Kumar returned to his house after
paying obeisance in the temples and Gurdwara, found the door of his house
closed from inside, knocked at the door several times, but there was no
response from inside. Deepak Kumar peeped through the glass pane fitted
near the door and saw the body of his father lying smeared with blood and
also blood lying in considerable quantity on the floor. F G

Deepak Kumar knocked the door with force on which appellant - Ravi
Virmani, came towards the door carrying the three months' old-child of
Deepak Kumar in one hand and a long knife in the other hand. Appellant -
Ravi Virmani opened the latch fitted inside the door and Deepak Kumar
entered crying loudly "Ravi what have you done". Ravi Virmani again bolted H

A the door from inside and demanded a sum of Rs. 5 lakhs from Deepak Kumar pointing the knife towards the son of Deepak Kumar and threatening that he will kill child if Deepak Kumar did not pay the money. At that time while Sanjay, the younger brother of Deepak Kumar started knocking at the door, the complainant - Deepak Kumar was grappling with appellant - Ravi Virmani. His child fell on the ground from the hand of Ravi Virmani.

B

Sanjay on seeing all this, pushed the door forcibly and the bolt of the door was broken. Sanjay also came inside, but by that time Ravi Virmani had inflicted injuries with the knife on the face and head of complainant - Deepak Kumar. Complainant - Deepak Kumar also received injury on his left leg when he was grappling.

C

Sanjay, who had come inside, snatched the dagger type hacksaw blade from the right hand of Ravi Virmani to save the life of Deepak Kumar. At that time Deepak Kumar came to the Gate and shouted "Mar Diya Mar Diya". Then Ravi Virmani inflicted injuries on the mouth of Sanjay and ran away after getting himself freed from Sanjay.

D

On hearing the noise raised by Deepak Kumar, Sukh Dayal Madan, resident of Pakistani Colony, Faridabad, arrived in the Porch in front of the house, and caught hold of Ravi Virmani who was going out through the Porch.

E

Deepak Kumar and Sanjay went inside the room and found their mother - Shashi Lakhani, Varsha Lakhani (wife of Deepak Kumar) lying dead and their brother - Sunil Lakhani lying seriously injured in a pool of blood. Their father - Om Parkash was also lying dead be smeared with blood. Immediately Deepak Kumar informed the Police Control Room by phone.

F

Prosecution emphasised that the shops of Ravi Virmani and that of the complainant are situate side by side and Ravi Virmani was having a doubt that the complainant was winning over his customers and ruining his business, due to which he was nursing a grudge against the complainant and used to protest to the complainant in that regard - that is why Ravi Virmani had murdered Shashi Lakhani, Varsha Lakhani and Om Parkash Lakhani and had also caused serious injuries to Sunil, who had been removed to the Hospital and died.

G

On receiving information from the Police Control Room, the S.H.O. of Police Station NIT - Faridabad, reached the spot, to whom Ravi Virmani along with the blood-stained weapon was handed over.

H

The statement of Deepak Kumar was recorded by S.H.O. Niadar Singh, and completed at the spot itself at 8-50 p.m. on 8.1.1996. The formal F.I.R. was registered at 9.15 p.m. on the same day and the F.I.R. reached the Chief Judicial Magistrate, Faridabad, at 11 p.m. on 8.1.1996 itself. A

As noticed herein before, the prosecution examined eight witnesses including the investigating officer and three doctors before, however, having a look at the evidence tendered before the Court and its appreciation by the learned Sessions Judge as also by the High Court, statement under Section 313 Cr.P.C. of the accused needs to be looked into and considered. B

When questioned under Section 313 Cr.P.C. accused - appellant - Ravi Virmani, apart from generally denying the allegations and pleading false implication stated that they had good relations with the family of Om Parkash Lakhani, with whom they had no business rivalry. He also stated that Sunil was his classmate and they were intimate. According to him, on 8.1.1996 he closed his shop-M/s Virmani Enterprises and at about 8 p.m. went to the Gurdwara, after parking his car. After paying homage at the Gurdwara, when he returned, his car did not start, so, he hired a rickshaw for Tikona Park to bring a Mechanic. It was 8.30 p.m. and there he heard about the murder of Varsha and Sunil. So, he went to their house and charged Deepak as being instrumental for the same, after which Sanjay and Deepak assaulted him (Ravi Virmani). Meanwhile the police came and detained him for interrogation, but on the Morning of 9.1.1996, made him the accused. Ravi Virmani, however, stated that he neither made a disclosure statement nor any article was recovered at his instance and claimed false implication in the instance of one A.C. Choudhary, a Minister in the State of Haryana. C D E

The learned Sessions Judge while passing an Order of death penalty as against Ravi Virmani but acquitted the other accused Hari Chand, being the father of Ravi Virmani by reason of non-availability of proper evidence and material. F

As noticed herein before, three doctors were examined in the matter—the first being Dr. V.R. Gupta, (PW-1) Medical Officer, Escorts Hospital, Faridabad, who happened to examine both Deepak Kumar and Sanjay on 8th January, 1996. The testimony records the nature of injury as follows: G

“The patient brought with alleged history of hit by some sharp edged object at his to usd. injury at GLW over left partial region I(x) H

A cm.

2. Abrasion over right sign of neck.
3. There was swelling over the left knee.”

B The testimony further recorded injuries of Sanjay as below:

“The patient was brought and alleged history of hit by one by sharp edged object. The patient had a CLOW over nose (bridge) ½ cm on bridge of nose. First aid treatment was given. The injury was caused by sharp edged weapon. Ex. is the photostat copy of the MLR.”

C

Dr. A.K. Gupta (PW-3) conducted a postmortem examination on the body of the deceased Varsha and found 13 specific injuries as below:

D

(1) Six incised wounds of sizes 6.0 x 0.5 cm each coronally inflicted on occipital region of scalp. The wounds were muscle deep.

(2) Incised wound 4.0 x 1.0 cm on left frontal region of scalp. On further dissection the underlying bone was out into pieces with brain matter injured. Clotted blood was present in cranial cavity-

(3) Incised wound 4.0 x 1.0 cm muscle deep on left temporal region of scalp.

E

(4) Six incised wounds of sizes 2.5 x 1.0 cm to 6.0 x 1.5 cm on face. The root of nose and nasal bones were fractured.

(5) Six incised wounds of sizes 2.0 x 0.5 cm each on left side of hip joint and lateral aspect of left thigh upper third part.

F

(6) Incised wound 0.5 x 0.5 cm on left side of back of chest. 7.0 cm from mid line in fifth intercostal space. On further dissection the wound was going downward and medially, piercing the lower lob of left lung through size 0.5 x 0.3 cm and reaching the left atrial cavity with wound in left strium 0.5 x 0.5 cm.

G

(7) Incised wound 0.5 x 0.5 cm on left side of back of chest 6.0 cm below injury No. six. On further dissection the wound peirced the left lower lob 0.5 x 0.5 cm. Fluid blood was present in the left pleural cavity and pericardium.

H

(8) Incised wound 5.0 x 3.0 cm with fracture of underlying bones on posterior aspect of left hand in its lateral half part.

- (9) Incised wound 5.0 x 3.0 cm with underlying bones fractured on base of left thumb area on posterior aspect. A
- (10) Incised wound 1.0 x 0.5 cm muscle deep on posterior aspect of left forearm in its middle third part.
- (11) Incised wound 1.0 x 0.5 cm skin deep on back of left elbow joint. B
- (12) Incised wound 3.0 x 1.0 cm muscle deep on front of right knee.
- (13) Incised wound 5.0 x 2.0 cm on front of right leg in upper third part. Underlying tibia bone was fractured.

All the other organs were pale and stomach contained about 100 CC of semi-digested food and gases." C

Dr. A.K. Gupta (PW-3) also conducted the postmortem examination on the body of the deceased Om Parkash (being father of Deepak) aged about 50 years and found 10 injuries as below: D

- "(1) Incised wound 12.0 x 3.0 cm on right occipital region of scalp. On further dissection the underlying bone was cut with injury in the brain matter. Fluid blood was present in cranial cavity.
- (2) Multiple incised wounds of size as 2.5 x 1.0 cm to 6.0 x 2.0 cm on left temper parietal region of scalp, mid parietal and frontal region of scalp. The wounds were in form of criss cross shape underlying bones were fractured with injury to brain matter. E
- (3) Multiple incised wounds more than 20 in number in criss cross manner on face, forehead, nose. There were fractures of nasal bone, right and left mandibles. Clotted blood was present. F
- (4) Incised wound 6.0 x 3.0 cm on front of neck at level of right thyroid. The wound was skin deep.
- (5) Incised wound 6.0 x 3.0 cm on front of left forearm in its anterior lateral part in middle third area. The wound was muscle deep. G
- (6) Incised wound 5.0 x 3.5 cm on front of left wrist. Muscles were cut and bones were visible.
- (7) Incised wound 3.0 x 1.0 cm on lateral aspect of left leg in middle third part. The wound was skin deep. H

- A (8) Incised wound 3.0 x 0.5 cm on right palm. Underlying metacarpal bone was cut.
- (9) Incised wound 4.0 x 2.0 cm on front of right forearm lower third part. The underlying both bones were cut.

- B (10) Incised wound 5.0 x 1.0 cm at base of right thumb, muscles cut, bone was visible.

All internal organs were pale.

- C Stomach contained about 100 CC of semi digested food and gases. Large vessels and heart were pale. The left side of heart was empty while right side contained dark fluid blood.

The cause of death in this in our opinion was shock and haemorrhage and injuries to vital organ i.e. brain.

- D All the injuries were antemortem in nature and were sufficient to cause death in ordinary course of events of life.”

The postmortem examination was also effected by Dr. Gupta on the body of Sunil aged about 25 years and there were found 16 injuries details of which are as below:

- E “(1) Cut wound 10.0 x 8.0 cm on left temporo parieto occipital region of scalp. Multiple skull bone pieces cut in between in criss cross manner. Underlying brain matter was cut with fluid blood in cranial cavity.

- F (2) Two incised wounds of sizes 6.0 x 1.5 cm each on right and left frontal region of scalp one each. Clotted blood was present, muscles cut and bones.

- (3) Incised wound 5.0 x 1.0 cm muscles visible on right eye brow area.

- G (4) Multiple incised wounds of sizes 2.5 x 1.0 cm to 6.0 x 1.0 cm on right side of cheek, both lips and mandible area. Underlying right maxillary and mandibular area were fractured.

- (5) Incised wounds 0.5 x 0.5 cm skin deep on left side of back of chest 4.0 cm lateral to mid line at level of 4th rib.

- H (6) Incised wound 0.5 x 0.5 cm skin deep on left scapular region of

back 10.0 cm from mid line.

- (7) Incised wound 0.5 x 0.5 cm on left side of back of chest 6.0 cm from mid line in 6th intercostal space. On further dissection the wound was directed downward and laterally and pierces the middle lobe of left lung with fluid blood was present in the left pleural cavity.
- (8) Six incised wounds of sizes 1.5 x 0.1 cm to 1.0 x 1.0 cm size on back of left forearm.
- (9) Incised wound 6.0 x 3.0 cm on medical surface of left forearm in its lower third part.
- (10) Incised wound 8.0 x 6.0 cm size on back of left wrist. The underlying bones were cut into pieces in thrice cross manner.
- (11) Multiple incised wound on back of left hand skin deep.
- (12) Incised wound 6.0 x 1.0 cm. muscle cut on left palm.
- (13) Three incised wounds of sizes 2.0 x 1.0 cm. 2.0 cm 1.0 cm 3.0 x 2.0 cm each skin deep on back of left leg in its lower third part.
- (14) Incised wound 6.0 x 3.0 cm on back of right thumb and wrist muscles and tendon were cut.
- (15) Two incised wounds of sizes 3.5 x 1. cm and 2.5 x 1.0 cm on back of right hand in deep.
- (16) All right hand fingers were cut at level of termination phalanx."

Records also depict that Dr. Gupta while conducting the postmortem examination on the body of Shashi (Deepak's mother) found 11 injuries on the body of the deceased as below:

- (1) Cut wound 14.0 x 8.0 cm on left parieto occipital region of scalp lateral to mid line. In the wound multiple skull bone pieces were present cut in criss cross manner underlying brain matter was cut with fluid blood oozing and present in cranial cavity.
- (2) Incised wound 6.0 x 2.0 cm on right side of forehead, eye brow and cheek. Right eye was cut. Underlying skull bone and maceillary bones were cut with injuries to brain matter.
- (3) Incised wound 5.0 x 2.0 cm on left eye area. Left eye was cut.

- A (4) Multiple incised wound more than twenty in number on left side of forehead, left cheek, nose, left medifular area and mid line of chin, —the wounds were in criss cross manner. Nasal bones, left maxillary bones and mandible were fractured.
- B (5) Seven incised wounds of sizes 1.0 x 1.0 cm each skin deep on left side of front on chest.
- (6) Two incised wounds of sizes 1.0 x 0.5 cm skin deep on left side of abdomen.
- (7) Incised wound 8.0 x 3.0 cm on back of left wrist and lower part of left forearm, underlying bones were cut and muscles were also cut.
- C (8) Incised wound 10.0 x 4.0 cm on left hand at level of metacarples bones. All metacarples bones were cut.
- (9) Incised wound 2.5 x 1.5 cm on lateral aspect of right forearm in its lower third part. Muscles were cut.
- D (10) Proximal phalanx of middle finger and middle phalanx of ring finger of right hand were cut.
- (11) Two incised wounds of sizes of 3.0 x 1.0 cm skin deep on back of left shoulder.

E All the internal organs were pale. Left side of heart was empty while right side contained dark fluid blood. The stomach contained about 100 CC of semi-digested food and gasses.”

It is Dr. Gupta again, who stated:

F “All injuries on deceased Om Parkash and Shashi could be caused with this weapon shown to me (At this stage a sealed packet open which found to contain hexablade which is Ex. P1. It is the same weapon and one corner of hexa blade was wrapped with the clothes at that time. The piece of cloth is Ex.P.2). All the injuries on deceased Varsha (except injuries No. 6 & 7) could be caused with this weapon. All injuries on deceased Sunil Lakhani (except injury No. 7) could be caused with this weapon. The weapon was sealed with three seals. Attested sample seal used was also given. My opinion is Ex. PL/2.”

G In cross-examination, Dr. Gupta, however, stated:

H “In injury No. 1 the wound will increase in the width over the

skin in comparison to the width of the weapon particularly in the occipital region. The injury No. 2 could be caused with hard weapon. Hard means not elastic. Knife may be elastic or without elasticity. It is correct that as regard injury No. 2 is concerned it must have been caused with a heavy weapon with force. The injury No. 2 could have been caused by sharp edged of gandasa/pharsa with force. I have not mentioned the area of injury No. 5. It is correct that the blade shown to me is lighter than the Gandasa/Pharsa. It is correct that sawed edge of the hexa blade would cause lacerated wound only. Injury No. 6 could be caused by thrust blow of knife. I have already mentioned the injury No. 6 and 7 could not have been caused by a Hexablade shown to me today in the Court. It is correct that injury No. 7 could have been caused by a knife. The possibility of inquiry No. 8 and 9 from Gandasa or Pharsa cannot be ruled out. All the incised wounds having width 0.5 cm could have been caused by knife which includes injury No. 10, 11. Injury No. 12 could be caused by a knife blow. It is correct that injury No. 13 could have been as a result of blow of heavy weapon like Gandasa or Pharsa. It is correct that tibia bone is a strong bone. She must have taken food two hours before the death. The possibility of injuries being received by the deceased at 11 or 12 AM on 8.1.96 cannot be ruled out. It is correct that if hexa blade is dragged on the body then it would cause tailing of the incised wound.

The injury No. 1 on the person of Om Parkash deceased could have been as a result of Gandasa/Pharsa with force. Injury No. 2 could also have been caused by a pharsa or gandasa only with force. It is correct that all the injuries on the person of deceased Om Parkash could have been as a result of gandasa or pharsa blows.

All the injuries on the person of deceased Sunil Lakhani could have been caused by a gandasa or pharsa with force.

Similarly the injuries on the person of Shashi Lakhani could have been caused by a Gandasa or Pharsa. Injury No. 3 could have been caused by a knife blow on the person of deceased Shashi Lakhani. Injury No. 4 could not have been caused by knife as and 11 could be as a result of knife blow.”

The third doctor examined in the trial being PW-7 is Dr. Amar Bajaj, Medical Officer, B.K. Hospital, Faridabad and found the following injuries on his person:

- A “(1) An abrasion 2.5 cm x 1.5 cm over palmer aspect of right hand just below the nareminance.
- (2) An abrasion 2 cm x 1 cm over palmer aspect of right index finger over its first and second phalanx.
- B (3) An abrasion 1.2 cm x 0.5 cm over palmer aspect of terminal Phalanx of right middle finger.
- (4) An abrasion 1 cm x 0.5 cm over palmer aspect of proximal phalanx of right ring finger.
- (5) 0.5 cm x 0.5 cm over palmer aspect of junction of proximal and second phalanx of right little finger.
- C (6) Seven abrasions of varying size measuring 0.2 cm x 0.2 cm to 1 cm x 0.2 cm over back of right hand.
- (7) Abrasion 0.2 cm x 0.2 cm over palmer aspect of proximal phalanx of left hand.
- D (8) Abrasion 1 cm x 0.2 cm over left side of face just outer to left eye.
- (9) Abrasion 0.75 cm x 0.2 cm over upper lip below right nostril.
- (10) Abrasion 1 cm x 0.2 cm over left side of face outer to left angle of mouth.
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All the injuries were caused with blunt weapon. Nature of injuries was simple, duration was within 12 hours.”

F On this state of medical evidence, the learned Sessions Judge recorded a death penalty for Ravi Virmani whereas the High Court modified it to life imprisonment as noticed herein before.

G Needless to record that the weapon used (as the prosecution case depicts) has been part of a hacksaw blade one end of which was wrapped with a piece of cloth and Mr. Sushil Kumar points out that the same facilitates holding of the blade. We shall deal with the evidence of the two brothers, namely, Deepak and Sanjay slightly later but presently be it noted that the total length of the weapon would be 2½ feet, which was broken into two pieces and the piece, which was said to have been used for the murder of these four persons was about 1½ feet. Mr. Sushil Kumar in support of the appeal of the State

H of Haryana has placed much reliance on the discovery of a piece of sharpening

stone, which was said to have been used to sharpen the blunt edges of the hacksaw blade and which as a matter of fact looked like a knife - an industrial hacksaw blade admittedly was in use - which is to be screwed and bolted to the machinery for cutting steel is said to have been sharpened through the medium of a sharpening stone and the hacksaw blade looked like a knife. Significantly, in the FIR, which has been to some extent delayed though not fatal to the case of prosecution, it has been recorded that a knife was used by the murderer : does it match the instrument mentioned in the FIR that the sharpening stone and sharpening of blunt edges of looking like a knife was introduced though Mr. Sushil Kumar emphatically answered in negative but the learned Advocate for the appellant Mr. Anis Ahmed Khan answered it in the affirmative.

It is at this juncture, however, let us consider the evidence of Deepak Kumar, the complainant.

The basic evidence as is available on record has already been dealt with herein before in this judgment as part of the prosecution case and by reason therefore we need not reiterate the same excepting recording four salient features in the evidence:

- (i) Deepak Kumar peeped through the glass pane fitted just near the doors and by reason of the electric light of the lobby saw the father lying on the ground on a pool of blood;
- (ii) On seeing the father Deepak knocks the door with some force;
- (iii) Ravi Virmani the accused came towards the door at that time and he was having one hexablade in one hand and in his other hand he was lifting Deepak's three months' child and it is only thereafter he opened the bolt of the door from inside; and
- (iv) Demand of a ransom of 5 lakhs otherwise Ravi threatened to kill Deepak's son.

The introduction of the concept of ransom however went totally hay ward: four persons are already dead or to be precise as per prosecution killed by Ravi: three months old baby was available to be a prey of Ravi, if the prosecution case is to be accepted - But Ravi spares the child and after having spared the child, killing four persons but story of ransom does not fit well neither same to be a part of human conduct desirous of obtaining a ransom: why would Ravi kill the other four if ransom was the reason therefore as against the life of a child- gruesome murder of four persons inside their

- A** respective rooms does not fit in with the case of ransom as against a child of three months - the High Court, however, accept the fact of sparing the child as an instance of humane conduct and the same stands out to be a factor for transforming the death penalty to that of life imprisonment: our inquiry however slightly differ therefrom - Can it be an acceptable state of evidence or the same rather shakes the confidence of the court as regards trustworthiness
- B** of the witness? The sketch plan though mentions the door but does not mention transparent glass panes - needless to record but before entry on to the lobby Deepak watched the father in a pool of blood as also Ravi coming with an hexablade on one hand and three month old child on the other. The definite evidence of Deepak is that the door bolt was opened by Ravi and it
- C** was again bolted by the latter.

- The second aspect of Deepak's evidence is the entry of Sanjay which takes place immediately after the arrival of Deepak: Sanjay also sees the happening inside the house and by reason thereof breaks open the door obviously the kundi (the bolt gave way and have fallen on the ground - but
- D** there is no mention for the same in the police report or in the seizure list - this is however a minor omission with the Court ought not to dilate in a matter of the nature presently dealt with). Deepak's evidence thereafter becomes rather interesting - Deepak stated that immediately after Sanjay arrived inside the house the hexablade was snatched away from Ravi—thus
- E** hexa blade shifts hand from Ravi to Sanjay and immediately thereafter Deepak stated in his evidence that he came out and cried out "maar diya, maar diya" - Deepak's cry was loud enough to attract Sukhdayal but in the meantime Sanjay was grappling with Ravi and the latter did also inflict injury to Sanjay and thereafter as he tried to escape Sukhdayal captured Ravi and it is then both the brothers went inside the house and discovered four gruesome murders.
- F** Police was informed telephonically and within a few minutes thereafter the police arrived and Ravi along with weapon of offence was handed over to the police - How has the weapon changed hands? Deepak's definite evidence that Sanjay entered the house and snatched the hexablade from Ravi, when did this happen? Unfortunately there is no answer to the same and the evidence
- G** is also delightfully silent. Sukhdayal was supposed to have captured Ravi while the latter was on his escape - hundreds of people gathered at the cry of Deepak neither Sukhdayal nor anyone of the people who gathered there were examined as witnesses. What prevented Sukhdayal to be brought in the witness box since he would have been the best witness possible to narrate the incident at least from the moment Deepak cried out "maar diya" - Sukhdayal
- H** could have said as to whether Virmani was caught by him with the murderous

weapon in his hand or not : It is this lapse which in our view go a long way in the matter presently under consideration. Sukhdayal would have been a completely independent witness or anyone of the persons who gathered subsequently as to the state of affairs of the Ravi Virmani being caught - the veracity of Deepak's evidence could have founded corroboration and obviously would have laid acceptance of the same without a hitch anywhere—this is however not done. The prosecution has examined eight witnesses of which three are Doctors, two formal witnesses, the Investigating Officer and the two brothers - not one independent witness though a large number of people were available, was examined. Sukhdayal was in a definite position to lend credence to Deepak or Sanjay's statement as an independent witness - there has however been no effort on the part of the prosecution in that direction—it is not that multiplicity of witnesses would improve the situation neither we ought to be understood to hold that corroboration from independent witnesses stands out to be a mandatory requirement—witnesses though be interested can be relied upon provided however the evidence available on record is trustworthy and creates a confidence in the mind of the court that the scrutiny entails only pointing out of commission of an offence by the accused persons and that scrutiny in totality leads to an inevitable conclusion of the guilt of the accused. The issue thus for our consideration is whether the evidence available on record only leads to one conclusion—that is the guilt of the accused. Incidentally, the prosecution involved both the father and the son—whereas the father has to wait outside, the son was completing his part of duty in a most heinous killing of four persons. The Sessions Court, however in the absence of iota of evidence of even his presence outside the door acquitted the father though convicted the son under Section 302 and the High court converts the sentence of death penalty to that of life imprisonment but the State has also appealed against the High court's finding and as noticed above Mr. Sushil Kumar appearing for the State in no uncertain terms submitted that State's appeal is by reason of the fact that a social evil ought not to be allowed to be in the midst of the society since the accused Ravi is not only an evil but a social menace. State's anxiety to put a man in the gallows is however not very plainly understandable neither it is understandable as to the State's attitude being eye for an eye and tooth for a tooth—it is true that it is the responsibility to maintain law and order but the State on the other hand also maintains reformatory schools and if the State is failed to bring the accused to books in a court of law can the State's failure be countenanced by the apex Court? Why was not Sukhdayal examined? Why there were'nt any independent witness? Mr. Sushil Kumar had no answer. Obviously erudite as he is, only contended that the records otherwise would be sufficient to

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A bring home the charge and the penalty imposed by the Sessions Court. We are however not in a position to lend any credence to the submissions of Mr. Sushil Kumar that the death penalty ought not to have been transformed to that of life imprisonment as is sought to be done by the High court. On the wake of the aforesaid, the four Appeals preferred by the State and Deepak Kumar (Crl. A. Nos. 927-928 and 929-930 of 2000) stand dismissed.

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Turning on to the main appeal under consideration before proceeding with the evidentiary aspect of the matter a technical objection raised by Mr. Lalit, appearing for the respondents ought to be noticed at this juncture to wit complicity of Ravi in the offence has been concurrently found by the Trial Court and the High Court as a finding of fact and that also upon marshalling of the evidence and as such question of re-appreciation of the evidence in the absence of perversity or contra appreciation of the evidence the apex Court ought not to intervene or interfere in the impugned order. While it is true that in the normal course of events in an appeal under Article 136 of the Constitution, the Apex Court would not reopen the concurrent findings relating

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to the appreciation of evidence, but this does not preclude this Court from reappraisal of the evidence in the interest of justice in the event of there being some winks of doubt as to the reliability of the evidence of the prosecution. It is thus not a rule steadfast but depend on the concept of justice and the question of availability of acceptable evidence on record. The observations of this Court in *Malempati Pattabhi Narendra v. Ghattamaneni Maruthi Prasad and Ors.*, [2000] 5 SCC 226 lend concurrence to the view expressed above. No doubt, both the Courts did accept the evidence but that acceptance was without raising even an eyebrow as to why no independent witness has been examined in respect of the presence of so many people at the entrance door as noticed herein before. Availability or non-availability of

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independent witness has not even been referred to neither there is available on record any explanation as to the reason of not examining even Sukh Dayal before the court. This aspect of the matter has been dealt with in detail hereinbefore in this Judgment and in the absence of any justifiable reason a doubt creeps in the mind of the Court as to whether appropriate justice has

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been made available to an accused in the justice delivery system of the country. It is on this score that this Court found it essential to have a re-look or a further scrutiny of the available evidence on record before recording its concurrence with the findings, which stand challenged in this appeal. Ravi Virmani is the appellatant here charged with gruesome murder of four persons as detailed more fully herein before but on a short recapitulation of the events

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at this juncture it appears that four adult persons were killed - none of them

were ill or feeble or was of very advance in age : an elderly gentleman of 50 years or so was murdered in the drawing room: In the adjoining bed room a young lady with a three month old child alongwith the wife of the elderly gentleman in the drawing room and a young boy were available and three of them were murdered in the same room—would not there be any effort on the part of any one of these four to resist unless they were totally thunderstruck—and in fact rendered themselves over awed and stone faced : an outsider unknown to the family enters the bed room with a hacksaw blade and kills three persons without there being any sign of any protest or resistance—this raises undoubtedly an eyebrow and thus a doubt in the available evidence. Motive has been stated as noticed more fully herein before but that cannot be termed to be a motive to kill four persons of the same family. The elderly person was murdered in the drawing room outside the bedroom : the instrument used for murder is a hacksaw blade which has to be fitted with bolts in the steel cutting machine being operated by electrical power : sharpening of the blunt edge of the hacksaw blade on a piece of stone has been the evidence by reason wherefor the hacksaw blade looked like a knife : if the intent was to kill why not bring a chopper so as to get rid of the persons in one go and why a blunt edged weapon like hacksaw blade would be used—assuming that being so the 50 year old man, who happened to be otherwise well built would not raise a cry or even an alarm? Is this an acceptable piece of evidence that a man is being murdered with a hacksaw blade, which stands sharpened through a sharpening stone, will not raise an alarm or cry before the death—it is not a gun shot injury but a blade: it is neither the case that there were more than one person in the room where these killings took place. One of the persons, who was seriously injured and thereafter died in the hospital, had been the classmate of Ravi Virmani, the accused—obviously of the same or near about the age of the accused—would the person of the same age accept a situation seeing his father, the mother and the sister-in-law being killed without a demur or protest or even a fight to restrain the outsider from committing these gruesome acts of murder of three persons—there is total silence on this score in the evidence. The High court obviously was over-awed by the killings of four persons in one flat but by reason of the fact that there was no criminal history transformed the death sentence to a life term imprisonment under Section 302 IPC. The issue, therefore, is as to whether the High Court was otherwise right in coming to the conclusion on the basis of available evidence as regards the guilt of the accused. We once again remind ourselves the absence of any independent witness and the entire prosecution's case is based upon the evidence of these two brothers Deepak and Sanjay. Non-availability of independent witness thus creates an uncanny

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- A feeling as to why this avoidance - the reason did not see the light of the day at an earlier point of time nor the learned senior Advocates appearing in the matter in support of the prosecution could offer any explanation therefor. A pointed question to that effect was answered in silence only. It is undoubtedly true that commission of the crime in the manner as is framed by the prosecutor cannot but be ascribed to be brutal and most heinous and in the event of there
- B being cogent available evidence, it would be a normal procedure to even award the maximum sentence prescribed under the law—but is there any cogent evidence pointing to the guilt of the accused or there happen to be some lacuna and some holes in the entire edifice of the prosecution case resulting in creeping of a doubt—does the evidence pointedly point towards
- C the guilt of the accused and no other conclusion is possible? If the answer stands in the affirmative then without a least hesitation one cannot but lend concurrence to the view expressed by the High Court but the evidence on record, however, as detailed more fully herein before does not strictly pointedly point out to the guilt of the accused by reason wherefor the burden of the prosecution to prove beyond all reasonable doubts has not been discharged
- D in a manner as it ought to have discharged—there are lacunae in the evidence and in totality of the circumstance, the prosecution case raises a definite doubt in the matter of involvement of Ravi Virmani. On a proper perusal of the evidence on record, we do feel it expedient to record that both the learned Sessions Court as also the High Court have not been able to appreciate the
- E evidence in its proper perspective by reason wherefor they have in fact failed to appreciate evidence in its correct perspective and have thus committed a manifest error in coming to a finding, which stands challenged and impugned in this appeal.

F The appeal of Ravi Virmani being Criminal Appeal No. 931 of 2000 thus stands allowed. The Order of the High Court stands set aside and Ravi Virmani stands acquitted of all charges. The appellant be let off immediately unless required in some other case.

S.K.S.

Complainant appeals dismissed,
and State appeals allowed.

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