DHARMENDRASINH @ MANSING RATANSINH A

v.

STATE OF GUJARAT

APRIL 17, 2002

[DORAISWAMY RAJU AND BRIJESH KUMAR, JJ.] B

Penal Code, 1860 : Section 302:

Murder—Husband suspecting fidelity of wife—Committing murder of his two sons—Testimony of wife—Vivid description of occurrence given by her—Prosecution case established by cogent evidence on record—Held, reliance on her testimony despite minor contradiction and infirmity in investigation was valid—Conviction of accused upheld—Case on facts do not fall in the category of rarest of rare cases—Death penalty substituted with imprisonment for life. C

D

Code of Criminal Procedure, 1973 : Section 154.

FIR—Contradiction in lodging of—Effect.

Maxim

Falsus in Uno Falsus in omnibus—Applicability of. E

The appellant was prosecuted under Section 302 of the Indian Penal Code, 1860. He committed murder of his two sons. The prosecution case was that he had suspicion about character of his wife and in that connection he quite often quarrelled with her. Inspite of this, they lived together. In the night preceding the incident the appellant told they would be sleeping inside the F **home though they usually slept outside in the open. In the early hours of morning he woke up his wife and after milching of the cow told her to go to the dairy to deliver the milk. He himself declined to go to the dairy when asked by his wife and had also not allowed her to awake his son to go to the dairy for the purpose. After his wife had left he alone was present in the house. On her return appellant's wife found her husband assaulting the sleeping boys** G **namely their sons. She raised alarm whereupon the appellant slipped away by the back door leaving the weapon at the spot. Her father-in-law and brother-in-law arrived. A neighbour of the appellant PW-7, also reached the house of appellant, who in his evidence stated that on his arrival, he had found no one else there. In his testimony he also stated that the appellant had been** H

A suffering from mental disease and had also been admitted in the hospital. Regarding lodging of FIR there was contradiction. Appellant's wife, PW-3, stated that she had gone to the police station where enquiries were made by police personnel and thereafter report was lodged. The investigation officer, PW-9 also stated that report was lodged by PW-3. But in his cross examination he made a contradictory statement that on his way back from Court he got a wireless message from the Control regarding the incident and report was written at the house of PW-3, where her mother-in-law and father were also present. The accused who was absconding was arrested after 15 days of the incident. The doctor, PW-1, who conducted the post mortem examination opined that injuries were ante mortem and were caused by sharp edged weapon.

Relying upon the ocular testimony of mother of the deceased children and wife of appellant, PW-3, the Trial Court convicted the appellant of the offence charged and awarded capital punishment to him.

High Court upheld the conviction and sentence of the appellant. It held that (i) the reliable testimony of appellant's wife could not be discarded on the ground that there was negligence in conducting the investigation (ii) no evidence had been led to prove the fact of mental illness of appellant; (iii) while saying that on reaching the spot , he found no one else there PW-7 was not speaking truth. As to contradiction in lodging the FIR High Court found that the investigating officer, PW-9, while returning from Court went to the village where the FIR was scribed at the house of PW-3 which was forwarded to police station for its registration.

In appeal to this Court it was contended on behalf of the appellant that (i) the presence of appellant at the scene of occurrence was not established; (ii) the complainant had not actually witnessed the occurrence; (iii) there was glaring contradiction in regard to lodging of FIR; (iv) there was discrepancy between oral and medical evidence; and (v) the appellant was suffering from mental disorder and insanity.

Dismissing the appeal and modifying the sentence the Court

HELD : 1. The presence of PW-3 cannot be doubted in respect of which an effort was made to raise an argument in vain. The prosecution story as per her statement rings true and stands established by cogent evidence on the record and independent circumstances. Nothing could be elicited in her cross-examination by reason of which any doubt could arise about veracity

of her statement. She was given a vivid description of the incident most naturally the way she was awakened and was told by her husband to go to deliver milk at the dairy. She did go and on return as soon as she entered into the house, she raised alarm; this part of statement is supported by PW-7 also, but for the fact that according to him on his arrival, he found no one else at the scene of occurrence. It would be a matter of minutes or a fraction thereof, if the accused had at once left the place by the other door, the moment he heard the alarm of PW-3; PW-7 though a neighbour lives in different house and by the time he reached, it is not unlikely that he may have missed the appellant who had left the spot. Therefore, on the basis of the mere statement of PW-7 that on his arrival he found no one else it cannot be said that PW-3 told a lie while stating that her husband had slipped away from the other door on hearing her cries. At the same time, there is no good reason to suspect that she would falsely implicate her husband for the killing of their sons by some one else. [203-F, G; 206-G; 207-E, F, H; 208-A-C]

2. The father and brother of the appellant did not appear in his defence in the Court to say that it was a case of false implication of the appellant by none else but his daughter-in-law. Normally a brother or father will also not be a silent spectator to the false implication of his brother/son by his wife. After incident appellant was not available for more than 15 days until he was arrested by police. Relations between the appellant and PW-3 had not been strained from her side to the extent that she would falsely implicate her husband. In the circumstances statement of PW-3 totally inspires confidence. [202-D, F, G; 207-F; 209-C]

3. The High Court rightly came to the conclusion that otherwise reliable statement of the witness PW-3 could not be discarded or discredited even though there had been any fault or negligence in conducting the investigation, that too by itself, be not sufficient to dislodge the prosecution case as a whole. The chances of making some embellishment here and there in the statement are not ruled out even in cases of otherwise truthful and reliable witnesses. The concept of falsus in uno falsus in omnibus has been discarded long ago. Therefore in such circumstances the Court may have to scrutinize the matter a bit more closely and carefully to find out as to how far and to what extent the prosecution story as a whole is demolished or it is rendered unreliable. For this purpose the statement of the witnesses will have to be considered along with other corroborating evidence and independent circumstances so as to come to a conclusion that the contradiction in the statement of a witness could be considered as an embellishment by the witness under one or the other

A belief or notion or it is of a nature that the whole statement of the witness becomes untrustworthy affecting the prosecution case as a whole. In this case the Trial Court and the High Court have rightly placed implicit reliance upon the statement of PW-3 despite the informities which crept in due to careless investigation and contradiction regarding the place of lodging of the report. [206-C-F; 208-F]

B

The State of Rajasthan v. *Kishore,* [1996] SCC (Crl.) 646; *Karnail Singh* v. *State of Madhya Pradesh,* [1995] 5 SCC 518; *Ram Bihari Yadav* v. *State of Bihar,* [1998] 4 SCC 517; *Paras Yadav* v. *State of Bihar,* [1999] 2 SCC 126 and *Ambica Prasad and Anr.* v. *State (Delhi Admn.),* [2000] SCC (Crl.) 522, referred to.

C

4. There is no doubt about the fact that there is definitely a contradiction about the lodging of the FIR but the effect of such contradiction or discrepancy may have to be viewed in the light of the facts and circumstances of each case. There may be cases where such a discrepancy may prove fatal D to the prosecution whereas in other cases it may not have the same effect. The discrepancy in regard to the lodging of the FIR is certainly there and the conduct of the Investigating Officer in carrying out the investigation of the case has also been commented upon by the Trial Court but the consequences of such discrepancies or defensive or doubtful investigation is not necessarily only one leading to discredit the main prosecution case if the E prosecution evidence inspires confidence and circumstances lead to such a conclusion and the prosecution story rings true. [204-C, F, G]

5. There is no force in the submission that there is discrepancy between oral and medical evidence. The doctor has very clearly stated that all the injuries F found on the dead bodies were caused by some sharp edged weapon. He has categorically stated that those injuries could be caused by Dharia which was exhibited in the Court though a suggestion was made and denied by the doctor that such injuries could be caused only by an axe. In the FIR, PW-3 had mentioned that the appellant had assaulted the children with an axe but later on changed her statement in the Court saying that it was by mistake she had G mentioned 'axe' in the FIR but in fact it was Dharia. It is a very insignificant contradiction which may not lead to any worthwhile conclusion in view of the fact that it was immaterial whether the weapon was an axe or dharia as both are sharp edged weapons and according to the statement of the doctor the injuries as received by two children were caused by a sharp edged weapon. H There was thus no design or purpose in changing the statement or deliberately

giving out something wrong in the First Information Report about the weapon used by the appellant to cause the injuries upon the deceased persons. The medical evidence supports the prosecution case in all respects. [203-A-D] A

6. On the basis of the statement of the witnesses, no conclusion can be drawn that the appellant was suffering from any mental illness or he used to become mad. No circumstance has been indicated on the basis of which any such inference could be drawn. There is no infirmity in the finding of the High Court that in case it was so, evidence should have been led on behalf of the defence to prove the fact of mental illness. [207-C, E] B

7. Every murder is a heinous crime. Apart from personal implications it is also a crime against the society but in every case of murder death penalty is not to be awarded. Under the present legal position imprisonment for life is the normal rule for punishing crime of murder and sentence of death would be awarded only in the rarest of rare cases. Number of factors are to be taken into account namely the motive of the crime, the manner of the assault, the impact of the crime on the society as a whole, the personality of the accused, circumstances and facts of the case as to whether the crime committed, has been committed for satisfying any kind of lust, greed or in pursuance of anti-social activity or by way of organised crime, drug trafficking or the like. Chances of inflicting the society with the similar criminal act that is to say vulnerability of members of the society at the hands of the accused in future and mitigating and aggravating circumstances of each case has to be considered and a balance has to be struck. [210-G-H; 211-A-B] C D E

Bachan Singh v. *State of Punjab* AIR (1980) SC 898; *Manoharlal @ Munna and Ors.*, v. *State of NCT of New Delhi,* AIR (2000) SC 420; *Kishori v. State (NCT) Delhi,* AIR (2000) SC 562; *Om Prakash v. State of Haryana,* AIR (1999) SC 1332; *Krishan* v. *State of Haryana,* [2000] 10 SCC 451; *Machhi Singh and Ors.* v. *State of Haryana,* AIR (1983) SC 957; *State of Madhya Pradesh* v. *Shyam Sunder Trivedi,* [1994] 4 SCC 262; *Kuljeet Singh alias Ranga* v. *Union of India and Anr.,* AIR (1981) SC 1572; *Asharafi Lal and Sons* v. *State of U.P.,* AIR (1987) SC 1721; *Ramdeo Chauhan alias Rajnath Chauhand* v. *State of Assam,* [2000] 7 SCC 455 and *Dhanajoy Chatterjee alias Dhana* v. *State of West Bengal,* [1994] 2 SCC 220, referred to. F G

8. The appellant had been labouring under the strain suspecting character of his wife. It is true that there does not seem to be any immediate cause before the commission of offence, yet the fact remains that rightly or wrongly such a painful belief was being entertained by the appellant since H

long which constantly engaged his mind as admittedly there had been quarrels on that count between the two. The offence was obviously not committed for lust of power or otherwise or with a view to grab any property nor in pursuance of any orgainsed criminal or anti-social activity. Chances or repetition of such criminal acts at his hands making the society further vulnerable are also not apparent. He had no previous criminal record. Therefore, it cannot be said that the case falls in the category of rarest of rare cases so as to make the appellante liable for extreme penalty of death. The crime committed is no doubt heinous and unpardonable. The act of the appellant is condemnable. However the normal sentence of life imprisonment for the offence of murder would meet the ends of justice. [211-C-D; F-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 927 of 2001.

From the Judgment and Order dated 3.7.2001, 5.7.2001 and 10.7.2001 of the Gujarat High Court in Crl. C.C. No. 2/2000 with Crl. A. No. 500 of 2000.

Chandrakant Nayak (A.C.) for the Appellant.

Ms. Hemantika Wahi and Ms. Anu Sawhney for the Respondent.

The Judgment of the Court was delivered by

BRIJESH KUMAR, J. This appeal has been preferred by the appellant from Jail against the judgment and order dated 5th, 7th and 10th July, 2001 passed by the Gujarat High Court upholding his conviction under Section 302 I. P. C. and sentence of death as awarded by the Additional Sessions Judge Sabarkantha, at Himmatnagar. The reference for confirmation of the death sentence was also accepted.

We have heard the Amicus curiae representing the appellant at length as well as the learned counsel representing the State.

The facts of the case are in a narrow campass. The appellant and PW-3 Ashaben, were married about 15 years before the incident. They had two sons, Jigarsinh and Vimalsinh aged about 12 and 7 years respectively. They were residing in Village Bhadresar along with the parents of the appellant. The brother of the appellant, namely Dashrathsinh was living separately. The prosecution case is that on 24. 8. 1998 while the appellant, the complainant PW-3 Ashaben and their two sons were sleeping on cots inside the house, the

appellant woke her up early in the morning. She milched the cow and requested her husband to deliver the milk at the dairy. The appellant declined to do so upon which she tried to awake Jigarsinh for delivering the milk but the appellant asked her to go herself for the purpose. She accordingly went to the dairy and reached back home at about 7 a. m. She found her husband assaulting the sleeping boys, namely their sons. She raised alarm and rushed into the room thereupon her husband left the house from the other door. Ratansinh her father-in-law and Dasrathsinh her brother-in-law and others arrived. She told them about the incident. The two sons died as a result of injury received by them. PW-4 Mangusinh Tetsinh, father of the complainant, PW-3 Ashaben on getting information of the incident through Sarpanch of his village went to Village Bhadresar, his daughter narrated the whole story to him. He brought her to his village Mhudi from Bhadresar. According to him on the way they also went to the Police Station, Jadar. According to PW-3 her report was written and lodged at the Police Station. The PSI, Police Station, Jadar, Bhurjibhai, who has been examined as PW-8 stated about the lodging of the FIR and registration of the case at the Police station at 5 p.m. on 24.8.1998. Thereafter PW-9 conducted the investigation into the case interrogating the complainant and other witnesses at the spot and taking into custody the other material exhibits and prepared their respective recovery memos including that of the weapon Dharia. He also took into custody the plain and blood stained earth etc. Inquest reports were also prepared. He arrested the accused on 17.9.1998 at 11.15 A.M. The post-mortem examination on the dead bodies of the two deceased was held by PW-1 Dr. Ganpatsinh Ambadan Charan, on 24.8.1998. He found three external injuries on the dead body of Jigarsinh, which consisted of one sharp cut wound on the left cervical region up to the middle line of neck and two other incised wounds. On internal examination he found fracture of the jaws. So far Vimalsinh is concerned he was found to have one sharp cut wound on the neck from left mandible to right ear lobule. There was fracture of occipital bone as well as that of 1st and 2nd cervical spine. The Doctor opined that the injuries were ante-mortem and they were caused by sharp edged weapon. On looking to the exhibit article No. 9, Dharia he stated that the said injuries could be caused by the said weapon. He also stated that injuries were sufficient in the ordinary course of nature to cause death. He denied the suggestion made in the cross-examination that the nature of the injuries indicated could be caused only by axe. He also denied the suggestion that the injury Nos. 2 and 3 could not be caused by Dharia. PW-2, Nathosinh is a witness of recovery and the articles and memos prepared there on. PW-3 is the complainant namely, the mother of the two deceased children and wife of the appellant. She has stated that the appellant

A B C D E F G H

A right from the beginning had suspicion about her character and in that connection he quite often quarreled with her. She however, denied a suggestion made on behalf of the defence in her cross-examination that the appellant used to tell her that the two sons Jigar and Vimal were not born of him. PW-4, Mangusinh Tetsinh, is father of the complainant. PW-5 Dineshbhai Paragbhai, who was examined as witness to the recoveries of his clothes etc. B made on the arrest of the accused on 17.9.1998, PW-6, is yet an another witness in connection with the same. PW-7 Dalpatsinh is a neighbour, who claims to have reached the house of the appellant on the shouts of PW-3, but had found no one else there. PW-8 Bhurjibhai Kavjibhai Damor was PSI and was posted at P. S., Jadar and had registered the case at the Police Station. C PW-9 Babubhai Kodarbhai Patel is the Investigating Officer.

The Trial Court believed the testimony of PW-3 Ashaben, and accepting the prosecution case that the murders have been committed by none else but the appellant convicted him under Section 302 and awarded the capital punishment. The High Court also, after appraising the evidence and considering D the points raised by the appellant upheld the judgment of the Trial Court as well as the conviction and the sentence awarded.

It is clear that the case rests on the only ocular testimony of PW-3 Ashaben the mother of the slain children and the wife of the appellant. The E other prosecution witness of fact regarding the alarm raised by Ashaben in the morning is PW-7 Dalpatsinh, but he has not stated about the presence of the appellant at the spot at the time he reached there. On the other hand he has stated that he reached on the alarm raised by Ashaben whom he had seen returning from the dairy, no one else was present at her house. In connection with the evidence of this witness it has been held that he has not disclosed F the full truth and had only tried to help his neighbour namely the appellant. Apart from other evidence adduced as indicated earlier, there are certain circumstances pointed to the fact that the offence was committed by the present appellant.

G Learned counsel for the appellant has assailed judgment and conviction broadly on the grounds that there was discrepancy between the oral and the medical evidence. The next point, which has been urged with some vehemence is that there being glaring contradiction in regard to lodging of the FIR, the investigation made in the case cannot be relied upon nor a case based on such an FIR could be believed. He also submitted that the presence of the appellant H at the relevant time is not established at the spot nor that of the complainant

PW-3 Ashaben. Yet another submission is that FIR was lodged according to the prosecution case itself after arrival of the parents of the complaint and the complainant not having happy relationship with the accused, falsely implicated him in the case. Yet another ground raised is that the appellant suffered from mental disorder and insanity. Therefore, he could not be liable for the offence convicted for.

Before dealing with each submission made we feel it appropriate to have an over view of the factual position of the case.

According to the complainant as disclosed in the FIR itself besides in her statement in the Court, the appellant had suspicion about her character right from the beginning. A suggestion made in the cross-examination though denied by her was that the accused used to tell her that two slain children were not born of him. In that background in the night preceding the incident the appellant told that they would be sleeping inside the house though usually they slept outside in the open. In the early hours of the morning he woke up his wife and after milching of the cow told her to go to the dairy to deliver the milk. He had himself declined to go to the dairy when asked by the complainant and had also not allowed her to awake Jigarsinh to go to the dairy for the purpose. According to the prosecution case after the complainant had left and he was alone in the house, he committed the crime which was witnessed by PW-3 on her return from the dairy. According to the complainant she raised alarm on seeing the appellant assaulting the children, upon which the appellant slipped away by the back door leaving the weapon at the spot. It is also stated by her that on her shouts her father-in-law, brother-in-law and others also arrived. Out of these persons Dalpat Sinh has been examined as PW-7. He is a neighbour of the appellant. The prosecution case as disclosed by PW-3 Ashaben, the complainant, is corroborated by the witness to the extent that he saw her returning from the dairy and that she raised alarm upon which he reached the spot and found that her two sons were lying murdered but thereafter he adds that he had not found anyone else at the spot meaning thereby that he does not state about the presence of the appellant there at that point of time.

So far PW-3 is concerned, it is her own case that the appellant had been quarreling with her quite often having suspicion on her character. The appellant also used to drink and sometimes gave beating to her. Her father PW-4 Mangusinh Tetsinh stated that his daughter at times told that the appellant had been having quarrels with her but other details were not brought to his

notice. As observed by the High Court, and in our view, rightly, that the husband and wife had still been living together with the differences whatever were there in between them which had not grown to such proportion that she might have told about it to her father or may not be prepared to live together. It also comes out from her statement that the appellant had been having his say in the matters at home and he woke her up and desired her to go to the dairy to deliver the milk refusing to do so himself even though asked by her. He also did not allow to awake Jigarsinh for the purpose. That is to say she was still obeying the wishes of her husband in the household chores and affairs. It has been observed in the judgment that PW-7 while saying that on reaching at the spot, he found no one else there, he was not speaking the full truth. It is however, to be noted that to a very great extent the statement of PW-3, Ashaben stands supported by his statement. The circumstances which undisputedly flow from these facts are that after PW-3 Ashaben left for dairy there was none else at the house except the appellant with two children asleep. On her return from the dairy she raised alarm seeing the appellant assaulting the children upon which the accused slipped away. PW-7, who arrived at the spot, it would not be surprising that he did not find accused present at that time. In the background of whatever has been indicated above it is clear that the relations between the appellant and PW-3 had not strained from her side at least to the extent that PW-3 would falsely implicate her husband for the murder of her two children leaving the real culprit who may have murdered their two sons. She was still complying with whatever the appellant desired her to do. It is also to be noted that father of the appellant though resides in the same house and having arrived at the spot, did not proceed to lodge the FIR. Brother of the appellant who also resides there though separately, failed to inform the police even though he had also arrived at the spot on the alarm raised by the complainant. The obvious reason appears to be that they might not be ready to lodge report against the appellant, the own son and the brother. Not this alone, once the father and the brother of the accused would find that the appellant was being falsely roped in by his wife, there was no reason for them not to come forward to inform the police about the correct position or to say that the crime was not committed by the appellant. They also did not appear in his defence in the Court to say that it was a case of false implication of the appellant by none else but his daughter-in-law. Normally a brother or father will also not be a silent spectator to the false implication of his brother/son by his wife.

Now taking up the points as raised by the appellant regarding the medical evidence, we may at the outset indicate that there is no force in it.

Learned counsel for the appellant has submitted that according to the statement of the doctor PW-1Ganpat Sinh Ambadan Charan the injuries found on the dead bodies of the deceased could only be caused by an Axe and not by a Dharia. On going through the statement of the doctor we do not find that the submission made is supported in any manner. The doctor has very clearly stated that all the injuries found on the dead bodies were caused by some sharp edged weapon. He has categorically stated that those injuries could be caused by Dharia which was exhibited in the Court though a suggestion was made and denied by the doctor that such injuries could be caused only by an axe. In this connection the other related argument which has been raised is that in the FIR PW-3 had mentioned that the appellant had assaulted the children with an axe but later on changed her statement in the Court saying that it was by mistake she had mentioned 'axe' in the FIR but in fact it was Dharia. In our view it is a very insignificant contradiction which may not lead to any worthwhile conclusion in view of the fact that it was immaterial whether the weapon was an axe or a dharia as both are sharp edged weapons and according to the statement of the doctor the injuries as received by two children were caused by a sharp edged weapon. There was thus no design or purpose in changing the statement or deliberately giving out something wrong in the First Information Report about the weapon used by the appellant to cause the injuries upon the deceased persons. The medical evidence supports the prosecution case in all respects. We therefore find no force in this submission as well.

Learned counsel for the appellant then submitted that presence of the appellant at the relevant time at the spot is not established and in this connection he has mainly relied upon the statement of PW-7. We have already made our observations in that regard. We find that it has rightly been found by the courts below that PW-7 has not come out with full truth, may be with a view to help out his neighbour otherwise to a great extent prosecution case finds supports from his statement up to the stage, the PW 3 on return from the dairy had raised an alarm. In this view of the matter the presence of PW-3 can also not be doubted in respect of which an effort was made to raise an argument in vain.

The next argument upon which much stress has been given by the learned counsel for the appellant is about the contradiction relating to the lodging of the FIR. According to the PW-3 she had gone to the police station where inquiries were made from her by the police personnel and thereafter report was lodged on 24.8.98 itself at 5.00 P. M. PW-9 also states that

A complaint was given by Ashaben on the basis of which a case was registered at the police station. In the cross-examination, he has however stated that on his way back from the Court, he got a wireless message from the Control Room, regarding this incident thus he straightaway went to village Bhadresar from Himmatnagar. The report was written at the house of Ashaben who was present there. The report was forwarded to the police station for registration B of the case. He also states that mother-in-law and father-in-law of the complainant were also present at the house. He inspected the spot and completed the other formalities of the investigation. He has also stated that two dead bodies were identified by PW-3 who had also shown him the place of occurrence. There is no doubt about the fact that there is definitely a C contradiction about the lodging of the FIR but the effect of such contradiction or discrepancy may have to be viewed in the light of the facts and circumstances of each case. There may be cases where such a discrepancy may prove fatal to the prosecution case whereas in other cases it may not have the same effect. The high Court has considered this matter in some detail taking into account all the discrepancies in regard to this point and D came to the conclusion that PW-9 the Investigating Officer had come straight to the village Bhadresar while returning from the Court after obtaining the remand of accused persons in some other case and the FIR was scribed there at the house of Ashaben which was forwarded to the Police Station for its registration. It has been observed that for an uneducated village person, it is E not unlikely that one may make some embellishment in the statement saying that the FIR was recorded at the police station since normally it is recorded there. It has also been observed that the complainant Ashaben was present in Village Bhadresar when the police reached there and that the Panchnamas etc. had also been prepared in her presence and that she had also identified the bodies and pointed out the place of occurrence to the Investigating Officer. F As observed earlier the discrepancy in regard to the lodging of the FIR is certainly there and the conduct of the Investigating Officer in carrying out the investigation of the case has also been commented upon by the trial court but we are of the view that the consequences of such discrepancies or defective or doubtful investigation is not necessarily only one leading to discredit the G main prosecution case if the prosecution evidences inspires confidence and circumstances lead to such a conclusion and the prosecution story rings true. No doubt that in that event it would be necessary to evaluate as to what extent such faulty investigation or discrepant statement on certain facts relating thereto, shall cause damage to the prosecution case as a whole. In the judgment of the High Court a few decisions on the point with their relevant observations H made thereunder have been referred to which we may to reproduce. They are

as follows:

"In *State of Rajasthan* v. *Kishore,* [1996] SCC (Crl) 646 has pointed out that mere fact that the investigating officer committed irregularity or illegality during the course of investigation would not and does not cast doubt on the prosecution case nor trustworthy and reliable evidence can be cast aside to record acquittal on that account. In that case piece of evidence was not considered by the High Court but it fell it doubtful like Doubting Thomas with vacillating mind to accept the prosecution case for the reasons which the Apex Court pointed out were invalid reasons and has wrongly given benefit of doubt to the respondent. Suffice it to say that in the instant case, there is sufficient, reliable, trustworthy and acceptable evidence and therefore the discrepancy pointed out is of no importance and does not affect the prosecution case and therefore, not only the evidence was rightly accepted by the trial court but the trial court on appreciation of evidence and circumstances in which offence was committed, made the order.

The Apex Court in the case of *Karnail Singh* v. *State of Madhya Pradesh,* [1995] 5 SCC 518 has observed as under:

"In case of defective investigation, it would not be proper to acquit the accused if the case is otherwise established conclusively because in that event, it would tantamount to the falling into the hands of an erring investigating officer. "

In the case of *Ram Bihari Yadav* v. *State of Bihar,* (1998) 4 S.C.C. 517, the Apex Court observed in Para 13 as under:

"In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice"

In the case of *Paras Yadav* v. *State of Bihar,* [1999] 2 SCC 126 the Court held as under:

A "It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omission to find out whether the said evidence is reliable or not"

B The High Court has also referred to a decision reported in 2000 S.C.C. (Crl.) 522 *Ambica Prasad and Anr.* v. *State (Delhi Administration)* in which this Court observed that faulty investigation or witnesses turning hostile may not ultimately affect the merit of the case nor it could be a ground to disbelieve the statement of the prosecution witnesses.

C In our view the High Court taking into account the observations made in the decision referred to above came to the conclusion that otherwise reliable statement of the witness PW-3 Ashaben could not be discarded or discredited even though there had been any fault or negligence in conducting the investigation, that too by itself, be not sufficient to dislodge the prosecution case as a whole. The chances of making some embellishment here and there D in the statement are not ruled out even in cases of otherwise truthful and reliable witnesses. The concept of falsus in uno and falsus in omnibus" has been discarded long ago. Therefore in such circumstances the Court may have to scrutinize the matter a bit more closely and carefully to find out as to how far and to what extent the prosecution story as a whole is demolished E or it is rendered unreliable. For this purpose the statement of the witnesses will have to be considered along with other corroborating evidence and independent circumstances so as to come to a conclusion that the contradiction in the statement of a witness could be considered as an embellishment by the witness under one or the other belief or notion or it is of a nature that the whole statement of the witness becomes untrustworthy affecting the F prosecution case as a whole. The same principle will apply to a faulty or tainted investigation. Other relevant facts and circumstances cannot be totally ignored altogether. While appreciating the matter one of the relevant considerations would be that chances of false implication are totally eliminated and the prosecution story as a whole rings true and inspires confidence. In G such circumstances despite the contradictions of the defective or tainted investigation, a conviction can safely be recorded.

We may next consider the argument made on behalf of the appellant that he was suffering from mental ailment and had received medical treatment for the same. First of all a reference has been made to the statement of PW- H 7 Danpatsinh who is neighbour of the appellant. He has stated that the appellant

had been suffering from mental disease and had been admitted in the hospital of Dr. Navin Modi. He further stated that the appellant was like a mad person and did not have any sense. It was also stated by him that the husband and wife were not on good terms and quarrel used to take between them. Whenever he got ill, his father used to take him to the hospital. So far the nature of illness of the appellant is concerned, PW-3 denied the suggestion that he was suffering from any mental illness. She stated that he had been taking liquor. She further goes on to say that he was admitted in Himmatnagar Hospital but did not know if it was hospital of Dr. Navin Modi or some other hospital. We do not think that on the basis of the statement of these witnesses, any conclusion can be drawn that the appellant was suffering from any mental illness or he used to become mad. We find no infirmity in the finding of the High Court that in case it was so, evidence should have been led on behalf of the defence to prove the fact of mental illness. The prescription of the treatment given to the appellant in the hospital should have been brought in the record or the Doctor who may have treated him could be produced to show that the appellant suffered from any mental illness. Obviously these facts if at all, would be in the special knowledge of the defence and in case the defence wanted to take advantage of any such ground of mental illness, this plea should have been substantiated by adducing relevant and cogent evidence. No circumstance has been indicated on the basis of which any such inference could be drawn. We therefore, find no force in this argument as advanced on behalf of the appellant.

The Submission made on behalf of the appellant that the complainant had actually not witnessed the occurrence also has no basis. She has made the statement to that effect and nothing could be elicited in her cross-examination by reason of which any doubt could arise about the veracity of her statement. On return from the dairy she found her husband assaulting the deceased and on her alarm raised he slipped away from the other door. It is also strange that after the incident the appellant was not available for more than 15 days until he was arrested by the police. In the normal course, on the murder of his two sons, he should have been moving around the scene and to have lodged the report against the real assailants or in case real assailants were not known, he could have lodged the report without naming any accused therein. PW-3 has made her statement in a very natural way without trying to hide anything. She has stated categorically that her husband suspected her character from the beginning and had been quarreling on that account . She also stated that about a week before he was drunk and had also given a beating to her. She has given a vivid description of the incident most naturally the way she

A was awakened and was told by her husband to go to deliver the milk at the dairy. She did go and on return as soon as she entered into the house, she raised alarm, this part of statement is supported by PW-7 also, but for the fact that according to him on his arrival, he found no one else at the scene of occurrence. It would be a matter of minutes or a fraction thereof, if the accused had at once left the place by the other door, the moment he heard B the alarm of PW-3. The PW-7 though a neighbour lives in different house and by the time he reached, it is not unlikely that he may have missed the appellant who had left the spot. Therefore, on the basis of the mere statement of PW-7 that on his arrival he found no one else it can not be said that PW-3 told a lie while stating that her husband had slipped away from the other C door on hearing her cries. At the same time, we also find no good reason to suspect that she would falsely implicate her husband for the killing of their sons by some one else. The real assailants of her own children would not be spared. It is true, as pointed out by the learned counsel for the appellant that her husband suspected her and there had been quarrel between them yet the fact remains that they continued to live together. It is difficult to accept that D after loosing sons she would be prepared to loose her husband too by falsely implicating him though she had been living with him for last 15 years along with his parents in the same house. As indicated earlier also at the risk of repetition we may again point out the question which stares for an answer is as to why the appellant himself, his father or brother would not lodge the E report or in any case if it was correct that he was being falsely fixed then too they would prefer silence rather to come forward to save the life of his son or the brother.

In the above background we find that the Trial Court and the High Court have rightly placed implicit reliance upon the statement of PW-3 despite F the infirmities which crept in due to careless investigation and contradiction regarding the place of lodging of the report. PW-3 was quite categorical that after the report was scribed she had put her thumb impression upon the same. According to I. O. PW-9, it was forwarded to the police station for registration of the case, which according to PW-3 was lodged at the police station itself. The Trial Court and the High Court have already appreciated the position and G have rightly observed that it may be due to some confusion or carelessness or under an impression that the reports are lodged at police station. PW-3 had stated that she has lodged the report at the police station, whereas it has been found that it was written at Village Bhadresar at her place. Learned counsel for the appellant relying upon the decision reported in 1994 (Suppl) 1 SCC H 590, submitted that if the Investigating Officer reaches the spot without

recording the FIR first, the statement given by the complainant is to be treated as under Section 162 Cr.P.C. and it would not be safe to rely upon it and as it can not be treated as a FIR. It is also submitted that the prosecution case also becomes doubtful and unreliable. We feel that we have substantially dealt with this aspect of the matter in the earlier part of the judgment even what has submitted by the learned counsel for the appellant is accepted, in our view, it will have no effect on the merit of the case based on the unimpeachable evidence on the record supported by the medical evidence and the independent circumstances of the case.

Statement of PW-3 Ashaben totally inspires confidence. It also appears that she was not ill-disposed to her husband to the extent that it could be inferred that she would be falsely implicating him in such a crime. This fact would be apparent from the statement of her father PW-4 who had stated that he knew that sometimes quarrels took place between her daughter and the appellant but he was never given any details about the same. Had she been ill-disposed to him, she might have been making all sorts of complaints to her parents but that does not appear to be so. The prosecution story as per her statement rings true and stands established by cogent evidence on the record and independent circumstances.

We may now turn to the question of sentence. In *Bachan Singh* v. *State of Punjab,* AIR (1980) SC 898 this Court said that death sentence is to be awarded only in the rarest of rare cases. In *Manoharlal @ Munna and Ors.* v. *State of NCT of New Delhi,*. AIR (2000) SC 420 death penalty was not awarded even though four innocent children of the family of the witness were burnt to death. It was however a case of rioting. In the case of *Kishori* v. *State* (NCT) Delhi AIR (2000) SC 562 also death sentence was not awarded as it was a case of mob attack and frenzy. A number of persons were killed. It was not considered to be the rarest of rare cases. Apart from these cases a reference has also been made to a decision reported in AIR (1999) SC 1332 *Om Prakash* v. *State of Haryana,* where accused a member of para military force had killed seven members of a family in a pre-planned manner as he was labouring under the strain that the accused and the members of his family were suffering agony at the hands of the family of the victims. He had a feeling of injustice being meted out to them. The Court considered it to be a mitigating circumstance and not treated it to be rarest of rare cases. Similarly, in the case of *Krishan* v. *State of Haryana,* [2000] 10 SCC 451 punishment of life imprisonment was awarded where the murder was committed while the accused was already undergoing life imprisonment and was on parole. It

A was observed that this fact alone would not be sufficient to inflict the death penalty. Other facts and circumstances would also have to be taken into account. In *Machhi Singh and Ors* v. *State of Haryana,* AIR (1983) SC 957 it has been observed that extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Circumstances of the offender are also required to be taken into account while considering the question of B awarding the death penalty. Imprisonment for life is the rule as punishment for murder and death sentence is an exception. It has then been observed that a balance-sheet of aggravating and mitigating circumstances has to be drawn up and a balance has to be struck. The other facts which need to be considered are magnitude of the crime, the anti-social nature of the crime, personality C of the victim, motive and the manner of commission of the murder etc. In *State of Madhya Pradesh* v. *Shyam Sunder Trivedi,* [1994] 4 SCC 262 also it has been observed that the Court must balance the mitigating and aggravating circumstances of the case which would depend upon the particular and peculiar circumstances of each case. On the other hand the cases in which death sentence was awarded and taken note of by the High Court are *Kuljeet Singh* D *alias Ranga* v. *Union of India and Anr.* AIR (1981) SC 1572. In this case also two innocent children were murdered. However, we find that they were kidnapped first with oblique motive and were murdered. In *Asharafi Lal and Sons* v. *State of U.P.,* AIR (1987) SC 1721 the accused persons had killed their two innocent nieces to wreak personal vengeance regarding property E dispute with the mother of the victims. In this case also death sentence was awarded by this Court. A reference is also made to a case reported in (2000) 7 S.C.C. 455 *Ramdeo Chauhan alias Rajnath Chauhand* v. *State of Assam.* It was observed that when a man becomes beast and menace to the society, he could be deprived of his life according to the procedure established by law. In *Dhananjoy Chatterjee alias Dhana* v. *State of West Bengal,* [1994] F 2 SCC 220 the accused had killed his pregnant wife and three minor children for no reason and without provocation. He had assaulted his mother also who came to their rescue. The incident was described to be shocking to the conscience of the society. Hence, death sentence was awarded.

G Every murder is a heinous crime. Apart from personal implications, it is a crime against the society but in every case of murder death penalty is not to be awarded. Under the present legal position imprisonment for life is the normal rule for punishing crime of murder and sentence of death, as held in different cases referred to above, would be awarded only in the rarest of rare cases. The number of factors are to be taken into account namely, the motive H of the crime, the manner of the assault, the impact of the crime on the society

as a whole, the personality of the accused, circumstances and facts of the case as to whether the crime committed, has been committed for satisfying any kind of lust, greed or in pursuance of anti-social activity or by way of organized crime, drug-trafficking or the like. Chances of inflicting the society with the similar criminal act that is to say vulnerability of the members of the society at the hands of the accused in future and ultimately as held in several cases mitigating and aggravating circumstances of each case has to be considered and a balance has to be struck. The learned State counsel has already indicated the aggravating circumstances by reason of which it has been vehemently urged that sentence of death deserves to be confirmed.

Now considering the facts of the present case in the background of our observations made in the preceding paragraph, we take note of the fact that the appellant had been labouring under the strain suspecting character of his wife. This fact is mentioned by none else but by the complainant Ashaben herself in her report. She also admitted in her statement in Court that quite often there has been quarrel between the two on that count. Though denied, a suggestion has been made to PW-3 Ashaben in her cross-examination that the appellant had been telling her that their sons were not born of him. It is true that there does not seem to be any immediate cause before the commission of offence, yet the fact remains that rightly or wrongly such a painful belief was being entertained by the appellant since long which constantly engaged his mind as admittedly there had been quarrels on that count between the two. Obviously he would have been brooding under that idea, which perhaps he could not contain any more. It is true that two innocent children lost their lives for no fault of theirs. We also notice that Dharia is a weapon, which is ordinarily to be found in the house of any farmer or agriculturist in that area as stated by PW-3. He seems to have used the weapon as lying in the house. The offence was obviously not committed for lust of power or otherwise or with a view to grab any property nor in pursuance of any organized criminal or anti-social activity. Chances of repetition of such criminal acts at his hands making the society further vulnerable are also not apparent. He had no previous criminal record.

For the above reasons in our view it cannot be said that the case falls in the category of rarest of rare cases so as to make the appellant liable for extreme penalty of death. The crime committed is no doubt heinous and unpardonable. The act of the appellant is condemnable. In our view however the normal sentence of life imprisonment for the offence of murder would meet the ends of justice.

A In the result, while dismissing the appeal against his conviction, we set aside the sentence of death as awarded by the trial court and confirmed by the High Court and commute to that of imprisonment for life. The appellant shall serve out the sentence of imprisonment for life.

T.N.A. Appeal dismissed.

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