A

SUSHIL SHARMA

v.

THE STATE OF N.C.T. OF DELHI

(Criminal Appeal No.693 of 2007)

B

OCTOBER 8, 2013

[P. SATHASIVAM,CJI AND RANJANA PRAKASH DESAI AND RANJAN GOGOI, JJ.]

Penal Code, 1860 – s.302 and s.120-B r/w s.201 – Naina C *Sahni murder case – Prosecution case that appellant killed his wife since he was suspecting that she was having some relationship with PW-12 and also because appellant did not want to make his marriage with the deceased public while the deceased was insisting on the same – Further case of the* D *prosecution that after killing her, the appellant with the help of A2 burnt her dead body in the tandoor of the Bar-be-Que restaurant owned by the appellant – Conviction of appellant u/s.302 and s.120-B r/w s.201 and of A2 u/s.120-B r/w s.201 – Justification – Held: The prosecution successfully proved* E *beyond reasonable doubt number of incriminating circumstances against the accused – Chain of circumstances complete and unerringly pointed to the guilt of appellant – Established circumstances capable of giving rise to inference inconsistent with any other hypothesis except the guilt of* F *appellant – Prosecution, therefore, proved that the appellant alone committed the murder of deceased in the flat where they were staying together and then conspired with A2 to do away with the dead body of the deceased so as to cause disappearance of the evidence of murder – At the instance* G *of appellant, A2 burnt the dead body in the tandoor – Appellant, therefore, rightly convicted u/s.302 IPC and u/s.201 r/w s.120-B IPC – A2 rightly convicted u/s.201 r/w s.120-B.*

Sentence / Sentencing – Appropriate sentence –

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Mitigating circumsfances – Appreciation of – Murder – Naina Sahni murder case – Appellant convicted by Courts below for murdering his wife and for thereafter burning the dead body in the tandoor of the Bar-be-Que restaurant owned by him – Death sentence awarded by Trial Court and confirmed by the High Court – Propriety – Held: Appellant suspected the fidelity of deceased and the murder was the result of this possessiveness – When appellant was taken to the Mortuary and the dead body was shown to him, he started weeping – He was therefore not remorseless – Medical evidence did not establish that the dead body was cut – No recovery of any weapon like chopper which could suggest that appellant had cut the dead body – Murder was the outcome of strained personal relationship – It was not an offence against the Society – Appellant had no criminal antecedents – No evidence led by the State to indicate that he was likely to revert to such crimes in future – Appellant was the only son of his parents, who were old and infirm – Appellant already spent more than 10 years in death cell – The offence was brutal but brutality alone would not justify death sentence in this case – Death sentence commuted to life imprisonment in view of the mitigating circumstances – Life sentence for the whole of remaining life subject to remission granted by the appropriate Government u/s. 432 CrPC, which, in turn, subject to procedural checks mentioned in the said provision and further substantive checks in s.433-A CrPC – Penal Code, 1860 – s.302 and s.120-B r/w s.201 – Code of Criminal Procedure, 1973 – ss.432 and 433A.

The prosecution case was that in the night intervening 2/7/1995 and 3/7/1995, the appellant killed his wife since he was suspecting that she was having some relationship with PW-12 and also because appellant also did not want to make his marriage with the deceased public while the deceased was insisting on the same. The further case of the prosecution was that after killing her, the appellant with the help of A2 burnt her dead body

A in the tandoor of the *Bagia* Bar-be-Que restaurant owned by the appellant. The trial court convicted the appellant u/s. 302 IPC and also u/s.120-B r/w s.201 IPC and sentenced him to death. A2 was convicted u/s. 120-B r/w s. 201 IPC. Three other accused- A3, A4 and A5, who were B tried u/s. 212 IPC, were acquitted. The High Court confirmed the conviction and the death sentence awarded to the appellant.

In the instant appeal, the questions for consideration C before this Court were whether the conviction of appellant was correct and whether the death sentence awarded by the trial Court and confirmed by the High Court was justified.

Disposing of the appeal, the Court

D

HELD:1.1. In the instant case, the prosecution successfully proved beyond reasonable doubt the following circumstances: (a) the appellant and the deceased were married and they were staying together; E (b)the relations between the appellant and the deceased were strained. The appellant was suspecting the fidelity of the deceased. The deceased wanted to make their marriage public which the appellant was not willing to do. There was, thus, a strong motive to murder; (c) the F appellant and the deceased were last seen together in the evening of 2/7/1995 in the said flat; (d) on 2/7/1995, at about 11.00 p.m. there was a fire in Bagia Restaurant and the appellant was seen at around 10.15 p.m. at the Bagia Restaurant in his Maruti Car bearing No.DL-2CA-1872; (e) A2, who was an employee of the Bagia Restaurant owned G by the appellant, was seen shuffling the wood in the *tandoor* with a wooden stick and he was apprehended at the spot in the night intervening 2/7/1995 and 3/7/1995; (f) charred corpse found in the *tandoor* was identified to be that of the deceased; (g) on 4/7/1995, certain blood H stained articles were recovered from the said flat where

the appellant and the deceased were staying together; (h) on 4/7/1995, Car No.DL-2CA-1872 was found abandoned at Malcha Marg and the dicky of the car was found to contain dry blood; (i) on 5/7/1995, five empty cartridges, one lead bullet, a ply with bullet hole and an air pistol were recovered from the flat where the appellant and the deceased were staying together; (j)from the evening of 2-3/7/1995, the appellant was on the run till he was arrested by the Bangalore Police at Bangalore on 10/07/1995. On 11/07/1995, the appellant was handed over to the Delhi Police and, inter alia, a .32 Arminius revolver owned by him was recovered by the police from his room at Pai Vihar Hotel at Bangalore; (k)the second post-mortem report prepared after studying the X-ray plates of the skull of the deceased revealed that there were two bullets embedded in it; (l)the CFSL report stated that the said two bullets recovered from the skull of the deceased and the one lead bullet recovered from the said flat were fired from the .32 Arminius revolver recovered by the police from Pai Vihar Hotel at Bangalore; (m) the death of the deceased was homicidal and was consequent upon firearm injuries to the head of the deceased caused by the appellant alone with his .32 bore Arminius revolver; (n) as per the CFSL Report, blood found on various articles seized from the said flat and from Bagia Restaurant and the blood found on the bullets recovered from the skull tallied. It was of the blood group of the deceased; (o) the defence of alibi pleaded by the appellant was found to be false; and (p) the appellant and A2 conspired to cause disappearance of the evidence of murder by burning the dead body of the deceased in tandoor of Bagia Restaurant. [Para 56] [608-B-H; 681-A-H; 682-A-B]

1.2. The chain of the circumstances is complete and unerringly points to the guilt of the appellant. The established circumstances are capable of giving rise to

A inference which is inconsistent with any other hypothesis except the guilt of the appellant. The prosecution has, therefore, proved that the appellant alone has committed the murder of the deceased in the said flat on 2/7/1995. The appellant conspired with A2 to do away with the dead B body of the deceased so as to cause disappearance of the evidence of murder and, at the instance of the appellant, A2 burnt the dead body in the tandoor. The appellant has, therefore, rightly been convicted under Section 302 of the IPC and also for offence under Section C 201 read with Section 120-B of the IPC. A2 has been acquitted of offence punishable under Section 302 read with Section 120-B of the IPC. However, he has been rightly convicted for offence punishable under Section 201 read with Section 120-B of the IPC. The conviction of the appellant is confirmed for offence punishable D under Section 302 IPC and also for offence punishable under Section 201 read with Section 120-B IPC. [Para 57] [682-C-G]

Bahadul v. State of Orissa. AIR 1979 SC 1262: 1979 (4) E SCC 346; *Swamy Shraddananda alias Murali Manohar Mishra v. State of Karnataka* (2007) 12 SCC 288: 2007 (7) SCR 616 – referred to.

2.1. However, mere brutality of the murder or the F number of persons killed or the manner in which the body is disposed of has not always persuaded this Court to impose death penalty. Similarly, at times, in the peculiar factual matrix, this Court has not thought it fit to award death penalty in cases, which rested on circumstantial evidence or solely on approver's evidence. Where G murder, though brutal, is committed driven by extreme emotional disturbance and it does not have enormous proportion, the option of life imprisonment has been exercised in certain cases. Extreme poverty and social status has also been taken into account amongst other H circumstances for not awarding death sentence. In few

cases, time spent by the accused in death cell has been taken into consideration along with other circumstances, to commute death sentence into life imprisonment. Where the accused had no criminal antecedents; where the State had not led any evidence to show that the accused is beyond reformation and rehabilitation or that he would revert to similar crimes in future, this Court has leaned in favour of life imprisonment. In such cases, doctrine of proportionality and the theory of deterrence have taken a back seat. The theory of reformation and rehabilitation has prevailed over the idea of retribution. [Para 79] [700-D-H; 701-A]

2.2. On the other hand, rape followed by a cold-blooded murder of a minor girl and further followed by disrespect to the body of the victim has been often held to be an offence attracting death penalty. At times, cases exhibiting premeditation and meticulous execution of the plan to murder by levelling a calculated attack on the victim to annihilate him, have been held to be fit cases for imposing death penalty. Where innocent minor children, unarmed persons, hapless women and old and infirm persons have been killed in a brutal manner by persons in dominating position, and where after ghastly murder displaying depraved mentality, the accused have shown no remorse, death penalty has been imposed. Where it is established that the accused is a confirmed criminal and has committed murder in a diabolic manner and where it is felt that reformation and rehabilitation of such a person is impossible and if let free, he would be a menace to the society, this Court has not hesitated to confirm death sentence. Many a time, in cases of brutal murder, exhibiting depravity and sick mind, this Court has acknowledged the need to send a deterrent message to those who may embark on such crimes in future. In some cases involving brutal murders, society's cry for justice has been taken note of by this court, amongst other relevant factors. But, one thing is certain that while

A deciding whether death penalty should be awarded or not, this Court has in each case realizing the irreversible nature of the sentence, pondered over the issue many times over. This Court has always kept in mind the caution sounded by the Constitution Bench in *Bachan Singh* that Judges should never be bloodthirsty but
B wherever necessary in the interest of society locate the rarest of rare case and exercise the tougher option of death penalty. [Para 80] [701-B-G]

2.3. In the nature of things, there can be no hard and
C fast rules which the Court can follow while considering whether an accused should be awarded death sentence or not. The core of a criminal case is its facts and, the facts differ from case to case. Therefore, the various factors like the age of the criminal, his social status, his
D background, whether he is a confirmed criminal or not, whether he had any antecedents, whether there is any possibility of his reformation and rehabilitation or whether it is a case where the reformation is impossible and the accused is likely to revert to such crimes in future and become a threat
E o the society are factors which the criminal court will hav to examine independently in each case. Decision whether to impose death penalty or not must be taken in light of guiding principles laid down in several authoritative pronouncements of this Court in the facts and attendant
F circumstances of each case. [Para 81] [701-H; 702-A-C]

2.4. Though judicial proceedings do take a long time in attaining finality, that would not be a ground for commuting the death sentence to life imprisonment. The
G time taken by the courts till the final verdict is pronounced cannot come to the aid of the accused in canvassing commutation of death sentence to life imprisonment. Though ordinarily, it is expected that even in this Court, the matters where the capital punishment is involved, will
H be given top priority and shall be heard and disposed of

as expeditiously as possible but it could not be doubted that so long as the matter is pending in any court, before final adjudication, even the person who has been condemned or who has been sentenced to death has a ray of hope. It, therefore, could not be contended that he suffers that mental torture which a person suffers when he knows that he is to be hanged but waits for the doomsday. Therefore, the appellant cannot draw any support from the fact that from the day of the crime till the final verdict, a long time has elapsed. Fair trial is the right of an accused and involves following the correct procedure and giving opportunity to the accused to probabalize his defence. In a matter such as this, hurried decision may not be in the interest of the appellant. [Para 82] [702-D-H; 703-A]

2.5. The appellant was the State President of the Youth Congress in Delhi. The deceased was a qualified pilot and she was also the State General Secretary of Youth Congress (Girls Wing), Delhi. She was an independent lady, who was capable of taking her own decisions. From the evidence on record, it cannot be said that she was not in touch with people residing outside the four walls of her house. Evidence discloses that even on the date of incident at around 4.00 p.m. she had contacted PW-12. She was not a poor illiterate hapless woman. Considering the social status of the deceased, it would be difficult to come to the conclusion that the appellant was in a dominant position qua her. The appellant was deeply in love with the deceased and knowing full well that the deceased was very close to PW-12, he married her hoping that the deceased would settle down with him and lead a happy life. The evidence on record establishes that they were living together and were married but unfortunately, it appears that the deceased was still in touch with PW-12. It appears that the appellant was extremely possessive of the deceased.

A The evidence on record shows that the appellant suspected her fidelity and the murder was the result of this possessiveness. When the appellant was taken to Lady Hardinge Mortuary and when the dead body was shown to him, he started weeping. It would be difficult, B therefore, to say that he was remorseless. The fact that he absconded is undoubtedly a circumstance which will have to be taken against him, but the same would be more relevant to the issue of culpability of the accused which is already decided against him rather than the C question of what would be the appropriate sentence to be awarded which is presently under consideration. The medical evidence does not establish that the dead body of the deceased was cut. The second post-mortem report states that no opinion could be given as to whether the D dead body was cut as dislocation could be due to burning of the dead body. There is no recovery of any weapon like chopper which could suggest that the appellant had cut the dead body. No member of the family of the deceased came forward to depose against E the appellant. In fact, in his evidence, PW-81 IO stated that the brother and sister-in-law of the deceased stated that they were under the obligation of the appellant and they would not like to depose against him. Murder was the outcome of strained personal relationship. It was not an offence against the Society. The appellant has no F criminal antecedents. He is not a confirmed criminal and no evidence is led by the State to indicate that he is likely to revert to such crimes in future. It is, therefore, not possible in the facts of the case to say that there is no chance of the appellant being reformed and rehabilitated. G That option is not closed. Though it may not be strictly relevant, the appellant is the only son of his parents, who are old and infirm. As of today, the appellant has spent more than 10 years in death cell. Undoubtedly, the offence is brutal but the brutality alone would not justify H death sentence in this case. The above mitigating

circumstances persuade this Court to commute the death sentence to life imprisonment. Life sentence is for the whole of remaining life subject to the remission granted by the appropriate Government under Section 432 CrPC, which, in turn, is subject to the procedural checks mentioned in the said provision and further substantive checks in Section 433-A CrPC. [Para 83] [703-B-H; 704-A-G]

Bachan Singh, etc. v. State of Punjab, etc. **(1980) 2 SCC 684 and** *Smt. Triveniben, etc. v. State of Gujarat, etc.* **(1989) 1 SCC 678: 1989 (1) SCR 509 – followed.**

Santosh Kumar Satishbhushan Bariyar, etc. v. State of Maharashtra, etc. **(2009) 6 SCC 498: 2009 (9) SCR 90;** *Ramdeo Chauhan alias Raj Nath v. State of Assam* **(2001) 5 SCC 714: 2001 (3) SCR 669;** *Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka* **(2008) 13 SCC 767: 2008 (11) SCR 93;** *Aloke Nath Dutta & Ors. v. State of West Bengal* **(2007) 12 SCC 230: 2006 (10) Suppl. SCR 662;** *Haresh Mohandas Rajput v. State of Maharashtra* **(2011) 12 SCC 56: 2011 (14) SCR 921;** *State of Punjab v. Manjit Singh and Ors.* **(2009) 14 SCC 31: 2009 (9) SCR 864;** *Mohd. Chaman v. State (NCT of Delhi)* **(2001) 2 SCC 28;** *Dilip Premnarayan Tiwari & Anr. etc. v. State of Maharashtra* **(2010) 1 SCC 775: 2009 (16) SCR 322;** *Sebastian alias Chevithayan v. State of Kerala* **(2010) 1 SCC 58;** *Rajesh Kumar v. State through Government of NCT of Delhi* **(2011) 13 SCC 706;** *Amit v. State of Uttar Pradesh* **(2012) 4 SCC 107,** *Machhi Singh & Ors. v. State of Punjab* **(1983) 3 SCC 470: 1983 (3) SCR 413;** *Piare Dusadh v. King Emperor AIR* **1944 FC 1;** *Neti Sreeramulu v. State of Andhra Pradesh* **(1974) 3 SCC 314: 1973 (3) SCR 844;** *Ediga Anamma v. State of Andhra Pradesh* **(1974) 4 SCC 443: 1974 (3) SCR 329;** *Ramesh and Ors. v. State of Rajasthan* **(2011) 3 SCC 685: 2011 (4) SCR 585;** *Mohd. Farooq Abdul Gafur & Anr. etc. v. State of Maharashtra, etc.* **(2010) 14 SCC 641: 2009**

A **(12) SCR 1093;** *State of Uttar Pradesh v. Munesh* **(2012) 9 SCC 742;** ***Ediga Anamma*** **(1974) 4 SCC 443;** *Mahesh s/o. Ram Narain, & Ors. v. State of Madhya Pradesh* **(1987) 3 SCC 80: 1987 (2) SCR 710;** *Machhi Singh; Molai & Anr. v. State of Madhya Pradesh* **(1999) 9 SCC 581: 1999 (4) Suppl. SCR**
B **104;** *State of Rajasthan v. Kheraj Ram* **(2003) 8 SCC 224: 2003 (2) Suppl. SCR 861;** *Dhananjoy Chatterjee alias Dhana v. State of West Bengal* **(1994) 2 SCC 220: 1994 (1) SCR 37;** *Mohinder Singh v. State of Punjab* **(2013) 3 SCC 294: 2013 (3) SCR 90 and** *Sangeet & Anr. v. State of Haryana* **(2013) 2**
C **SCC 452 – referred to.**

Case Law Reference :

1979 (4) SCC 346	**referred to**	**Para 59**
2007 (7) SCR 616	**referred to**	**Para 59**
(1980) 2 SCC 684	**followed**	**Para 59**
2009 (9) SCR 90	**referred to**	**Para 59**
2001 (3) SCR 669	**referred to**	**Para 59**
2008 (11) SCR 93	**referred to**	**Para 59**
2006 (10) Suppl. SCR 662	**referred to**	**Para 59**
2011 (14) SCR 921	**referred to**	**Para 59**
2009 (9) SCR 864	**referred to**	**Para 59**
(2001) 2 SCC 28	**referred to**	**Para 59**
2009 (16) SCR 322	**referred to**	**Para 59**
(2010) 1 SCC 58	**referred to**	**Para 59**
(2011) 13 SCC 706	**referred to**	**Para 59**
(2012) 4 SCC 107	**referred to**	**Para 59**
1983 (3) SCR 413	**referred to**	**Para 59**

H

AIR 1944 FC 1	**referred to**	**Para 59**	A
1973 (3) SCR 844	**referred to**	**Para 59**	
1974 (3) SCR 329	**referred to**	**Para 59**	
2011 (4) SCR 585	**referred to**	**Para 59**	B
2009 (12) SCR 1093	**referred to**	**Para 59**	
(2012) 9 SCC 742	**referred to**	**Para 59**	
(1974) 4 SCC 443	**referred to**	**Para 60**	
1987 (2) SCR 710	**referred to**	**Para 60**	C
1999 (4) Suppl. SCR 104	**referred to**	**Para 60**	
2003 (2) Suppl. SCR 861	**referred to**	**Para 60**	
1994 (1) SCR 37	**referred to**	**Para 60**	D
1989 (1) SCR 509	**followed**	**Para 60**	
2013 (3) SCR 90	**referred to**	**Para 73**	
(2013) 2 SCC 452	**referred to**	**Para 73**	E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 693 of 2007.

From the Judgment and Order dated 19.02.2007 of the High Court of Delhi at New Delhi in Death Sentence Reference No. 3 of 2003 with Criminal Appeal No. 827 of 2003 F

Jaspal Singh, Sumita Kapil, Sudershan Rajan, Mukesh Kalia, Anshul Wadhwa, Subramonium Prasad for the Appellant.

Amarjit Singh Chandhiok, Mukul Gupta, Wasim A. Qadri, Ritesh Kumar, Shweta Gupta, Honey Kumari, Mallika Ahluwalia, Sadhna Sadhu, Anjali Chauhan, Zaid Ali, D. S. Mahrafor the Respondent. G

The Judgment of the Court was delivered by H

A **(SMT.) RANJANA PRAKASH DESAI,** J. 1. In this appeal, by special leave, appellant - Sushil Sharma (**"the appellant"**) has challenged judgment and order dated 19/02/2007 passed by the Delhi High Court in Criminal Appeal No:827 of 2003 confirming the death sentence awarded to him
B in Sessions Case No.88 of 1996. He was tried in the said case along with A2-Keshav Kumar (**"A2-Keshav"**), A3-Jai Prakash, A4-Rishi Raj and A5-Ram Prakash.

2. The appellant was tried for offences punishable under Section 302, Section 120-B read with Sections 302 and 201
C of the Indian Penal Code (**"the IPC"**). A2-Keshav was tried under Section 120-B read with Sections 302 and 201 of the IPC. A3-Jai Prakash, A4-Rishi Raj and A5-Ram Prakash were tried under Section 212 of the IPC. Learned Additional Sessions Judge by judgment and order dated 3/11/2003
D convicted the appellant under Section 302 of the IPC. He convicted the appellant and A2-Keshav under Section 120-B read with Section 201 of the IPC. Since the charge under Section 302 read with Section 120-B of the IPC was held not proved against A2-Keshav, he was acquitted of the said
E charge. Charge under Section 212 of the IPC was held not proved against A3-Jai Prakash, A4-Rishi Raj and A5-Ram Prakash and they were acquitted. Learned Additional Sessions Judge forwarded the death reference to the Delhi High Court, as required under Section 366 of the Code of Criminal
F Procedure, 1973 (**'the Cr.P.C.'**). A2-Keshav did not file any appeal. As stated above, by the impugned judgment, the Delhi High Court confirmed the death sentence awarded to the appellant.

G **PROSECUTION CASE:**

3. The appellant was the President of Delhi Youth Congress (I), at the relevant time. Naina Sahni (**'the deceased'**) was the General Secretary of the Delhi Youth Congress (I) Girls Wing. The appellant and the deceased were working for Delhi
H Youth Congress. The office of the Delhi Youth Congress was

earlier situated at 4, Bhai Veer Singh Marg, Gole Market, New Delhi. Later on, it was shifted to 2, Talkatora Road, New Delhi. The deceased used to visit the appellant at the office of Youth Congress at the above-mentioned places. In the year 1992, the appellant obtained Flat No.8/2A situated at Mandir Marg, New Delhi ("**Flat No.8/2A**" or "**the said flat**") from it's allottee - Jagdish Prasad. The deceased used to visit the appellant at the said flat also. At times, she used to stay there in the night. The appellant and the deceased got married secretly. The deceased, therefore, continued to live in the said flat as the wife of the appellant till she was murdered.

4. The India Tourism Development Corporation ('**the ITDC**') which was running its unit called Ashok Yatri Niwas at Ashoka Road entered into a licence agreement on 10/11/1994 with Lalit Kishore Sachdeva, Virendra Kumar Nagpal, Manoj Malik, R.P. Sachdeva and the appellant - partners of M/s. Excel Hotel & Restaurant Inc., situated at 159, Kamla Market, Delhi. The licence granted by the ITDC permitted the user of park in front of main gate of Ashok Yatri Niwas towards Ashoka Road by the said partners of M/s. Excel Hotel & Restaurant Inc. for running a 'Bar-be-Que'. As per the licence, Bar-be-Que was continuously run by the appellant at the said park. It was ca led 'Bagia Bar-be-Que'. There was a *tandoor* in the said park. The park had fencing of bamboos called Jafri.

5. On the night of 2-3/07/1995, PW-3 HC Kunju, who was posted at the P.S. Connaught Place and PW-4 Home Guard Chander Pal of Delhi Home Guard were patrolling in the Ashoka Road, Western Court Area. At about 11.00 p.m., when they reached near Ashok Yatri Niwas they heard the cry of PW-7 Anaroo Devi saying '*hotel main aag lag gayi*' (hotel is on fire). Having heard the cry, PW-3 HC Kunju and PW-4 Home Guard Chander Pal rushed towards Janpath lane where Ashok Yatri Niwas is situated. They noticed smoke spiralling and flames leaping out of Bagia Bar-be-Que from the side of the kitchen. PW-3 HC Kunju rushed to the nearby telephone booth

A to inform the control room. However, the telephone booth was closed. He, then, left PW-4 Home Guard Chander Pal at the site and rushed to the police post Western Court situated nearby to inform the police station, on wireless, about the fire. On return, PW-3 HC Kunju noticed that the smoke and fire had B increased. PW-3 HC Kunju and PW-4 Home Guard Chander Pal, in order to find out the cause of the same, entered the Bar-be-Que from its back. They found A2-Keshav standing near the *tandoor*. They also noticed him putting wooden logs and small fire wood in the fire so as to increase it with the aid of a C bamboo. PW-3 HC Kunju told A2-Keshav that by this, the fire would spread and the entire hotel would be burnt. A2-Keshav then represented to PW-3 HC Kunju that he was a worker of the Congress Party and he was burning old banners, posters and waste papers of the party.

D 6. Patrolling Officer SI Rajesh Kumar along with CW-5 HC Majid Khan of Police Control Room, PW-62 PC Ranbir Singh and security staff of hotel PW-35 Mahesh Prasad reached the Bar-be-Que from the main gate of Ashok Yatri Niwas towards Ashoka Road. The appellant was noticed by them standing by E the side of the *kanat* at the gate of the Bar-be-Que. Foul and pungent smell was emitting from the *tandoor*. A2-Keshav was detained out of suspicion by SI Rajesh Kumar and PW-3 HC Kunju. SI Rajesh Kumar along with security staff of the hotel and A2-Keshav then went upstairs to find out whether the fire had F spread there. They noticed that the flames in the *tandoor* had flared-up again. SI Rajesh Kumar and others rushed downstairs. By that time the appellant had run away from there.

7. The fire was doused. When they went near the *tandoor* G they saw a part of human body inside it. Closer look revealed that it was a charred body of a female whose limbs had burnt. Intestines had come out of the body. Burnt bones were lying in the *tandoor*. They also noticed near the *tandoor* a black polythene sheet. Investigating Officer PW-81 IO Niranjan Singh and senior officer of the hotel PW-5 K.K. Tuli also reached H

there. Then, A2-Keshav was handed over to PW-81 IO Niranjan Singh. PW-81 IO Niranjan Singh inspected the site. He found that the burnt body was of a woman. He recorded the statement of PW-3 HC Kunju which was treated as FIR.

8. There were blood stains on the clothes of A2-Keshav. He was arrested. His blood stained clothes were seized. PW-81 IO Niranjan Singh seized the polythene sheet, besides other articles, from the place of offence. After holding the inquest proceedings, PW-81 IO Niranjan Singh sent the dead body to RML Hospital, where PW-85 Dr. Joginder Singh prepared the Medico Legal Report (Ex.PW-85/A). PW-85 Dr. Joginder Singh noticed the following condition of the charred body.

> "Whole body burnt exposing underlying bones and tissues, gastro intestinal contents are protruding outside. The left lower limb is amputated above the knee joint, right limb is amputated below knee joint. Brought dead."

9. The prosecution had made an application to the hospital authorities to preserve the dead body as it was not identified. In view of the disclosure made by A2-Keshav, the search for the appellant and the Maruti Car in which he had come to the restaurant was started. Since both could not be traced out, the police obtained arrest warrant for the appellant.

10. On 04/07/1995 the police got information from Chanakya Puri Police Station that Maruti Car No.DL-2CA-1872 had been found abandoned at Malcha Marg near Gujarat Bhawan where the appellant had gone and spent the night of 2-3/07/1985 with PW-31 D.K. Rao after fleeing from his Bagia Restaurant. The police team reached the said place and found the Maruti Car abandoned there. On inspection of the car, they found dried blood in the dicky and some hair stuck on the back of the left front seat. On 4/7/1995 the police also searched Flat No.8/2A where the appellant was residing. Certain articles were seized. During the search, some cartridges, a lead bullet and a ply having a hole and an air pistol were seen in the said flat

A but they were not seized as Ballistic Expert was not present. They were seized in the presence of Ballistic Expert on 5/7/1995 under a panchnama. On enquiries made from the neighbourhood, the police came to know that the deceased used to live in the said flat of the appellant as his wife. One B Maruti Car No.DAC 3283 was parked below the flat, which was found to be in the name of the deceased. It was seized by the police.

11. Parents of the deceased were contacted for identification of the corpse. On seeing the charred body kept C in the mortuary, they simply wept but they could not identify the dead body. On 05/07/1995 the dead body was identified by PW-12 Matloob Karim, who was also a worker of the Congress Party and was stated to be very close to the deceased. Thereafter, on 05/07/1995, the post-mortem examination was D conducted by CW-6 Dr. Murari Prasad Sarangi. The condition of the burnt body as noticed by CW-6 Dr. Sarangi, in his Report, was as under:

"(Eyes, Ears, Nose, Mouth, Teeth and Tongue etc.)

E

Both eye lids with face charred, eye balls destroyed, ears, nose and lips were also charred, teeth were exposed and studded with soot, other natural orifices were studded with soot particles.

F **EXTERNAL EXAMINATION:-**

Revealed extensive charring of a female dead body beyond identification, having attained a Pugilistic attitude owing to coagulation of the muscle proteins.

G

Skull bone exposed, partly burnt, blackened, showed multiple post mortem cracks with a few strands of partially burnt hair and metallic hair clip.

...intestines exposed to outside with portions of other H *internal organs in the abdomen, more on the left side.*

Thoracic cage, intercostals muscles and diaphragm were burnt more on the lt side.

Lt. thigh was chopped off, 28 cms. below left. And super iliac spine, underlying thigh bone cut from the back showing beveling from above downwards vide overleaf. No evidence of firearm discharge from internal examination of the organs.

HEAD and NECK

Scalp tissue almost burnt except over a very insignificant (2.5 x 0.8 cm) area on the occipital region with a few strands of burnt hair. Skull showed multiple post mortem heat cracks partly charred and blackened.

BRAIN, MENINGES and CEREBRAL BLOOD VESSELS:

Reddish white thick heat haematoma present more on the left cerebral hemisphere above the dura adhered to the endoevanium on the same side.Meninges intact and pale. Brain shrunken and substance looked pale, no injury or haemorrhage anywhere.

LARYNX, PHARYNX and OTHER NECK STRUCTURES

Pharynx, Larynx and Tracheal rings intact lipoid bone intact. Mucous membranes of Pharynx, Larynx and Trachea showed adhered soot particles. Blood vessels were destroyed and collapsed due to burns.

THORAX

Burnt as mentioned above. Leg was chopped off 23 cm. below the knee. Both the bones of the leg exposed being cut from the front showing beveling below and inwards.

Patella (knee cap) bone was missing on the Rt.side Distal phalanges in the hand missing (chopped off) Upper limb was chopped off just below the elbow.

A *Trachea and Bronchi: Intact, mucosa of Tracheal rings smeared with black soot particles.*

Pleural Cavity and Lungs: Pleural studded with carbon particles did not show any inflammatory sign to the naked eyes. Both lungs shrunken, desiccated and pale WT 200 gms. (Lt) 210 gms (Rt.)

B

Abdominal wall, peritoneum: Abdominal and pelvic walls burnt, peritoneum- partly burnt.

C *Stomach and contents: Contained about 500 ml of brownish-semi liquid material, smelt alcoholic, walls looked pale*

Pancreas, small and large intestines: Shrunken, desiccated, protruded out, no injury/abnormality was noticed."

D

12. CW-6 Dr. Sarangi opined provisionally that the cause of death was "*hemorrhagic shock consequent to various ante-mortem injuries found on the dead body*". According to CW-
E 6 Dr. Sarangi the burns noticed on the dead body appeared to have been inflicted after death. Final opinion about the cause of death was kept pending by him till the receipt of the Report about histopathological examination as well as the Report of examination of viscera and blood sample. Although PW-81 IO
F Niranjan Singh had also asked for X-ray of the dead body to find out if there was any firearm injury, it could not be conducted at that time because the X-ray machine was stated to be out of order.

13. The appellant, in order to avoid his arrest, spent the
G night of 2/7/1995 at Gujarat Bhawan, New Delhi with PW-31 D.K. Rao and from there he kept on going from one city to another. He called up PW-31 D.K. Rao on 4/7/1995 from Bombay and told him that he had killed his wife i.e. the deceased. It may be mentioned here that the High Court has
H not relied upon this piece of evidence and, in our opinion, rightly

so. The appellant obtained anticipatory bail from the Sessions Court at Madras upon coming to know that the police were looking for him. The anticipatory bail granted by Sessions Court, Madras was later on cancelled by the Madras High Court at the instance of the Delhi Police. He was arrested on 10/07/1995 at Bangalore by the Bangalore Police under Section 41A of the Cr.P.C. when he was moving around in a suspicious manner with his advocate Mr. Anantanarain. Delhi Police upon coming to know about his apprehension went to Bangalore and took over the custody of the appellant on 11/7/1995 with the permission of the concerned court. During the interrogation, it transpired that the appellant was staying in one hotel called Pai Vihar along with advocate Mr. Anantanarain. The appellant led the police to Room No.110 of the said hotel. From the room he produced a briefcase which was found to contain one .32 bore revolver No.1277725 (make Arminius) with its license in his name, four live cartridges and some other documents. All these articles were seized by PW-81 IO Niranjan Singh.

14. The appellant was then brought to Delhi. Pursuant to disclosure statements made by him one blood stained *kurta-pajama* was recovered from the bushes near Gujarat Bhawan at Malcha Marg. At his instance, another blood stained *kurta* was also recovered from Rangpuri area.

15. The investigating agency decided to get another post-mortem examination conducted from a Board of Autopsy Surgeons. Accordingly, second post-mortem examination was done on 12/07/1995 by a team of three doctors headed by PW-44 Dr. Bharat Singh. During the course of the second post-mortem examination the dead body was subjected to X-ray examination and the X-ray Reports showed the presence of one metallic piece in the skull and one in the neck region of the dead body. Those metallic pieces were then extracted out and were found to be lead bullets. The Board of Doctors opined that the cause of death was due to "*coma consequent upon firearm injury on the head which was sufficient to cause death in the ordinary course of nature*".

16. The bullets recovered from the body, fired cartridge cases, one lead bullet which were recovered from the said flat, the live cartridges and Arminius revolver recovered from the possession of the appellant at Bangalore were sent to the Central Forensic Science Laboratory ("**the CFSL**") for examination by a Ballistic Expert. The Ballistic Expert - PW-70 Roop Singh gave Report (Ex. PW-70/A) confirming that the .32 Arminius revolver was a firearm in working condition and had been fired through. He further opined that the five .32 cartridge cases and one lead bullet, which were recovered from the said flat and the two lead bullets which were extracted from the skull and neck of the deceased had been fired from the said .32 Arminius revolver. The piece of plywood seized from the said flat on which a bullet hole was noticed, was also forwarded to the CFSL. The bullet hole was found to have been caused by the aforesaid .32 lead bullet recovered from the said flat. Blood stained articles seized from the Bagia Restaurant and those recovered from the said flat were sent to the CFSL where, on examination, it was found that human blood found on these articles was of 'B' group, which was the blood group of the deceased.

17. DNA test was also got conducted from the Centre for Cellular and Molecular Biology, Hyderabad for confirming the identity of the corpse by forwarding to it the blood samples of the parents of the deceased and the tissues (muscle) from the thigh, radius and ulna bones and two ribs of the deceased. The DNA Report (Ex.PW-87/A) confirmed that the dead body which was burnt at the Bagia Bar-be-Que *tandoor* was that of the deceased, who was the biological offspring of CW-1 Smt. Jaswant Kaur and CW-2 Harbhajan Singh.

18. After completion of investigation, the prosecution came to the conclusion that the deceased was killed by the appellant since he was suspecting that she was having some relationship with PW-12 Matloob Karim. The appellant also did not want to make his marriage with the deceased public and the deceased

was insisting on that. After killing her, the appellant with the help of A2-Keshav burnt her dead body in the *tandoor* of Bagia Bar-be-Que. The appellant was harboured to save him from punishment from the crime by three persons, namely, A3-Jai Prakash, A4-Rishi Raj and A5-Ram Prakash. After the case was committed to the Sessions Court, learned Additional Sessions Judge framed charges as aforesaid against the accused.

THE TRIAL:

19. In support of its case, the prosecution examined 85 witnesses. Seven Court Witnesses were also examined. We shall refer to the important witnesses as we proceed further. All the accused pleaded not guilty to the charges and claimed to be tried. During the trial, A2-Keshav moved an application confessing his guilt so far as the charges against him under Section 201 read with Section 120-B of the IPC are concerned. He requested the court to dispose of his case in view of the confession. He, inter alia, stated that he had not conspired to murder the deceased. He was serving in Bagia Restaurant of the appellant and, at his command, he put the dead body of the deceased in the *tandoor*. At the trial, A2-Keshav admitted the correctness of the contents of his confessional application. However, he added that it was moved because the Special Public Prosecutor told him that he would be released at the final stage of the trial.

20. The appellant in his statement recorded under Section 313 of the Cr.P.C., inter alia, stated that from the evening of 1/7/1995 to 6/7/1995 he was at Tirupati Balaji and then he went to Madras on 7/7/1995. From Madras, he gave a telephone call at his residence in Maurya Enclave in Delhi when he came to know that one ACP Alok Kumar had visited his residence on 3/7/1995 and had removed from there his vehicle, licensed revolver, license of the revolver and bullets. He, further, stated that the ACP had given his telephone number and had

A left a message for him to contact him on phone and when the appellant contacted the ACP, he told him to get anticipatory bail otherwise he would be arrested. He, then, obtained anticipatory bail from the Sessions Court at Madras. On 8/7/1995, he was called for enquiry at a police station at Madras and that day in
B the evening some police officers from Delhi reached there and brought him to Bangalore and showed his arrest there on 10/7/1995. He admitted that Car No.DL-2CA-1872 belonged to him. He stated that it was removed from his residence at MP-27, Maurya Enclave, Delhi where it was parked by his driver.
C At one stage, he admitted that he was living with the deceased at Mandir Marg. However, as far as his relationship with the deceased is concerned he stated as under:

> "I knew Naina since 1985. She contested election of Shyama Parsad Mukherjee college. She lost. I was
D president of N.S.U.I. Delhi. She came in contact with me then. Her attendance was short in the college. She was not allowed to sit in the examination. Next year I got admitted her in the correspondence course. She was career oriented woman. She learned the course of Pilot. I helped
E her in that. She went to London for CPL (Commercial pilot license). From 1994 to January 1995 she lived in a flat Opp. Birla Mandir as paying guest. That flat belonged to a lady working in Doordarshan. I have shown that flat to police. Police did not cite her as witness. I used to be
F called at various functions organized at her residence along with other lady friends associated with her business and pilot course. She started living separately from her parents after there was a dispute between her and her father. She then lived at Gole Market. In the functions which
G were organized at the residence at Gole Market her parents visited and I also visited. She had a servant Ramu @ Bilas. She was not allowing anyone else to stay there including her parents. I had no contact with her after January, 1995. She remained busy in her career and I
H remained involved in politics".

21. None of the accused persons adduced any evidence in defense. A

22. After considering the evidence, learned Additional Sessions Judge convicted the appellant as aforesaid. The Reference made by the learned Sessions Judge under Section 366 of the Cr.P.C. was heard by the High Court along with the appeal filed by the appellant challenging his conviction and sentence. The High Court dismissed the appellant's appeal and confirmed the death sentence awarded to him. Hence, this appeal by special leave. B C

23. We have heard Mr. Jaspal Singh, learned Senior Advocate for the appellant and Mr. Amarjit Singh Chandhiok, learned Additional Solicitor General for the State of NCT of Delhi. We have carefully perused the written submissions filed by them. Since death sentence is awarded to the appellant, we have independently considered the evidence. We shall now give the gist of the submissions of the counsel. D

24. WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANT ON THE MERITS OF THE CASE: E

(a) This is a case which rests on circumstantial evidence and, therefore, motive assumes great significance. The prosecution case is that the deceased wanted to make public her marriage with the appellant and the appellant did not want to do that because that would have affected his political career. To substantiate this case, PW-12 Matloob Karim has been examined, but, his conduct makes him a totally unreliable witness. He is a married man. Despite the appellant's marriage with the deceased, he kept alive his relationship with the deceased. He continued to assist the deceased in her attempt to go to Bombay or migrate to Australia. All this indicates that he was inimically disposed towards the appellant. In any case, marriage can F G H

A hardly spoil anyone's political prospects. Besides, there is ample evidence on record to establish that the marriage was already known to everybody. PW-12 Matloob Karim knew about it. Marriage was with the consent of the parents of the deceased. They B used to visit the said flat where the deceased was allegedly living with the appellant as his wife. Thus, the alleged motive for the murder viz. that the deceased wanted to make the marriage between her and the appellant public is not proved. Even C otherwise, the prosecution evidence shows that the appellant was deeply in love with the deceased. Despite knowing her intimate relations with PW-12 Matloob Karim, he did not turn her out of the house. He only restricted her movements as he wanted to D stop her from her wayward ways. There is no evidence on record to show that there were any constant quarrels between the appellant and the deceased. The story that the appellant suspected the fidelity of the deceased and, hence, he killed her is also not borne out by the evidence. Therefore, the E prosecution has failed to prove motive.

(b) It is the prosecution case that empty cartridges were recovered from the matrimonial house of the deceased on 4th and 5th of July, 1995. According F to PW-81 IO Niranjan Singh, on 4/7/1995, he inspected the said flat in the presence of PW-14 Inspector Suraj Prakash and PW-13 Dhara Singh. He found two bowls on the cupboard containing empty cartridges and one .32 bore empty cartridge G under a stool and one lead bullet under the bed. He further stated that he did not take them into possession as the Ballistic Experts were not present. According to him, he left the said flat under surveillance of PW-14 Inspector Suraj Prakash. H This story is concocted because PW-13 Dhara

Singh, the panch witness has nowhere stated that empty cartridges and lead bullet were found in the house on 4/7/1995. He visited the said flat on 5/7/1995 along with PW-70 Roop Singh, the Ballistic Expert and took those cartridges and lead bullet into possession in his presence. The lead bullet was stained with the blood of the blood group of the deceased. PW-14 Inspector Suraj Prakash admitted that in his statement recorded under Section 161 of the Cr.P.C. there is no mention of those recoveries. No memo was prepared that though empty cartridges and lead bullet had been found, they had not been taken into possession on account of the advise of persons from the CFSL. The Ballistic Expert - PW-70 Roop Singh does not say anything about the recoveries allegedly effected on 5/7/1995. There is a recovery memo of 4/7/1995. It does not speak of recovery of empty cartridges or lead bullet. Thus, the version of PW-81 IO Niranjan Singh about the recovery of empty cartridges and lead bullet is falsified.

(c) It is the case of the prosecution that the deceased had received two bullet injuries in the skull. This is confirmed by the Report of the Board of Doctors. Any other firearm injury is, therefore, ruled out. Therefore, the prosecution must explain the presence of a lead bullet having blood group of the deceased in the room. This suggests that there was some other person also in the house having the same blood group as that of the deceased as the appellant has a different blood group from that of the deceased. Had the prosecution taken the finger prints from the vodka bottle which was lying there, it would have provided answer to this as someone was consuming vodka in the room. The deceased was a teetotaler and so is the appellant. Besides,

A the alleged recovery of empty cartridges, lead bullet and bullet hole in the plywood show that at least 10 rounds were fired (5 empty cartridges in the bowls, two recovered from the floor, one causing hole in the ply and two found from the skull). Surprisingly, B the next door neighbours did not notice such firing. Moreover, the police found no trail of blood in the drawing room, on the stairs or on the road. This casts a shadow of doubt on the prosecution story.

C (d) It is also doubtful whether the death was caused due to firearm injuries. PW-85 Dr. Joginder Pal, the Casualty Medical Officer at RML Hospital, who was on duty on 3/7/1995, stated that he did not find any firearm injuries in the neck or in the head or in the nape of the deceased. CW-6 Dr. Sarangi, who had D conducted the post-mortem of the deceased on 5/7/1995 at 3.30 p.m. at Lady Hardinge Medical College stated that he had opened the skull and had not noticed any bullet mark or any bullet and that the brain matter was intact. CW-6 Dr. Sarangi E is MBBS and MD in forensic medicine and toxicology, having experience in the field and, therefore, his evidence cannot be lightly brushed aside. The Board of Doctors allegedly extracted two bullets and opined that those two bullets F caused the death. Report dated 13/7/1995 of the Board headed by PW-44 Dr. Bharat Singh needs to be rejected because as per PW-44 Dr. Bharat Singh, the Board first conducted post-mortem on 12/7/1995 at 12.00 noon at Lady Hardinge Medical G College which lasted upto 2.00 or 3.00 p.m. and it was only after 2.00 or 3.00 p.m. that the body was shifted to the Civil Hospital. However, as per PW-57 SI Ombir Singh, on instructions of PW-81 IO Niranjan Singh, he reached the mortuary of Lady H Hardinge Medical College at 9.00 a.m. on 12/7/

1995, took the body from there at 9.30 a.m. and reached the Civil Hospital at 11.30 a.m., where he entrusted the body to PW-44 Dr. Bharat Singh. According to him, post-mortem started at Civil Hospital at 12.30 p.m. However, as per the Report of the Board, the post-mortem started at Lady Hardinge Medical College at 12.00 noon and, thereafter, the body was shifted to the Civil Hospital. PW-57 SI Ombir Singh has not been declared hostile and, if his statement is accepted, the evidence of PW-44 Dr. Bharat Singh about the post-mortem becomes suspect.

(e) There is no evidence on record that the body and the skull subjected to post-mortem by the Board were of the deceased. PW-44 Dr. Bharat Singh stated that the body and the skull had been identified by PW-57 SI Ombir Singh. However, PW-57 SI Ombir Singh has nowhere stated that he had identified the body. There is no evidence produced from the mortuary of Lady Hardinge Medical College that on 12/7/1995 the body and the skull of the deceased were in its mortuary and no record has been produced to show that they were removed from there on 12/7/1995. Lady Hardinge Hospital & Medical College is one of the top-most hospitals in Delhi. It is unbelievable that it had no X-ray facility. Therefore, the reason given for removal of the dead body and skull from Lady Hardinge mortuary to Civil Hospital that because X-ray facility was not available there, it was so removed, is not acceptable.

(f) The entire evidence relating to the Board of Doctors deserves to be rejected because (a) there is no evidence that the skull sent for X-ray was that of the deceased; (b) assuming that the skull was that of

the deceased, the prosecution has not led any evidence to assure that before 12/7/1995, it had not been tampered with; (c) the members of the Board have not proved the sky grams which allegedly they had examined on 12/7/1995; (d) although PW-44 Dr. Bharat Singh has stated that the sky grams and the Report of the Radiologist were received from the Radiologist on 12/7/1995 at 2.00 p.m. or 3.00 p.m., the Report of the Radiologist shows that X-rays were taken on 13/7/1995 and the Report was also prepared on 13/7/1995 and (e) as the X-ray films were developed and the Report was prepared on 13/7/1995, recovery of bullets from the skull on 12/7/1995 allegedly on the basis of X-rays and the Report of CW-7 Dr. P.S. Kiran makes the entire version regarding recovery of bullets unworthy of reliance. There is no evidence on record to establish that the members of the Board were experts in conducting post-mortems. The answer given by CW-6 Dr. Sarangi to a court question, which contains six reasons for rejecting the Report of the Board have not been answered by the prosecution. CW-6 Dr. Sarangi stated that after the post-mortem was conducted on 5/7/1995 on the request of PW-81 IO Niranjan Singh, he had handed over the skull bone, after separating the same from the body, to PW-81 IO Niranjan Singh. This is supported by endorsement dated 5/7/1995 made by PW-81 IO Niranjan Singh on a letter addressed by SHO, P.S. Connaught Place to the Autopsy Surgeon, Lady Hardinge Medical College. If the skull was handed over to PW-81 IO Niranjan Singh on 5/7/1995, then there is no evidence to show where the skull was kept till 12/7/1995 when it was produced before the Board headed by PW-44 Dr. Bharat Singh for post-mortem. PW-44 Dr. Bharat Singh has stated that "*a burnt dead body with skull separated*" **was**

received by him and that the skull was kept in a separate cardboard box. Therefore, there is no evidence to establish that the skull was that of the deceased and assuming it to be the skull of the deceased, there is no guarantee that between 5/7/1995 and 12/7/1995, it was not tampered with. From the evidence on record, it can be said that only one unidentified skull of a lady containing two bullets was handed over to the Board on 12/7/1995. When asked whether a bullet can be put inside the body after death at a place where it had been noticed by the Board, CW-6 Dr. Sarangi stated that such a possibility could not be absolutely ruled out especially in the presence of multiple post-mortem cracks and separation of the skull bone from the neck for the purpose of superimposition.

(g) Assuming that the skull produced before the Board was that of the deceased and that two bullets were recovered from the skull, the prosecution has failed to prove that the bullets were fired from the revolver of the appellant. It is the prosecution case that two bullets were put in two separate parcels and both bore the seal of Civil Hospital and, they were handed over to PW-81 IO Niranjan Singh by PW-57 SI Ombir Singh. However, PW-81 IO Niranjan Singh has nowhere stated that he had deposited the two parcels with the seal of Civil Hospital with the Mohrar Malkhana. He has not stated that he had himself sent those two parcels with the seal of the Civil Hospital to the CFSL. PW-67 HC Raj Kumar, who was in-charge of Mohrar Malkhana has stated that no parcel was deposited with him on 12/7/1995, 13/7/1995 and 14/07/1995. It was only on 15/7/1995 that two parcels were deposited but they bore the seal of N.S. Thus, from his evidence, it cannot be concluded that the parcels with the seal

A of Civil Hospital were ever sent to the CFSL. If these parcels were never sent to the CFSL, it cannot be said that the two bullets which killed the deceased were fired from the revolver of the appellant. Moreover, the two bullets which were B allegedly extracted by the Board from the skull have not been identified by anyone.

(h) The case that a revolver, a licence and four live cartridges were recovered from Pai Vihar Hotel, Bangalore where the appellant was staying is false C because on 10/7/1995 at 11.30 p.m., the appellant was brought to Delhi. On 12/7/1995, a remand application was made before the Metropolitan Magistrate's Court. In that application, it is stated that the weapon used in the crime is to be D ascertained and recovered. If the weapon was already recovered, such averment would not have been made in the application. Moreover, the appellant was brought on the strength of a production warrant issued by a Delhi Court and, E therefore, he was in judicial custody. Section 27 of the Evidence Act would not be, therefore, attracted. In any case, no statement under Section 27 of the Evidence Act was recorded. The alleged recoveries are, therefore, not admissible. *[Bahadul v. State of* F *Orissa.*[1]] Mr. Anantnarayan, the appellant's advocate was present in the hotel room when the alleged recoveries were made. However, he has not been examined. Similarly, PW-48 Srinivas Rao, the Manager of the hotel and PW-50 Kancha, the G waiter of the hotel were given-up after having entered the witness box. Recoveries were made by PW-81 IO Niranjan Singh of P.S. Connaught Place, New Delhi in Bangalore i.e. outside his territorial

H 1. AIR 1979 SC 1262.

jurisdiction. Therefore, provisions of sub-sections (4) and (5) of Section 165 of the Cr.P.C. ought to have been followed. The licence which was allegedly recovered from Pai Vihar Hotel, Bangalore had expired on 18/1/1994 and its validity was extended only on 15/10/1995. Therefore, at the time of alleged recovery of revolver on 11/7/1995, there was no valid licence. Yet, no action was taken by the police. To cover up this, the validity of the license was extended later on. If the licence was deposited with Mohrar Malkhana with the seal of N.S., it is not understood how the entry of extension was made on it on 15/10/1995. This suggests tampering of evidence.

(i) Recovery of the appellant's car from Malcha Marg is suspect because no record of wireless message has been produced; no one from P.S., Malcha Marg was examined; no record of P.S., Malcha Marg has been produced, no information was given to the nearest Magistrate; no record showing presence of PW-72 PC Mukesh Kumar was produced. According to the prosecution, the CFSL team was called and blood sample was taken from the blood stains in the dicky of the car. However, no witness from the CFSL has been examined; no photographs have been produced and no independent witness has been examined. PW-72 PC Mukesh Kumar stated that PW-81 IO Niranjan Singh remained at the site for six hours. PW-81 IO Niranjan Singh stated that he had received wireless message about the car on 4/7/1995 at 9/10 a.m. Even if he had reached the site at 10.00 a.m. he should have remained there till 4.00 p.m. He, however, stated in his evidence that he reached the said flat at 11.30 a.m. or 12.00 noon on 4/7/1995.

The seizure memo dated 4/7/1995 states that in the dicky of the car, very little blood was detected. The memo also states that the long hairs were found at the back of the front seat next to the driver's seat. If the prosecution case is true then the dicky ought to have a pool of blood and not very little blood and the long hairs should have been found in the dicky and not on the back of the front seat next to the driver's seat.

(j) To prove the presence of the appellant at the *tandoor* in the night of 2/7/1995, the prosecution has examined PW-1 Philips and PW-2 Mrs. Nisha. They stated that they had last seen the appellant at around 9.45 p.m. at the gate of Ashok Yatri Niwas in his Maruti car. However, PW-3 HC Kunju stated that he noticed the fire at 11.20 p.m. Therefore, the presence of the appellant at around 10.00 p.m. at the *tandoor* is not of much importance. To prove his presence at the *tandoor* at 11.30 p.m. the prosecution has also examined PW-4 Home Guard Chander Pal and CW-5 HC Majid Khan. It is apparent from the evidence of PW-3 HC Kunju that at the relevant time, the light at the Bagia Restaurant was switched off. The appellant was not known to any of the witnesses. He was identified because PW-35 Mahesh Prasad had allegedly told the witnesses about him. However, PW-35 Mahesh Prasad has stated that he had never met the appellant. It is doubtful whether PW-3 HC Kunju, PW-4 Home Guard Chander Pal and CW-5 HC Majid Khan were actually present. They are from P.S., Connaught Place. No record of P.S., Connaught Place, has been produced to show that they were on duty at the relevant time. No record has been produced to show that PW-3 HC Kunju had sent wireless message about the incident. In

fact, PW-59 ASI Sher Singh stated that the message was actually received from Constable Rattan Singh. CW-5 HC Majid Khan of the PCR was directed by the court to bring Log Book of the vehicle - Victor 20 in which he claimed to have gone to the restaurant. However, the record is stated to have been destroyed. Thus, most vital contemporaneous record was kept back intentionally. CW-5 HC Majid Khan also stated that PCR Van did not enter the hotel and remained parked outside. However, the register showing entry and exit of vehicles indicates that the PCR Van entered the hotel. PW-35 Mahesh Prasad stated that all entries were made in the register by him as directed by the police at the police station. Thus, the prosecution story is shrouded in suspicion. The prosecution has not been able to prove its case beyond reasonable doubt. The appellant, therefore, be acquitted.

25. **SUBMISSIONS ON BEHALF OF THE RESPONDENT ON THE MERITS OF THE CASE.**

(a) Unnecessary doubt is sought to be created as regards location of skull from 5/7/1995 till 12/7/1995. During trial no questions were asked and no suggestions were put to the witnesses in this regard. Had that been done, the witnesses would have offered explanation. In any case, there is reliable and cogent evidence on record that the skull was properly preserved and it was the skull of the deceased.

(b) At one stage, the stand of the appellant was that there was a possibility of implanting bullets on 12/7/1995 itself when the body was being taken to the Civil Hospital for X-ray. A contrary stand is taken in this Court that two bullets might have been put

A in the skull during the period 5/7/1995 to 12/7/1995. This submission of the defence deserves to be rejected. There is no reason to disbelieve independent evidence of the doctors who were part of the Board of Doctors.

B

(c) A revolver was recovered from the custody of the appellant from Bangalore on 11/7/1995. It was brought to New Delhi along with the appellant on 12/7/1995. The Report of the CFSL shows that the bullets found in the skull were from the revolver of C the appellant. There was no cross-examination on the veracity of the said Report. The defence has not stated what could be the motive for PW-81 IO Niranjan Singh or anyone else to falsely involve the appellant. There was no enmity between them and D the appellant.

(d) The contention that the bullets recovered were not deposited in the Malkhana must be rejected. One lead bullet was deposited in the Malkahna on 5/7/ E 1995 by PW-81 IO Niranjan Singh. Two bullets (Ex-36 and Ex-37) removed from the skull of the deceased were duly sealed and handed over to the police by PW-44 Dr. Bharat Singh immediately after the post-mortem examination. As per the F Register of the Malkhana, the two bullets recovered from the skull of the deceased were deposited in the Malkhana by PW-81 IO Niranjan Singh on 12/7/1995. They were received in the CFSL on 17/7/1995 in sealed condition, as is evident from Ex-PW70/A1-A9. The said bullets were also examined G by Dr. G.D. Gupta, Serologist, who confirmed that the blood on the bullets was B+ve.

(e) Only one lead bullet, five empty cartridges, one piece of ply having one hole of bullet and one air H pistol were collected on 5/7/1995 after the site was

inspected by PW-70 Roop Singh, the Ballistic Expert and also the Director of the CFSL - PW-16 Dr. V.N. Sehgal. From memo (Ex-PW-16/A) which bears the signature of PW-16 Dr. V.N. Sehgal and Inspector Ramesh, it is clear that only one lead bullet (Ex-24) and five cartridges (Ex-25) were found at the said flat. It is not the case of the prosecution that bullet recovered from the said flat was stained with human blood.

(f) It is true that CW-6 Dr. Sarangi, who conducted the post-mortem did not find any bullet injury but due to the condition of the dead body the bullet injuries might not have been detected by naked eyes at the time of first post-mortem. The second post-mortem Report clearly states that the firearm injuries were ante-mortem. The evidence on record thus clearly establishes that firearm injuries were found on the skull of the deceased. It is true that the Security Regulations prohibit the carriage of weapons in the passenger cabin but it was not impossible for the appellant to have flown from Jaipur-Mumbai-Chennai carrying a revolver. There is no prohibition in carrying the revolver in checked-in luggage. This plea is also raised during arguments. The witnesses were not confronted with it at the trial.

(g) The appellant has not established the plea of alibi. Since the appellant pleaded alibi the burden was on him to prove it. Since he has failed to prove alibi an adverse inference is drawn against him. The appellant was noticed at or around 10.00 p.m. or 11.00 p.m. in the night intervening 2nd and 3rd at Bagia Restaurant with Car bearing No.DL-2CA-1872. This is established by leading evidence of reliable witnesses. That the deceased and the appellant were last seen together on 2/7/1995 at the

said Flat No.8/2A is established by the evidence of the neighbour of the appellant. PW-11 Mrs. R.K. Chaudhary. PW-12 Matloob Karim and PW-82 R.N. Dubey, the servant of the appellant have established that the relations between the appellant and the deceased were strained. PW-81 IO Niranjan Singh who deposed about the condition of the said flat and the recoveries made from the said flat. He stated that recoveries were effected on 4/7/1995 in the presence of PW-13 Dhara Singh and PW-14 Inspector Suraj Prakash and, thereafter, the said flat was locked and left under surveillance of SHO, Mandir Marg and on 5/7/1995 the recovery of one lead bullet, five cartridges, one ply with a hole, one air pistol was made in the presence of the Ballistic Expert - PW-70 Roop Singh and PW-16 Dr. V.N. Sehgal, the Director of the CFSL. The testimony of PW-13 Dhara Singh is supported by the photos taken by PW-84 PC Balwan Singh. The contention that photos taken during investigation were not placed on record is contrary to the facts. Photographs of the burnt body are exhibited at Ex-PW-74/9-16 and their negatives are at Ex-PW-74/1-9, skull photographs are at Ex-PW-76/A15-A28 and their negatives are at Ex-PW-76/A1-A31 and photographs of the said flat, female clothes etc. were placed on record at Ex-PW-76/A1-A14.

(h) The appellant absconded from Bagia Restaurant on the night intervening 2/7/1995 and 3/7/1995 and stayed at Gujarat Bhawan. He absconded from Delhi to Jaipur by taxi on 3/7/1995. On 4/7/1995 he travelled by air from Jaipur-Bombay and from Bombay-Madras and, in the end, he went to Bangalore from where he was apprehended by the Bangalore Police on 10/7/1995. In the presence of the DCP of Bangalore Police, search of the

briefcase and shoulder bag produced by the appellant was done and the revolver was recovered from his possession. The Report of the CFSL states that the damaged fired lead bullets recovered from the head and the neck of the deceased and the damaged fired lead bullet recovered from the carpet in the said flat were fired from the said revolver. The hole in the ply was also caused by the shot fired from the said revolver. Though the incident in question was widely published the appellant never sought to contact any one. Abscondence of the appellant is an important circumstance and lends support to the case of the prosecution. His conduct is relevant under Section 8 of the Indian Evidence Act. *[Swamy Shraddananda alias Murali Manohar Mishra v. State of Karnataka*[2]*]*

(i) The car of the appellant bearing No.DL-2CA-1872 was found abandoned at Malcha Marg on 4/7/1995. On information received by PW-81 IO Niranjan Singh, the same was seized. Dry human blood was found in the dicky of the said car. The key of this car was recovered at the Pai Vihar Hotel at Bangalore in the presence of the appellant and his advocate. The testimony of PW-81 IO Niranjan Singh about the recovery of the car at Malcha Marg has not been questioned in cross-examination. Thus, all the circumstances clearly establish the prosecution case. The conviction of the appellant deserves to be confirmed.

ANALYSIS OF EVIDENCE IN LIGHT OF SUBMISSIONS OF THE COUNSEL.

26. We shall now consider the submissions of the counsel

2. (2007) 12 SCC 288.

A in light of evidence on record. Since this is a case based on circumstantial evidence, we must see whether chain of circumstances is complete and points unerringly to the guilt of the appellant. It is first necessary to see the background of the case. The fact that the appellant and the deceased were staying
B at the said flat as husband and wife can hardly be disputed. PW-12 Matloob Karim, who was known to the appellant and the deceased stated that in the year 1989, he was the Organizing Secretary of Youth Congress. At that time, the appellant was its President and the deceased was General
C Secretary of its Girls Wing. He stated that he knew the deceased from 1984 when they were in the Students Union of Delhi University and because of their close association, they had fallen in love with each other. However, they could not marry because they belonged to different religions. He stated that he
D got married in December, 1988. The deceased got married to the appellant in the year 1992 and informed him about it. He further stated that after her marriage, she was staying with the appellant at the said flat. CW-1 Mrs. Jaswant Kaur, the mother of the deceased, CW-2 Sardar Harbhajan Singh, the father of
E the deceased and PW-82 Ram Niwas Dubey, who was the personal servant of the appellant also confirmed this fact. Pertinently, no suggestion was put to them in the cross-examination that what they were saying was false. In this connection, it is important to note that the DNA Report [Ex-PW-87/A] confirms that the dead body which was burnt at Bagia
F Restaurant was that of the deceased, who was the biological offspring of CW-1 Mrs. Jaswant Kaur and CW-2 Sardar Harbhajan Singh. PW-11 Mrs. Chaudhary, a retired Government servant, was staying along with her husband in Flat No.8/2-B, which was in front of the appellant's Flat No.8/2-A.
G She stated that the appellant was living with his wife i.e. the deceased in the said flat. Her husband PW-9 M.L. Chaudhary corroborated her evidence. According to PW-11 Mrs. Chaudhary, the deceased was last seen with the appellant in the evening of 2/7/1995 in the said flat. Though his statement
H recorded under Section 313 of the Cr.P.C., in answer to one

of the questions, the appellant stated that he was the President of NSU(I); that he knew the deceased since 1985; that the deceased was living with his parents at Gole Market and that he had no contact with her after 1985, while answering another question, he admitted that he was living with the deceased in the said flat. PW-15 HC Amba Das was the beat constable of Mandir Marg Area at the relevant time. According to him, once he had gone to the house of the appellant for verification of the quarters. At that time, the appellant told him that he should take care of the Car bearing No.DAC 3285 belonging to his wife and his Car bearing No.DL-2CA-1872 as the vehicles were increasingly being stolen. According to him, the appellant also told him that since during the day time they were out, he should take care of their house. Admittedly, Car bearing No.DAC 3285 belonged to the deceased. It may be noted here that on 5/7/1995, this car was seized by PW-81 IO Niranjan Singh when it was parked below the said flat. We are, therefore, of the opinion that the prosecution has successfully proved that the appellant and the deceased were married and they were staying in the said flat as husband and wife and that the deceased was last seen in the company of the appellant in the said flat on the evening of 2/7/1995 by PW-11 Mrs. Chaudhary.

27. The appellant's connection with the Bagia Restaurant is very crucial to the prosecution because the infamous *tandoor* was situated there. The appellant has not disputed that the Bagia Restaurant is run as per the agreement with the ITDC. In his statement recorded under Section 313 of the Cr.P.C., he stated that his Manager at Bagia Restaurant was one Mr. Handa and his Accountant was one Mr. Karan. He admitted that A2-Keshav was employed in Bagia Restaurant. A2-Keshav has also admitted this fact. Thus, the prosecution has successfully proved that the appellant was the owner of Bagia Restaurant.

28. From the evidence on record, it is clear that all was not well between the appellant and the deceased. PW-12 Matloob Karim has admitted that the deceased and he were

A in love with each other but they could not marry because they belonged to different religions. His evidence indicates that he got married to a Muslim girl in December, 1988. According to him, the deceased told him that she had married the appellant in the year 1992. He stated that even after his marriage, he and B the deceased used to meet and talk. According to him, in August, 1989, the deceased told him to enquire about the antecedents of the appellant. She told him that the appellant had proposed to her. According to this witness, he had told her that the appellant was not a good person. The deceased C phoned him sometimes in the year 1992 and stated that she had got married with the appellant and that prior to the marriage, she had disclosed their friendship to the appellant. Six months thereafter, he received a call from the deceased stating that she was trapped; that the appellant was not a good D man and that he used to abuse and thrash her on trivial matters. The deceased again phoned him and told him that the appellant had thrown her out of their house. On 2/7/1995 between 3.00 p.m. to 4.00 p.m., the deceased telephoned him and told him to help her to migrate to Australia. The evidence of this witness is criticized on the ground that he is not a person of good E character because he admitted that even after marriage, he continued to have relationship with the deceased. It is contended that he was inimically disposed towards the appellant and, therefore, he had falsely implicated him. We find no substance in this submission. Assuming this witness loved F the deceased and he continued to meet her after her marriage with the appellant that, in our opinion, has no relevance. His evidence has a ring of truth. By falsely implicating the appellant, he would not have gained anything. In our opinion, this witness is worthy of credence. PW-82 Ram Niwas Dubey's testimony G also throws light on this aspect. His association with the appellant began in the year 1989 when the appellant was the President of Youth Congress (I). He was working as a peon with him till April, 1995. He stated that the appellant obtained the said flat in 1992. The appellant lived with his wife i.e. the

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deceased in the said flat. He knew the deceased since 1992 as she was the General Secretary of Youth Congress and used to visit the appellant at his office at Talkatora. After the appellant's marriage with the deceased, he was working with the appellant and was living in the said flat. He stated that the appellant and the deceased used to quarrel on the topic of marriage. The deceased used to ask the appellant as to when he would make their marriage public. The appellant used to tell her that he will disclose their marriage to the people at the appropriate time. According to him, there used to be frequent quarrels between the two and the appellant used to beat the deceased with legs, fists and dandaa. He further deposed that as directed by the appellant, he used to accompany the deceased to keep a watch on her movements because the appellant suspected her fidelity. The defence has not elicited anything in the cross-examination of this witness, which can persuade us to discard his testimony. PW-11 Mrs. R.K. Chaudhary, the neighbour of the appellant and the deceased, stated that once when they were watching T.V. in their house, they heard a noise coming from outside. They opened the door of the drawing room and saw that scuffle was going on between the appellant and the deceased. The deceased wanted to go out of the house but the appellant was pulling her back inside the house. This witness has no reason to concoct a story. She appears to us to be a reliable witness. Though the father and the mother of the deceased, the neighbours of the appellant and the deceased and their servant knew that the appellant and the deceased were staying together and the parents of the deceased stated in the court that the appellant and the deceased were married to each other, the marriage was not made public. The deceased wanted the marriage to be made public. The appellant was reluctant to do so and was suspecting her fidelity. On account of this suspicion, he used to quarrel with her and beat her. He had asked PW-82 Ram Niwas Dubey to keep watch over her movements and had also put restrictions on her movements. On account of this, the deceased was making efforts to leave him. It appears that perhaps the

A appellant did not want to make the marriage public because the deceased was continuing her relationship with PW-12 Matloob Karim even after marriage. These circumstances established by evidence adduced by the prosecution lead us to conclude that there was a strong motive for the appellant to B do away with the deceased. It was urged that the appellant was deeply in love with the deceased and despite knowing her relationship with PW-12 Matloob Karim, he did not drive her out. He only restricted her movements because he wanted to stop her from her wayward ways. He would have, therefore, C never killed her. In our opinion, the appellant's love for the deceased does not dilute the prosecution case on motive. In fact, it strengthens it.

29. That there was fire in the Bagia Restaurant around 10.30 p.m. on 2/7/1995 and that, at that time, the appellant was D present near the Bagia Restaurant is established by the prosecution by leading reliable evidence. PW-7 Mrs. Anaro Devi who was running a vegetable shop near Ashok Yatri Niwas stated that two years back at about 11.30 p.m. on 2/7/1995 when she was present at her shop, a fire broke out in E Bagia Restaurant. One constable and home guard came there. She informed them about the fire. PW-3 HC Kunju stated that on 2/7/1995 he was posted as Constable at P.S., Connaught Place. PW-4 Home Guard Chander Pal was with him. When they reached near Ashok Yatri Niwas at about 11.20 p.m., they F found that fire had broken out in the Bagia Restaurant. He rushed to the Police Post, Western Court and gave information to the police through wireless. On reaching the spot, he saw flames coming up from the Bagia Restaurant. He entered the restaurant along with PW-4 Home Guard Chander Pal and saw G A2-Keshav standing near the *tandoor*. He was putting pieces of wood into the *tandoor* and was shuffling the same with a long wooden stick. On enquiry, A2-Keshav told him that he was a Congress Party worker and he was burning the old banners, posters and waste papers, etc. of the Congress Party. In the H meantime, the patrolling officer SI Rajesh Kumar, the staff of

PCR and security officials Rajiv Thakur and PW-35 Mahesh Prasad also came there. According to him, he saw the appellant near the gate of the Bagia Restaurant. PW-35 Mahesh Prasad told him that the appellant was the owner of the Bagia Restaurant. PW-3 HC Kunju identified the appellant at the police station as the same person whom he had seen at the gate of the Bagia Restaurant. PW-4 Home Guard Chander Pal stated that on 2/7/1995, when he was on patrolling duty along with PW-3 HC Kunju, they reached Ashok Yatri Niwas at about 11.30 p.m. They saw fire at the Bagia Restaurant. PW-3 HC Kunju went and phoned the police station and came back. Both of them scaled the wall and entered the Bagia Restaurant for extinguishing the fire. They saw A2-Kesahv trying to stoke the fire with the help of a wooden stick. When asked, A2-Keshav told them that he was burning the old banners and posters of the Congress Party. He further stated that the appellant was standing there wearing white coloured *kurta pyjama*. He was so informed by PW-35 Mahesh Prasad. He further stated that the appellant came near the *tandoor* and shuffled the fire with wooden stick and, thereafter, he left from there. He stated that he identified the appellant at the police station. CW-5 HC Majid Khan deposed that in the night of 2/7/1995, he was on duty on PCR vehicle driven by Ranbir Singh. They went to Ashok Yatri Niwas for drinking water and there they noticed the fire in Bagia Restaurant. They went towards the gate of Bagia Restaurant. There was a *kanat* fixed at the gate and one man was standing there. The man told them that they were burning the old banners and waste papers and flags of Congress Party and that he was the leader of Youth Congress. PW-35 Mahesh Prasad then told them that that man was the owner of Bagia Restaurant and his name was 'Sushil Sharma'. According to him, A2-Keshav was stoking the fire. He stated that A2-Keshav was apprehended at the spot. PW-1 Philips's evidence is also important. He was working as a Stage Programmer in Bagia Restaurant. This fact is confirmed by PW-5 K.K. Tuli, the General Manager of Bagia Restaurant. According to PW-1 Philips, on 2/7/1995, he was on duty from 8.00 p.m. to 12.00 midnight. He stated that he and

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A his wife PW-2 Mrs. Nisha were to stage a performance on that day. One guest had come to see him. He had gone to see off that guest at 9.30 p.m. or 9.45 p.m. When he came back, he saw the appellant coming there in Maruti Car No.1872. After 5-7 minutes, A2-Keshav asked him to stop the programme and B go back to his house as his duty was over. He obeyed and left for his house along with his wife PW-2 Mrs. Nisha. While going, he saw the appellant sitting in his Maruti car which was standing at the gate. PW-2 Mrs. Nisha corroborated PW-1 Philips. She stated that she had seen the appellant at about 10.15 p.m. at C the gate of Bagia Restaurant in Maruti Car No.1872. PW-5 K.K. Tuli, General Manager of Bagia Restaurant stated that around the time when the incident occurred, the appellant used to visit the Bagia Restaurant every day. All these witnesses have stood firm in the cross-examination.

D 30. PW-3 HC Kunju stated that since foul smell was emanating from the *tandoor*, he and SI Rajesh Kumar went near the *tandoor* out of suspicion. They saw a human body whose hands and feet were completely burnt and whose intestines were protruding out from the stomach in the *tandoor*. On a close E look, they found that the dead body was of a female. PW-4 Home Guard Chander Pal corroborated PW-3 HC Kunju on this aspect. He stated that a body of a woman was found lying in the *tandoor*. It's bones were cut and intestines were protruding. PW-5 K.K. Tuli, the General Manager of Ashok Yatri Niwas F stated that on receiving telephonic information from the security staff, he went to the Bagia Restaurant and found a dead body of a woman in burnt condition lying amongst the wood pieces in *tandoor*. There is no challenge to these statements of the witnesses in the cross-examination. On receiving information, G senior police officers including PW-81 IO Niranjan Singh reached the spot. Photographs of the dead body were taken by PW-74 HC Hari Chand. He produced the photographs of the dead body (Ex-PW-74/9 to 16) and negatives thereof (Ex-PW-74/1 to 8). PW-75 Inspector Jagat Singh and PW-81 IO H Niranjan Singh have also deposed about it. A2-Keshav was

handed over to PW-81 IO Niranjan Singh. PW-81 IO Niranjan Singh recorded the statement of PW-3 HC Kunju, which was treated as FIR. In the FIR, PW-3 HC Kunju narrated all the events which took place after he reached the Bagia Restaurant till his statement was recorded. It is necessary to note here that he specifically mentioned about the presence of the appellant. He made it clear that he was informed about the appellant's presence by the Security Guard PW-35 Mahesh Prasad. He stated that the Security Guard PW-35 Mahesh Prasad told him that the appellant, who is the owner of the Bagia Restaurant was standing there. He noted the presence of the appellant and A2-Keshav. He stated that A2-Keshav was detained, however, the appellant had run away. He also stated about the finding of burnt body of an unknown lady in the *tandoor*.

31. It must be mentioned here that PW-35 Mahesh Prasad has not supported the prosecution on this aspect. He stated that he had not seen the appellant on that day at the Bagia Restaurant. It appears that he was won over by the defence. Tenor of his evidence suggests that he was hiding the truth and favouring the appellant. The trial court has rightly commented on his demeanor and stated that his demeanor indicates that he was won over by the appellant. In the circumstances, we see no reason to disbelieve PW-1 Philips, PW-2 Mrs. Nisha, PW-3 HC Kunju, PW-4 Home Guard Chander Pal and CW-5 HC Majid Khan. In any case, even if we leave the evidence of PW-3 HC Kunju, PW-4 Home Guard Chander Pal and CW-5 HC Majid Khan out of consideration on this aspect, the evidence of PW-1 Philips and PW-2 Mrs. Nisha establishes the presence of the appellant at the Bagia Restaurant at the relevant time in the night of 2/7/1995 at around 10.15 p.m. Some controversy is sought to be created as to whether PCR Vehicle entered the Bagia Restaurant or not because the log book of the PCR Vehicle was not produced. We have no manner of doubt that this discrepancy is created by PW-35 Mahesh Prasad, who was won over by the appellant. It needs to be ignored. In our opinion, whether the PCR vehicle entered the

A Bagia Restaurant or was parked outside is not a material circumstance. The presence of the witnesses is well established. It is, therefore, not necessary to dwell on this point. On the basis of the evidence discussed above, we are satisfied that the prosecution has established the presence of the B appellant at the Bagia Restaurant at around 10.30 p.m. on 2/7/1995. It has also established that a dead body of a woman in burnt condition was found lying in the *tandoor.*

32. PW-81 IO Niranjan Singh started investigation and after holding inquest, sent the dead body to RML Hospital. We C have already referred to PW-85 Dr. Joginder Pal, who stated that on 3/7/1995 an unknown female body was brought to the RML Hospital at 6.20 a.m. He examined the dead body. In his Report (Ex-PW-85/A) he noted the condition of the charred body. PW-12 Matloob Karim identified the dead body as that D of the deceased on 5/7/1995 at RML Hospital. DNA Report established that the dead body was of deceased Naina Sahni, who was the daughter of CW-1 Mrs. Jaswant Kaur and CW-2 Sardar Harbhajan Singh. Thus, the prosecution has successfully established that the dead body was of Naina Sahini, wife of E the appellant.

33. Post-mortem of the dead body was conducted by CW-6 Dr. Sarangi on 5/7/1995. We have reproduced the observations noted by CW-6 Dr. Sarangi in his post-mortem F report, hereinabove. That the death was homicidal is established and is not disputed. In this case, the medical evidence assumes great importance. We shall discuss it, in detail, a little later.

34. We shall now go to the search of the said flat. PW-81 G IO Niranjan Singh stated that on 3/7/1995 at about 3.00 p.m., he went to the said flat along with A2-Keshav, but it was found locked. On 4/7/1995 at about 11.30 a.m. / 12.00 noon, he reached the said flat. The said flat was under the surveillance of PW-14 Inspector Suraj Prakash. It was forced open under a H panchanama. Certain bloodstained articles like cloth pieces,

chatai and piece of carpet were seized from the said flat under a panchnama. He found five empty cartridges, a lead bullet, an air pistol and a ply in which there was a hole caused by the bullet. According to him, he did not take possession of these articles because the Ballistic Experts were not present. On 5/7/1995, he visited the said flat along with PW-70 Roop Singh, the Ballistic Expert, and PW-16 Dr. V.N. Sehgal, Director of the CFSL and in their presence five empty cartridges, one lead bullet, an air pistol and a ply having bullet hole were seized and panchnama (Ex-PW-16/A) was drawn. It was signed by PW-16 Dr. V.N. Sehgal and Inspector Ramesh Chander. PW-16 Dr. V.N. Sehgal has confirmed that on 5/7/1995 at about 12.00 noon, on a request made by the police, he visited the said flat along with PW-70 Roop Singh. He stated that he entered the said flat along with PW-70 Roop Singh and PW-81 IO Niranjan Singh. PW-70 Roop Singh collected five empty cartridges, one lead bullet, one piece of ply having a hole in it and one air pistol. He further stated that the seized articles were sealed and the memo was prepared, which is at Ex-PW-16/A. PW-81 IO Niranjan Singh has also spoken about the seizure memo [Ex-PW-16/A] on which he obtained signatures of PW-16 Dr. V.N. Sehgal and Inspector Ramesh Chander. PW-67 HC Raj Kumar, in-charge of Malkhana has deposed about the parcels of the seized articles received by him on 5/7/1995. He stated that on 17/7/1995, SI Rakesh Ahuja took all the parcels to the CFSL. Thus, seizure of five empty cartridges, one lead bullet, a ply with a hole on it from the said flat on 5/7/1995 is proved. It is also proved that the said seized articles were deposited in Malkhana on 5/7/1995 and were sent to the CFSL on 17/7/1995.

35. PW-70 Roop Singh, the Ballistic Expert has stated about receipt of the seized articles from SHO, P.S., Connaught Place on 17/7/1995. He has spoken about the examination of the said articles sent to his laboratory and the result thereof. It is true that in his evidence, he has not stated anything about his visit to the said flat on 5/7/1995 or the finding of cartridges,

A lead bullet and ply with a hole in the said flat, which has been stated by PW-16 Dr. V.N. Sehgal and PW-81 IO Niranjan Singh. From this, it cannot be concluded that he was not present in the said flat on 5/7/1995. Obviously, being a Ballistic Expert, he has only concentrated on the result of examination conducted B in his laboratory. No adverse inference can be drawn from his not mentioning finding of cartridges, lead bullet, etc. from the said flat on 5/7/1995. It is true that PW-14 Inspector Suraj Prakash has admitted that in his statement recorded under Section 161 of the Cr.P.C., he has not referred to the seizure C of cartridges, bullets, etc. However, his evidence makes it clear that his statement was recorded at the spot when the recoveries of other articles were made i.e. on 4/7/1995. He stated that his supplementary statement was not recorded. Since, the seizure of the said articles was made on 5/7/1995 that too in his absence, there was no question of his mentioning about the D recoveries of cartridges, etc. in his statement recorded on 4/7/1995. He stated in his evidence that the said articles were there in the said flat but they were not seized because the Ballistic Expert was not there. The fact that statement of this witness was recorded on 4/7/1995 is also stated by PW-81 IO E Niranjan Singh. Therefore, this circumstance cannot be taken against the prosecution.

36. It is argued that in the recovery memo dated 4/7/1995, there is no mention of recovery of empty cartridges, lead bullet, F etc. and, therefore, PW-81 IO Niranjan Singh's version regarding recovery of empty cartridges and lead bullet is falsified. This submission deserves to be rejected without hesitation because the recovery was effected on 5/7/1995 under panchnama (Ex-PW-16/A). These articles were not G seized on 4/7/1995. Therefore, they cannot find mention in the panchnama dated 4/7/1995. Recovery Memo dated 5/7/1995 clearly talks about recovery of cartridges, lead bullet, a piece of ply having a hole of a bullet and an air pistol. It is true that PW-13 Dhara Singh has not stated that on 4/7/1995 any H cartridges or lead bullet were found in the said flat. However,

PW-14 Inspector Suraj Prakash who had accompanied him and PW-81 IO Niranjan Singh have stated so. Therefore, non-mentioning of this fact by PW-13 Dhara Singh is of no consequence. Both PW-14 Inspector Suraj Prakash and PW-81 IO Niranjan Singh have stated that the said cartridges, etc. were not seized on 4/7/1995 because the Ballistic Expert was not present. Therefore, we feel that absence of any memo in this regard does not affect the prosecution case adversely. It is stated in the written submissions that two lead bullets were recovered from the said flat. This statement is factually incorrect. All the witnesses have stated that only one lead bullet was recovered from the said flat and that is confirmed by the panchnama (Ex-PW-16/A). We are also not impressed by the submission of the appellant's counsel that at least ten rounds must have been fired in the said room and the neighbours should have therefore spoken about it. That, ten rounds must have been fired is a speculation of the counsel. But, assuming that to be so, it is common knowledge that neighbours generally would not want to get involved in such cases. There is always an effort to disassociate oneself from such incidents for fear of getting entangled in court cases. Not much can be made out of this conduct of the neighbours. It is pertinent to note that PW-81 IO Niranjan Singh stated that when he asked the neighbours to become witnesses in the proceedings of the house search, they refused and stated that it is not proper to give evidence in a murder case. It appears that somehow two neighbours agreed to depose in the court, but considering the general apathy of the people towards associating themselves with such incidents, their not referring to any sound of firing cannot be taken against the prosecution. Moreover, it is quite possible that since the flats were closed, sound did not travel from one flat to the neighbours' flat. We, therefore, reject this submission.

37. It was argued that the lead bullet which was found in the said flat was blood stained. This is not correct. Seizure Memo [Ex-PW-16/A] regarding the seizure of articles from the

A said flat on 5/7/1995 states that one lead bullet was seized. It does not say that the said lead bullet was stained with blood. PW-81 IO Niranjan Singh stated that on 5/7/1995 he seized one lead bullet from the said flat. He makes no reference to any blood being found on it. PW-16 Dr. V.N. Sehgal, Director, B CFSL who was present when the articles were seized on 5/7/1995 stated that one lead bullet was recovered from the said flat. He nowhere stated that it was blood stained. PW-70 Roop Singh, Ballistic Expert stated that he received one lead bullet among others for examination on 17/7/1995. He stated that the C lead bullet recovered from the said flat was fired through .32 revolver [W-2]. It is pertinent to note that this is the same revolver which was seized from the room of the appellant at Pai Vihar Hotel, Bangalore. He further stated that the hole on the ply was found to have been caused by the said lead bullet recovered D from the said flat. He however did not state that it was blood stained. CFSL Report dated 27/7/1995 also does not state that the said bullet was blood stained. Therefore, it is clear that it is not the case of the prosecution that the lead bullet seized from the said flat on 5/7/1995 was stained with blood. Therefore, all the submissions based on the assumption that E bullet found in the said flat was blood stained are rejected.

38. PW-81 IO Niranjan Singh has stated that on 4/7/1995 at about 9.10 a.m., a wireless message was received by him that Car bearing No.DL-2CA-1872 was parked at Malcha F Marg. He along with the staff reached near Malcha Marg Market. The said car was parked on the road. The CFSL team was called for inspection of the car. Car was then inspected. The dry blood lying in the dicky of the car was scratched, kept in a polythene packet, converted into a parcel and sealed. G Many long hair were lifted from the back of the front left seat of the car, kept in a parcel and sealed. A memo being Ex-PW-60/B was prepared which bears this out. The recovery of the appellant's car is attacked on the ground that no record of wireless message has been produced; no one from P.S. H Malcha Marg was examined; no record of P.S. Malcha Marg

has been produced; no information was given to the nearest Magistrate and no record showing presence of PW-72 PC Mukesh of P.S. Chanakyapuri was produced. It is also stated that no witness from the CFSL has been examined; no photographs have been produced and no independent witnesses have been examined. In our opinion, it was not necessary to produce the record showing presence of PW-72 PC Mukesh. We find him to be a truthful witness. In his evidence, PW-72 PC Mukesh clearly stated that on 4/7/1995, the said car was found abandoned near Gujarat Bhavan. He also deposed that before leaving the police station for patrolling duty, he was given number of the said car by SHO saying that it was involved in the murder case of P.S. Connaught Place and he should look for the said car. In view of the clear testimony of PW-72 PC Mukesh, it was not necessary to produce other record to support seizure of the car. There is no reason to disbelieve him. PW-81 IO Niranjan Singh has stated that the blood stains found in the dicky were scratched and sample thereof was taken. Therefore, even if no witness from the CFSL has been examined to depose about this or no photographs have been produced, that has no adverse effect on the prosecution case. Some advantage is sought to be drawn from the discrepancies in the time as regards receipt of wireless message from PW-81 IO Niranjan Singh and the estimate of time given by PW-72 PC Mukesh regarding PW-81 IO Niranjan Singh's presence at the site and the time given by PW-81 IO Niranjan Singh as to when he reached the said flat after taking samples from the appellant's car. The estimate of time given by the witnesses differ and may, at times, conflict. When there are telltale circumstances on record clearly supporting the prosecution case, assuming there are some discrepancies in the evidence of witnesses as regards time, it would not make any dent in the prosecution story. The argument that in the dicky there ought to have been a pool of blood, will also have to be rejected. PW-75 Inspector Jagat Singh in his evidence stated that from the spot, a polythene sheet/tarpaulin bearing stains of blood on one side and scratch marks on the lower side was taken in

A B C D E F G H

A possession under seizure memo [Ex-PW-75/1]. The body must, therefore, have been well covered in polythene sheet to hide it and, hence, there was no pool of blood in the dicky. This also explains why there was no trail of blood on the staircase or on the road. Blood was, however, found in the said flat.

B 39. The CFSL Report dated 27/7/1995 states that the hair recovered from the back of the left front seat of the said car were identified to be of human origin. However, no opinion could be given as to whether they were of the deceased. From the dicky, no human hair were recovered possibly because the C dead body was properly covered. This circumstance appears to us to be totally innocuous and no advantage can be drawn from it by the defence. So far as the sample of blood found in the dicky of the said car is concerned, the CFSL Report while confirming that it was blood, stated that the blood group could D not be analysed. There is no positive finding that the blood detected was not found to be 'human' blood. The submission that the blood detected in the dicky was found not to be 'human' blood is contrary to facts. Seizure of the appellant's car which was found abandoned at Malcha Marg with dry blood in the E dicky establishes the prosecution case that the said car was used by the appellant to carry the dead body to the Bagia Restaurant. It is further established that after leaving Bagia Restaurant on arrival of police, he came to Malcha Marg and parked the car there.

F 40. The evidence on record establishes that after committing the murder, the appellant spent the night at Gujarat Bhawan situated at Malcha Marg. Thereafter, the appellant was on the run. PW-81 IO Niranjan Singh's evidence throws light on it. It appears that while in Madras, the appellant having come G to know that the police were looking for him, obtained anticipatory bail. On an application filed by the prosecution, the anticipatory bail was cancelled. According to PW-81 IO Niranjan Singh, he learnt that on 10/7/1995, the appellant was arrested by PW-46 Inspector Gangadhar of the Bangalore H

Police. PW-81 IO Niranjan Singh got the production warrant issued from the concerned Magistrate by filing Application [Ex-PW-81/X-6]. On 11/7/1995, he along with his colleague reached Bangalore and took custody of the appellant. The appellant led them to Room No.110 of Hotel Pai Vihar where he was staying along with his advocate Mr. Anantanarayan. From Room No.110, a briefcase was recovered. In the briefcase, there was a revolver of Arminius make of .32 bore. There were four live cartridges, arms licence, passport and other documents. A key of a Maruti Car was also found from the briefcase and the same was also taken charge of and marked Ex-PW-81/X-10. All the articles were seized and seizure memo [Ex-PW-47/A] was drawn. The appellant was then brought to New Delhi. PW-81 IO Niranjan Singh has clearly stated that he informed the security personnel at the airport about the recovered revolver and the cartridges, while bringing the appellant to New Delhi by air.

41. No advantage can be drawn by the appellant from the fact that in the remand application dated 12/7/1995, it was stated that the weapon used in the crime had to be ascertained and recovered, though a revolver had been recovered on 10/7/1995. It must be borne in mind that the said remand application was made at an early stage of investigation. When the remand application was made, the police had not ascertained from the CFSL whether the revolver recovered at Bangalore was used by the appellant. Therefore, the said averment does not affect the veracity of recovery evidence. As regards the criticism that there is no statement of the appellant recorded under Section 27 of the Evidence Act and, therefore, recoveries made at Bangalore become inadmissible is concerned, it must be stated that it is not the prosecution case that any statement of the appellant was recorded under Section 27 of the Evidence Act. The revolver was recovered during investigation. Pertinently, the CFSL Report has established the link between the revolver recovered from the hotel room at Bangalore and the bullets found in the skull of the deceased.

A Evidence of police witnesses on this aspect is cogent and reliable. We find no reason to discard it. We may add here that in his statement recorded under Section 313 of the Cr.P.C. the appellant admitted that he possessed .32 bore Arminius revolver. But he stated that police recovered it from his B residence at Maurya Enclave when he was at Tirupati. The appellant has not led any evidence to prove that he was staying at Maurya Enclave. His parents did not step in the witness box. This story is rightly disbelieved by the High Court. Thus, the appellant's admission that he possessed .32 bore Arminius C revolver goes a long way amongst other circumstances in establishing his guilt.

42. Alleged non-compliance with procedural requirements laid down in Cr.P.C. by PW-81 IO Niranjan Singh who was conducting investigation outside his jurisdiction assuming to be D true, is an instance of irregularity in investigation which has no adverse impact on the prosecution case. It is true that Mr. Anantanarayan, the advocate was not examined. It is also true that PW-48 Srinivas Rao, the Manager of Pai Vihar Hotel and PW-50 Kancha, the waiter of the said hotel were given up by E the prosecution. Mr. Anantanarayan being advocate of the appellant was not expected to support the prosecution. It appears that, therefore, he was not examined. So far as PW-48 Srinivas Rao is concerned, he was not examined by the prosecution because he was won over by the appellant. PW-F 50 Kancha was not examined by the prosecution because he had difficulty in understanding Hindi and English. These witnesses are therefore, of no use to the prosecution. However, the prosecution case is substantiated by the evidence of PW-81 IO Niranjan Singh, PW-55 ACP Raj Mahinder Singh of Delhi G Crime Branch and PW-47 CI Gowda of Hauze Kote Police Station, Bangalore. We find them to be truthful. There is no presumption that evidence of police witnesses is always tainted. No evidence has been brought on record to suggest that they bore any grudge against the appellant and, hence, wanted to H falsely involve him. In our opinion, recoveries made at

Bangalore are proved beyond reasonable doubt. A

43. So far as recoveries of bloodstained clothes at the instance of the appellant from bushes near Gujarat Bhawan and from Rangpuri area are concerned, the trial court has not relied upon the recovery made from the area near Gujrat Bhawan. The B High Court has found no reason to discard the recovery made from Rangpuri area. In our opinion, even if these recoveries are kept out of consideration, there is enough other evidence on record which establishes the guilt of the appellant. It is therefore, not necessary to dwell on the said recoveries. C

44. Counsel for the appellant has stated that according to the prosecution on 11/7/1995, a revolver and arms licence were recovered from the hotel room of the appellant at Pai Vihar, Bangalore. The same were put in a parcel sealed with the seal of N.S. It is submitted that on 15/10/1995, the licence period D was extended to cover up the lacunae and an entry was made on the seized licence to that effect and this suggests tampering. We find no substance in this allegation. It appears from the evidence that the appellant had made an application for extension of licence on 18/1/1994 which was granted on 15/ E 10/1995 by PW-55A ACP Ram Narain. The evidence on record indicates that what was recovered on 11/7/1995 is licence (Ex-PW-47/E) and according to PW-55A, ACP Ram Narain, he made the entry of extension dated 15/10/1995 on the licence (Ex-PW-55/A). There is, therefore, no question of F tampering with the seized licence. Besides, no question was put to any of the officers about the co-relation between the said two exhibits. In any case, expiry of arms licence has nothing to do with the core of the prosecution case. We reject this submission. G

45. We shall now go to the medical evidence. We have already reproduced the observations made by PW-85 Dr. Joginder Pal in his Medico Legal Report after he received the dead body. We have also reproduced the relevant portions of the post-mortem notes and the cause of death given by CW-6 H

A Dr. Sarangi. According to CW-6 Dr. Sarangi, the cause of death was hemorrhagic shock consequent to various ante-mortem injuries found on the dead body. He has opined that the burns present on the said body must be probably inflicted after the death. It was argued that it is doubtful whether the death B was caused due to firearm injuries. It was pointed out that PW-85 Dr. Joginder Pal, the Casualty Medical Officer at RML Hospital has stated that he did not find any firearm injuries in the neck or in the head or in the nape of the deceased. Moreover, CW-6 Dr. Sarangi also did not notice any bullet mark C or bullet present in the dead body. In fact, he stated that the brain matter was intact. Doubt was cast on the opinion of the Board of Doctors, who extracted the two bullets and opined that those two bullets caused death. It was argued that the skull from which bullets were recovered was not the skull of the deceased. D We have no hesitation in rejecting all these submissions which are aimed at creating doubt about the Report of the Board of Doctors.

46. So far as PW-85 Dr. Joginder Pal is concerned, admittedly, he did not conduct the post-mortem. He conducted E superficial examination of the dead body. Obviously, therefore, he did not notice any firearm injury in the neck or in the head or in the nape of the deceased. It is true that CW-6 Dr. Sarangi did not notice any evident bullet marks or the bullets embedded in the skull. Possibly the bullets were so embedded that they F were not visible to the naked eye. In this connection, it is necessary to turn to PW-81 IO Niranjan Singh's evidence. He stated that as he found empty cartridges, a lead bullet and a bullet hole on a ply in the said flat, he suspected that a firearm must have been used in this incident. Therefore, he requested G CW-6 Dr. Sarangi to conduct X-ray examination of the dead body. However, X-ray examination was not conducted. These facts were mentioned by him in letter (Ex-PW-81/X-11). Since no X-ray examination was done on 9/7/1995, he discussed the need of having a second post-mortem with the DCP, New Delhi H and ACP, Connaught Place. He wrote a letter containing queries

about re-post-mortem and handed it over to PW-57 SI Ombir Singh and directed him to hand over the same to the Board of Doctors. According to him, on 9/7/1995, he had requested Dr. Aditya Arya, DCP for constitution of Board of Doctors. Copy of the letter to Dr. Arya is at Ex-PW-81/X-11. The Commissioner requested the Lt. Governor and by the order of Lt. Governor of New Delhi, the Board of Doctors was constituted. PW-44 Dr. Bharat Singh, PW-68 Dr. T.D. Dogra and Dr. S.K. Khanna were selected as members of the Board. On 12/7/1995, at about 10.30 a.m., the members of the Board of Doctors reached the Lady Hardinge Mortuary to conduct second post-mortem. CW-6 Dr. Sarangi was also there and he had a conversation with them. Second post-mortem report (Ex-PW-44/A) indicates that it was partly conducted at Lady Hardinge Mortuary and thereafter the body was shifted to the Civil Hospital for X-ray. Skull was X-rayed. X-ray revealed two bullets embedded in the skull.

47. In our opinion, when PW-81 IO Niranjan Singh had requested CW-6 Dr. Sarangi to get the dead body X-rayed, he should have got the X-ray examination done. He gave an excuse that the X-ray examination was not done because the portable X-ray machine available at Lady Hardinge Medical College was not functioning. Assuming this to be true, in a serious crime like this, he should have immediately taken the dead body to the Civil Hospital for X-ray examination. It is pertinent to note that to a court question, he has stated that he was making sincere efforts to get X-ray of the dead body done in the X-ray department in consultation with the Medical Superintendent of the hospital. However, before he could complete any such endeavour, the body was taken away by PW-81 IO Niranjan Singh for further examination by some other doctors at some other hospital. There is nothing on record to show that CW-6 Dr. Sarangi made any grievance about this fact. In fact, he admitted that in the post-mortem report, he did not mention these facts nor did he take any action against PW-81 IO Niranjan Singh. When asked whether he had taken any

A action, CW-6 Dr. Sarangi changed his stand and stated that he thought that what PW-81 IO Niranjan Singh was doing was in the furtherance of "good justice". He has indeed contradicted himself. If he thought that the dead body was suddenly withdrawn and he was keen on X-raying it, then he ought to have
B written a letter to that effect to the Commissioner of Police and to the hospital authorities and he ought to have made complaint against PW-81 IO Niranjan Singh. He did nothing. In fact, at one stage he stated that the necessity of X-ray examination was not realized by him because he did not notice any bullet marks and
C at another stage he suggested that he wanted to get the dead body X-rayed. When he was asked as to whether a bullet can be put inside the body after death at the place where it has been noticed by the Board, he stated that the possibility could not be absolutely ruled out especially in the presence of multiple
D post-mortem cracks and separation of the skull bone from the neck for the purpose of superimposition. Thus, CW-6 Dr. Sarangi in his evidence has tried to cast a doubt on the entire investigation and the Board of Doctors. The trial court severely commented on the conduct of CW-6 Dr. Sarangi. The High Court, however, expunged those remarks. Since the High Court
E has expunged those remarks, we would not like to reopen the issue. But we find it extremely difficult to reject the opinion of the Board of Doctors on the basis of his evidence. Eminent doctors were members of the Board of Doctors. They had no reason to falsely implicate the appellant.

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48. We would also like to make it clear that there is absolutely no reason to doubt the prosecution case that the skull of which X-ray was taken was that of the deceased. CW-6 Dr. Sarangi stated that on the request of PW-81 IO Niranjan Singh,
G the skull bone was separated for superimposition. PW-81 IO Niranjan Singh stated that he received the skull on 5/7/1995. He stated that at the time of post-mortem, he gave application dated 5/7/1995 to the Autopsy Surgeon for preserving the skull for superimposition. Thus, the skull was merely separated for
H the purpose of superimposition but remained in the mortuary

along with the dead body. The first post-mortem report dated 5/7/1995 records that the skull was preserved for superimposition. The skull along with the body remained in the mortuary of Lady Hardinge Medical College after the first post-mortem and was not sent for superimposition. On application dated 9/7/1995 submitted by PW-81 IO Niranjan Singh, an order was passed for the second post-mortem. This application shows that though a request was made for skull superimposition test, the dead body with its head was still preserved in the Lady Hardinge Medical College mortuary and process of superimposition had not started till then. The second post-mortem report records that the body was kept in the mortuary of Lady Hardinge Medical College in a plastic bag and was taken out from the same. It was a dead body with the skull separated. The evidence clearly shows that the separated skull remained along with the body in the mortuary of the Lady Hardinge Medical College from 5/7/1995 till 12/7/1995. The second post-mortem was conducted on 12/7/1995. During the second post-mortem, the dead body was taken to Civil Hospital for X-ray and, thereafter, it was brought back to the Lady Hardinge Mortuary. The body along with the skull was later taken to AIIMS for conducting superimposition. The defence has not been able to create any doubt in our minds that the skull was not that of the deceased. Minor discrepancies, if any, in the evidence of witnesses are natural in a case of this type. They will not have any adverse impact on the basic case of the prosecution which is borne out by cogent and reliable evidence.

49. The second post-mortem report states that the body was kept in the mortuary of Lady Hardinge Medical College in a plastic bag and was taken out from the same in the presence Board of Doctors. On external examination, the body is described as "*a burnt dead body, with skull separated at upper cervical level (kept in a separate cardboard box)*". After describing the state of upper limbs, lower limbs, left lower limb, thoracic cavity, abdominal cavity, kidneys, back of trunk, spinal column, head, skull vault, cranial cavity, it is stated that at that

A stage it was decided to take X-rays of the body to detect any firearm projectiles. The Report further notes that due to non-availability of the facility of X-ray for the dead bodies at Lady Hardinge Medical College, it was decided to shift the body to the Civil Hospital for X-ray. The body was shifted to the Civil B Hospital in a police vehicle and X-ray was taken in the Civil Hospital. From the evidence of CW-7 Dr. (Ms.) P.S. Kiran, the Radiologist, Civil Hospital, New Delhi, it appears that she took the necessary X-rays of the dead body. X-ray plates were shown to the Board of Doctors. The doctors noted their C observations in their report after viewing the X-ray plates. It is stated that the X-ray plates showed the presence of two metal pieces, (i) in back of right ear (mastoid region) and (ii) left side of neck, near the spine in soft tissues of cervical stumps. The report then indicates that thereafter the neck was dissected and D a deformed bullet was located. Thereafter, the right mastoid area was also dissected to locate the bullet. The outer table of the skull above mastoid process was bulging outwards through which a metal piece was seen. On further dissection, a deformed bullet was found embedded in the bone with its nose portion pointing outwards and base towards medial side. Both E the bullets were removed. The final opinion of the Board reads as under:

> *"The burns are post-mortem in nature and are caused by fire. The firearm injuries are ante-mortem in nature,* F *caused by a firearm such as a revolver or pistol. In view of the extensive burns, it is not possible to give exact location of the entry wounds. However on the basis of the track and location of bullet, the entry wound on the head could be in the left temporal region and that in the neck* G *could be in the right upper part of the neck. It is also not possible to comment upon the range of fire, because of extensive burns on probable site of entry. The firearm injury on the head is sufficient to cause death in ordinary course of nature. The death in this case was due to coma,* H *consequent upon firearm injury to the head.*

It is not possible to comment whether the distal portions of the limbs were chopped off or were separated due to burns, in view of the burnt distal ends of the bones." A

50. Thus, the second post-mortem report makes it clear that the burns were post-mortem and firearm injuries were ante-mortem and the death was due to coma, consequent upon firearm injury to head. It was, however, not possible to say whether the distal portions of the limbs were chopped off or were separated due to burns in view of the burnt distal ends of the bones. The report also shows how the body travelled from Lady Hardinge Medical College to the Civil Hospital. The body was lying in the mortuary of Lady Hardinge Medical College in a plastic bag and it was taken out from there in the presence of the Board of Doctors and the second post-mortem was conducted. When need for X-ray was realized, it was shifted in police vehicle to the Civil Hospital and the X-rays were taken at the Civil Hospital. We have no hesitation in placing implicit reliance on the opinion expressed by the Board of Doctors after the second post-mortem. B C D

51. It is also necessary to deal with the submission of the counsel for the appellant that the two parcels containing bullets which were extracted from the skull of the deceased, bearing the seal of Civil Hospital were never sent to the CFSL. This submission deserves to be rejected, because PW-44 Dr. Bharat Singh stated that after the second post-mortem, he handed over the two bullets recovered from the skull of the deceased to PW-57 SI Ombir Singh in a sealed cover with the seal of Civil Hospital. PW-57 SI Ombir Singh has confirmed this fact. He stated that he took possession of the same vide Memo [Ex-PW57/A] and after depositing the dead body at Lady Hardinge Medical College, he came to the police station and handed over the said parcels to PW-81 IO Niranjan Singh along with Memo [Ex-PW-57/A]. It was urged that PW-67 HC Raj Kumar, who is in-charge of Malkhana has stated that no parcel was deposited with him on 12/7/1995, 13/7/1995 and E F G H

A 14/7/1995. This argument is misleading. In his evidence PW-67 HC Raj Kumar has nowhere stated that he had not received any parcel on 12/7/1995, 13/7/1995 and 14/7/1995. According to the prosecution, Entry No.2146 of the Malkhana Register shows that the two bullets [Ex.Nos.36 and 37] recovered from
B the skull of the deceased were deposited in Malkhana. PW-81 IO Niranjan Singh has stated that on 17/7/1995 he had sent the parcels to the CFSL through SI Rakesh Ahuja. PW-67 HC Raj Kumar has confirmed this fact. PW-70 Roop Singh has stated that he received two parcels with the seal of Civil
C Hospital, Delhi from the Malkhana on 17/7/1995. We have, therefore, no doubt that the two bullets recovered from the skull of the deceased were sent to the CFSL. There is, therefore, no substance in this argument.

52. We may add here that the CFSL Report dated 27/7/
D 1995 states that the two bullets recovered from the skull of the deceased were stained with blood of 'B' group. This establishes that the blood group of the deceased was 'B'. It is pertinent to note that the CFSL Report dated 17/7/1995 states that the various articles such as cloth piece, carpet piece, chatai,
E etc. recovered on 4/7/1995 from the said flat were stained with the blood of 'B' group. Similarly, it states that the polythene sheet which was recovered from the Bagia Restaurant was also stained with the blood of 'B' group. It is pertinent to note that the CFSL Report dated 27/7/1995 also shows that in the dicky
F of Car No.DL-2CA-1872, blood was detected. Therefore, the prosecution case that the deceased was murdered in the said flat by shooting her in the head by the appellant; that the body of the deceased was wrapped in the polythene sheet and carried by the appellant in his car bearing No.DL-2CA-1872
G to the Bagia Restaurant and that it was burnt there in the *tandoor*, is proved.

53. Attempt has been made to create confusion and caste a doubt on the entire procedure of second post-mortem by pointing out some discrepancies in the evidence of PW-44 Dr.
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Bharat Singh and PW-57 SI Ombir Singh as regards the time when the second post-mortem was conducted. We repeat that the evidence of the doctors who were concerned with the second post-mortem and their report inspires confidence. It is reliable. Hence, we reject this submission. At the cost of repetition, we must note that minor discrepancies in the evidence of witnesses as regards dates and time cannot have any adverse impact on the prosecution case because in this case, it's substratum is firmly established by cogent and reliable evidence.

54. Certain minor procedural irregularities have also been highlighted. But it must be borne in mind that the investigation of this case was not restricted to New Delhi. The appellant travelled from one city to another. He reached Madras. From there he went to Bangalore where he was arrested. In a case of this type there is likelihood of some lapses on the part of the investigating agency. It is well settled that such lapses, if they are minor, cannot be allowed to defeat the cause of justice. We have not noticed any major lacuna in the investigation from which adverse inference can be drawn against the prosecution. Attempt has been made to suggest that all witnesses including doctors, expert witnesses, and police officers have conspired against the appellant and he has been falsely implicated. We see no reason to draw such conclusion. It is impossible to believe that everyone would want to implicate the appellant in a false murder case and in that attempt, go to the extent of implanting bullets in the skull. We reject all such submissions.

55. The evidence on record clearly establishes that the appellant has not been able to prove the defence of alibi. Adverse inference needs to be drawn from this fact. False defence of alibi indeed forms a vital link in the chain of circumstances. It is also established by the prosecution that after the murder, the appellant made himself scarce. He stayed in the night of 2/7/1995 and 3/7/1995 at Gujarat Bhavan. He was on the run. He travelled from Delhi to Jaipur, from Jaipur to Bombay, from Bombay to Madras and from Madras to

A Bangalore where he was arrested on 10/7/1995. These facts are successfully established by oral and documentary evidence. Thus, the fact that the appellant was absconding is established beyond doubt.

B 56. In the ultimate analysis, therefore, we are of the opinion that the prosecution has successfully proved beyond reasonable doubt the following circumstances:

(a) the appellant and the deceased were married and they were staying together in the said flat being Flat C No.8/2A situated at Mandir Marg;

(b) the relations between the appellant and the deceased were strained. The appellant was suspecting the fidelity of the deceased. The D deceased wanted to make their marriage public which the appellant was not willing to do. There was, thus, a strong motive to murder;

(c) the appellant and the deceased were last seen together in the evening of 2/7/1995 in the said flat; E

(d) on 2/7/1995, at about 11.00 p.m. there was a fire in Bagia Restaurant and the appellant was seen at around 10.15 p.m. at the Bagia Restaurant in his Maruti Car bearing No.DL-2CA-1872; F

(e) A2-Keshav, who was an employee of the Bagia Restaurant owned by the appellant, was seen shuffling the wood in the *tandoor* with a wooden stick and he was apprehended at the spot in the night intervening 2/7/1995 and 3/7/1995; G

(f) charred corpse found in the *tandoor* was identified to be that of the deceased;

(g) on 4/7/1995, certain blood stained articles were H recovered from the said flat where the appellant and

the deceased were staying together; A

(h) on 4/7/1995, Car No.DL-2CA-1872 was found abandoned at Malcha Marg and the dicky of the car was found to contain dry blood.

(i) on 5/7/1995, five empty cartridges, one lead bullet, a ply with bullet hole and an air pistol were recovered from the said flat where the appellant and the deceased were staying together; B

(j) from the evening of 2-3/7/1995, the appellant was on the run till he was arrested by the Bangalore Police at Bangalore on 10/07/1995. On 11/07/1995, the appellant was handed over to the Delhi Police and, inter alia, a .32 Arminius revolver owned by him was recovered by the police from his room at Pai Vihar Hotel at Bangalore; C D

(k) the second post-mortem report prepared after studying the X-ray plates of the skull of the deceased revealed that there were two bullets embedded in it; E

(l) the CFSL report stated that the said two bullets recovered from the skull of the deceased and the one lead bullet recovered from the said flat were fired from the .32 Arminius revolver recovered by the police from Pai Vihar Hotel at Bangalore; F

(m) the death of the deceased was homicidal and was consequent upon firearm injuries to the head of the deceased caused by the appellant alone with his .32 bore Arminius revolver; G

(n) as per the CFSL Report, blood found on various articles seized from the said flat and from Bagia Restaurant and the blood found on the bullets H

A recovered from the skull tallied. It was of the blood group of the deceased.

(o) the defence of alibi pleaded by the appellant was found to be false; and

B (p) the appellant and A2-Keshav conspired to cause disappearance of the evidence of murder by burning the dead body of the deceased in tandoor of Bagia Restaurant.

C 57. We have no doubt that the chain of the above circumstances is complete and unerringly points to the guilt of the appellant. The established circumstances are capable of giving rise to inference which is inconsistent with any other hypothesis except the guilt of the appellant. The prosecution D has, therefore, proved that the appellant alone has committed the murder of the deceased in the said flat on 2/7/1995. The appellant conspired with A2-Keshav to do away with the dead body of the deceased so as to cause disappearance of the evidence of murder and, at the instance of the appellant, A2-E Keshav burnt the dead body in the tandoor. The appellant has, therefore, rightly been convicted under Section 302 of the IPC and also for offence under Section 201 read with Section 120-B of the IPC. A2-Keshav has been acquitted of offence punishable under Section 302 read with Section 120-B of the F IPC. However, he has been rightly convicted for offence punishable under Section 201 read with Section 120-B of the IPC. As already stated, he has not appealed against the said order of conviction. In view of the above, we confirm the conviction of the appellant for offence punishable under Section 302 of the IPC and also for offence punishable under Section G 201 read with Section 120-B of the IPC. Having confirmed the conviction, we must now consider as to whether the death sentence awarded by the trial court and confirmed by the High Court should be confirmed.

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SUBMISSIONS ON SENTENCE:

58. On the question of sentence, we have heard Mr. Jaspal Singh at great length. He first took us to the judgment of the Constitution Bench of this Court in *Bachan Singh, etc. v. State of Punjab, etc.*[3], where the Constitution Bench has noted the aggravating circumstances and mitigating circumstances and observed that while considering the question of sentence relative weight must be given to them. Counsel laid stress on the observation of the Constitution Bench that apart from the mitigating circumstances noted by it there are numerous other circumstances justifying the passing of the lighter sentence; that the mitigating factors in the area of death penalty must receive a liberal and expansive construction by the court and that judges should never be bloodthirsty.

59. Counsel relied on the judgments of this Court in *Santosh Kumar Satishbhushan Bariyar, etc. v. State of Maharashtra, etc.*[4]; *Ramdeo Chauhan alias Raj Nath v. State of Assam*[5]; *Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka*[6]; *Aloke Nath Dutta & Ors. v. State of West Bengal*[7]; *Haresh Mohandas Rajput v. State of Maharashtra*[8] *and State of Punjab v. Manjit Singh and Ors*[9]. and submitted that public perception is extraneous to conviction as also sentencing. Age of the accused would be a relevant consideration. In a case of circumstantial evidence the courts should lean towards life imprisonment. Every murder is brutal. Brutality alone would not be a ground for judging whether the case is one of the rarest of rare cases. The court must consider whether the accused has a criminal history; whether he is a

3. (1980) 2 SCC 684.
4. (2009) 6 SCC 498.
5. (2001) 5 SCC 714.
6. (2008) 13 SCC 767.
7. (2007) 12 SCC 230.
8. (2011) 12 SCC 56.
9. (2009) 14 SCC 31.

A criminal or a professional killer and whether he will be an ardent criminal and a menace to the society. Counsel pointed out that despite the fact that the offences committed by the accused were heinous in *Mohd. Chaman v. State (NCT of Delhi)*[10]; *Dilip Premnarayan Tiwari & Anr., etc. v. State of* B *Maharashtra*[11]; *Sebastian alias Chevithayan v. State of Kerala*[12]; *Rajesh Kumar v. State through Government of NCT of Delhi*[13] *and Amit v. State of Uttar Pradesh*[14], the court converted the death sentence into life sentence. Counsel submitted that probability of reformation and rehabilitation of C the accused has to be considered and burden is on the State to lead evidence to prove that there is no probability of reformation or rehabilitation of the accused. Counsel submitted that *Machhi Singh & Ors. v. State of Punjab*[15] advocates principle of proportionality which is old and archaic and, hence, D we must fall back on *Bachan Singh.* Counsel further submitted that there is a long lapse of time since the imposition of capital sentence and consideration of sentence by this Court. The offence was committed on 2/7/1995. The trial court convicted and sentenced the appellant on 3/11/2003. The High Court confirmed the death sentence on 19/2/2007. The appeal has E been pending in this Court for the last six years. He submitted that the appellant has already undergone more than 18 years imprisonment in the jail. This delay also provides a valid ground for commuting death sentence to life imprisonment. In this connection he relied on *Piare Dusadh v. King Emperor*[16]; *Neti* F *Sreeramulu v. State of Andhra Pradesh*[17]; *Ediga Anamma v.*

10. (2001) 2 SCC 28.
11. (2010) 1 SCC 775.
G 12. (2010) 1 SCC 58.
13. (2011) 13 SCC 706.
14. (2012) 4 SCC 107.
15. (1983) 3 SCC 470.
16. AIR 1944 FC 1.
H 17 (1974) 3 SCC 314

State of Andhra Pradesh[18]*; Ramesh and Ors. v. State of Rajasthan*[19]*; Mohd. Farooq Abdul Gafur & Anr. etc. v. State of Maharashtra, etc.*[20] *and State of Uttar Pradesh v. Munesh.*[21] Counsel submitted that the instant case does not fall in the category of rarest of rare cases. The appellant has no criminal history. He is not a professional criminal. Death was caused by bullet injuries. It was not savage or brutal. The State has not laid any evidence to establish that the accused would commit criminal acts of violence as would constitute continuing threat to the society. Therefore, the principle that life imprisonment is the rule and death sentence is an exception must be applied to this case. Counsel submitted that body was burnt to destroy evidence. That would not bring this case in the category of rarest of rare cases *(Santosh Kumar Bariyar).* Counsel submitted that evidence on record establishes that the appellant loved the deceased. He married her despite the fact that she had an affair with PW-12 Matloob Karim. She continued to have relations with PW-12 Matloob Karim despite his objection after marriage. The deceased was not a hapless woman. She was an independent woman. Since crime is committed in such circumstances, death sentence should not be awarded to the appellant.

60. On the other hand, relying on the judgments of this Court in *Ediga Anamma*[22]*; Mahesh s/o. Ram Narain, & Ors. v. State of Madhya Pradesh*[23]*; Machhi Singh; Molai & Anr. v. State of Madhya Pradesh*[24]*; State of Rajasthan v. Kheraj Ram*[25] *and Dhananjoy Chatterjee alias Dhana v. State of*

18 (1974) 4 SCC 443.
19 (2011) 3 SCC 685.
20. (2010) 14 SCC 641.
21. (2012) 9 SCC 742.
22. (1974) 4 SCC 443.
23. (1987) 3 SCC 80.
24. (1999) 9 SCC 581.
25 (2003) 8 SCC 224.

A *West Bengal*[26] Mr. Chandhiok, learned Additional Solicitor General, submitted that the appellant deserves no sympathy. The crime committed by the appellant is horrendous and warrants death penalty. Counsel submitted that the deceased was a hapless lady; qua her, the appellant was in a dominating
B position; the appellant always ill-treated her and refused to acknowledge her as his wife though she was residing with him; his plea was held to be false; he showed no remorse after the murder and he tried to destroy the evidence in a most barbaric manner. Thus, there are no mitigating circumstances, in this
C case. A sentence other than the death sentence will not operate as a deterrent and may send a wrong signal to the society. Counsel submitted that the object of sentencing is to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has
D been done. Drawing our attention to paragraphs 19, 22, 87 and 88 of the impugned judgment, counsel submitted that the High Court has given strong, convincing and legally sound reasons for awarding death penalty, which do not deserve to be disturbed. On the aspect of delay, relying on the judgment of this Court in *Smt. Triveniben, etc. v. State of Gujarat, etc.*[27],
E counsel submitted that in this case the Constitution Bench has held that while considering whether the death sentence should be awarded or not, the time utilized in judicial proceedings upto final verdict cannot be taken into account. This is not a case of delay in disposing of mercy petition. Counsel submitted that
F while awarding death sentence, perception of the Society is one of the considerations. Counsel submitted that this case is one of the most widely published and infamous murder case. It is a case where this Court must, by confirming the death sentence, send a strong signal to the society which will operate as an
G effective deterrent in future.

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26. (1994) 2 SCC 220.

H 27. (1989) 1 SCC 678.

ANALYSIS OF SUBMISSIONS ON SENTENCE AND CONCLUSION: A

61. Learned counsel have drawn our attention to the decisions of the Constitution Bench of this Court in ***Bachan Singh*** and ***Machhi Singh***. We must begin with them. In B ***Bachan Singh***, after referring to ***Ediga Anamma,*** which had, in turn, referred to ***Neti Sreeramulu,*** constitutional validity of death penalty for murder provided in Section 302 of the IPC and the sentencing procedure embodied in sub-section (3) of Section 354 of the Code was considered. The Constitution C Bench observed that the death penalty should be imposed in rarest of rare/gravest cases. It was observed that while considering the question of sentence relative weight must be given to the aggravating and mitigating circumstances. The Constitution Bench noted the aggravating circumstances as under: D

> "(a) if the murder has been committed after previous planning and involves extreme brutality; or
>
> (b) if the murder involves exceptional depravity; or E
>
> (c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed—
>
> > (i) while such member or public servant was on duty; F or
> >
> > (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was G such member or public servant, as the case may be, or had ceased to be such member or public servant; or
>
> (d) if the murder is of a person who had acted in the lawful H

A discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code."

B The mitigating circumstances were noted as under:

> "(1) That the offence was committed under the influence of extreme mental or emotional disturbance.
>
> C (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
>
> (3) The probability that the accused would not commit criminal acts of violence as would constitute
> D a continuing threat to society.
>
> (4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy
> E the conditions (3) and (4) above.
>
> (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
>
> F (6) That the accused acted under the duress or domination of another person.
>
> (7) That the condition of the accused showed that he was mentally defective and that the said defect
> G impaired his capacity to appreciate the criminality of his conduct."

62. The Constitution Bench noted that there are numerous other circumstances justifying the passing of the lighter sentence as there are countervailing circumstances of
H

aggravation. It was further observed that the court cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. Nonetheless, it cannot be over-emphasized that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy. It was further observed that Judges should never be bloodthirsty. Relevant observations of the Constitution Bench read as under:

> "Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency — a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

63. In *Machhi Singh*, a three Judge Bench of this Court considered whether death sentence awarded to the appellants should be confirmed. In that case as a result of a family feud the appellants with a motive of reprisal, committed 17 murders in five incidents occurring in the same night in quick succession in the five neighbouring villages. Some of the accused were sentenced to death. This Court referred to the judgment of the

A Constitution Bench in *Bachan Singh* and culled out the following propositions as emerging from *Bachan Singh's* case:

> "*(i)* The extreme penalty of death need not be inflicted except in gravest cases of extreme
B culpability.
>
> *(ii)* Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.
C
> *(iii)* Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether
D inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and
E circumstances of the crime and all the relevant circumstances.
>
> *(iv)* A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded
F full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

It was further observed that to apply these guidelines court
G must ask and answer the following questions:

> "(*a*) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?
>
H (*b*) Are the circumstances of the crime such that there is

no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?"

In the facts of the case, death sentence awarded to some of the accused was confirmed.

64. We shall now go to some of the other judgments on which reliance is placed by the appellant and the respondent. It is not necessary to refer to all the judgments because they reiterate the same principles.

JUDGMENTS RELIED ON BY THE APPELLANT:

65. In *Mohd. Chaman*, the appellant had raped a 1½ year-old girl. In the process of committing rape, injuries were inflicted on liver which resulted in death of the child. The trial court sentenced him to death. The High Court confirmed the death penalty. This Court observed that the crime was undoubtedly serious and heinous and the conduct of the appellant was reprehensible. It revealed a dirty and perverted mind of a human being who has no control over his carnal desires. However, after treating the case on the touchstone of the guidelines laid down in *Bachan Singh* and *Machhi Singh*, this Court was of the view that the appellant was not such a dangerous person that to spare his life will endanger the community. It was further observed that the circumstances of the crime were not such that there was no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the offender. It was observed that the case is one in which a humanist approach should be taken while awarding punishment. The capital punishment imposed against the appellant was set aside and the appellant was sentenced to life imprisonment.

66. In *Aloke Nath Dutta*, the appellant, who had many vices, was in need of money. Out of greed for money, he killed his brother. The trial court sentenced the appellant to death. The

A High Court confirmed the death sentence. This Court held that though the offence was gruesome, the case was not one of the rarest of rare cases. This Court observed that though the deceased was killed while he was in deep slumber, the method applied cannot be said to be cruel. This Court noted that both B the brothers i.e. the deceased and the appellant were living in the same premises for a long time; they were looking after their parents and the other brothers had filed a suit against them and their mother apprehending that their mother would bequeath the property in favour of the appellant and the deceased. This Court C held that the prosecution had failed to prove the case of conspiracy and, in the circumstances, the case did not fall in the category of rarest of rare cases. The appellant's death penalty was commuted to life imprisonment.

67. In *Manjit Singh*, the case of the prosecution was that D Bhinder Kaur, the wife of the deceased-Sewa Singh was having illicit relationship with the accused, who were working as Sewadars in the Gurdwara where the deceased used to recite Kirtan. Having come to know this, deceased-Sewa Singh and his son used to beat Bhinder Kaur. Enraged by this, the E accused came to the house of deceased-Sewa Singh and murdered him by assaulting him with Kirpan and Khanda. The son of deceased-Sewa Singh and two others were killed in the Gurdwara by them. The accused were sentenced to death by the trial court. The High Court, however, commuted the death F sentence to life imprisonment. The State of Punjab appealed to this Court. It was argued that the High Court was not right in converting the death sentence into life imprisonment. This Court observed that whether the case is one of the rarest of rare cases is a question which has to be determined on the facts G of each case. Only where culpability of the accused has assumed depravity or where the accused is found to be an ardent criminal and menace to the society; where the crime is committed in an organized manner and is gruesome, cold-blooded, heinous and atrocious; where innocent and unarmed H persons are attacked and murdered without any provocation,

death sentence should be awarded. In the facts of the case before it, this Court held that being driven more by infatuation and also being devoid of their senses on coming to know about the ill-treatment meted out to Bhinder Kaur, the accused committed the murders. It was observed that though the act of the accused was gruesome it was a result of human mind going astray. In the circumstances, the High Court's order commuting death sentence to life imprisonment was confirmed.

68 In *Santosh Kumar Bariyar,* all the accused including the appellant were unemployed young men in search of job. In execution of a plan proposed by the appellant and accepted by them, they kidnapped a friend of theirs with the motive of procuring ransom from his family but later murdered him and after cutting his body into pieces disposed of the same at different places. One of the accused turned approver. The prosecution case was based exclusively on his evidence. The trial court awarded death sentence to the appellant. The High Court confirmed the death sentence. In appeal, this Court held that doctrine of proportionality provides for justifiable reasoning for awarding death penalty. However, while imposing any sentence on the accused the court must also keep in mind the doctrine of rehabilitation. The court cannot, therefore, determine punishment on grounds of proportionality alone. This Court observed that there was nothing to show that the appellant could not be reformed and rehabilitated. It was further observed that the manner and method of disposal of the dead body of the deceased made the case a most foul and despicable case of murder. However, mere mode of disposal of the dead body may not by itself be made the ground for inclusion of a case in the rarest of care category for the purpose of imposition of death sentence. It may have to be considered along with several other factors. This Court was of the view that the fact that the prosecution case rested on the evidence of the approver, will have to be kept in mind. It was further observed that where the death sentence is to be imposed on the basis of circumstantial evidence, the circumstantial evidence must be

such which leads to an exceptional case. It was further observed that the discretion given to the court in such cases assumes onerous importance and its exercise becomes extremely difficult because of the irrevocable character of death penalty. Where two views ordinarily could be taken, imposition of death sentence would not be appropriate, but where there is no other option and it is shown that reformation is not possible, death sentence may be imposed. In the circumstances, the death sentence was converted to life imprisonment.

69. In *Sebastian*, the appellant had trespassed into the complainant's house and kidnapped his two year-old daughter. He then raped and killed her. The trial court sentenced him to death. The death sentence was confirmed by the High Court. This Court considered the fact that the appellant was a young man of 24 years of age at the time of incident and that the case rested on circumstantial evidence, and substituted the death sentence by life sentence. It was, however, directed that the appellant shall not be released from prison for the rest of his life.

70. In *Rajesh Kumar*, the appellant was convicted for killing two children aged four-and-a-half years, and eight months in a brutal and diabolical manner. He had held the legs of the infant and hit the child on the floor, and had slit the throat of the elder son with a piece of glass which he had obtained by breaking the dressing table glass. The motive for crime was said to be the refusal by the father of the children to lend money to him. The trial court imposed death sentence on the appellant. The High Court confirmed the death sentence. On appeal, this Court held that the State had failed to show that the appellant was a continuing threat to the society or that he was beyond reform and rehabilitation. It was observed that the High Court has taken a very narrow and a myopic view of the mitigating circumstances about the appellant. It was observed that the brutality of murder alone cannot justify infliction of death penalty.

The death sentence was, in the circumstances, set aside and the appellant was sentenced to life imprisonment. A

71. In *Ramesh*, Ramlal, who was doing business of money lending and his wife Shanti Devi were found lying dead in a pool of blood in their house-cum-shop. Pursuant to the FIR registered under Sections 302 and 457 of the IPC, the appellant was arrested along with others. The case of the prosecution was that the appellant and other accused had decided to commit robbery at the house-cum-shop of Ramlal. They trespassed into it; looted the house-cum-shop and decamped with the ornaments of silver, gold and cash. The murder weapon was recovered from the appellant. The trial court convicted the appellant, inter alia, under Sections 120-B and 302 of the IPC. He was sentenced to death. The High Court confirmed the death sentence. On appeal, this Court observed that though the case was of double murder, it cannot be said to be a crime of enormous proportion. The appellant could not be said to be a person in a dominating position as it was not a murder of an innocent child or a helpless woman or old or infirm person. Though it was the case of the prosecution that the appellant was having criminal record, this Court noticed that it did not find any previous conviction having been proved against him. The original intention was theft and on account of the deceased having been awakened, the accused took the extreme step of eliminating both of them for fear of being detected. This Court further observed that it cannot be said that the appellant alone had committed the murder because he discovered the murder weapon. It was not clear as to who was the actual author of the injuries. This Court noted that the appellant was languishing in death cell for more than six years. That would also be one of the mitigating circumstances. In the circumstances, death sentence awarded to the appellant was converted into life imprisonment. B C D E F G

72. In *Amit*, the complainant lodged FIR alleging that while his mother and wife were present in the house, the appellant H

A came there, took away his 3 year-old daughter on the pretext that he would give her biscuits. However, neither the appellant nor the complainant's daughter returned. Investigation disclosed that the appellant had kidnapped the girl. She was subjected to unnatural offence and rape. She was hit on the head and was B strangulated. The trial court convicted the appellant, inter alia, under Section 302 of the IPC and sentenced him to death. The High Court confirmed the death sentence. On appeal, this Court set aside the death sentence. This Court observed that the appellant was a young person aged about 28 years. There was C no evidence to show that he had committed such offences earlier. There was nothing on record to show that he was likely to repeat similar crimes in future. This Court expressed that given a chance, the appellant may reform over a period of years. This Court sentenced the appellant to life imprisonment and observed that life imprisonment shall extend to the full life D of the appellant, but subject to any remission or commutation at the instance of the Government for good and substantial reasons.

73. We may also refer to *Mohinder Singh v. State of* E *Punjab*[28], where the appellant, who was serving 12 years' rigorous imprisonment for having raped his own daughter was released on parole. While on parole, he murdered his wife and the daughter, whom he had raped earlier, by giving repeated axe-blows on their heads. His other daughter saved herself by F hiding in a room and bolting the same from inside. The trial court convicted him under Section 302 of the IPC and sentenced him to death. The High Court confirmed the death sentence. This Court observed that the appellant was a poor man and was unable to earn his livelihood since he was driven G out of his house by the deceased-wife. It was his grievance that the deceased-wife was adamant that he should live outside and that was the reason why the relations were strained. The appellant was feeling frustrated because of the attitude of his

H 28. (2013) 3 SCC 294.

wife and children. This Court also took into consideration the fact that the appellant did not harm his other daughter who was there even though he had a good chance to harm her. This Court observed that after balancing the aggravating and mitigating circumstances emerging from the evidence on record, it was not persuaded to accept that the case can appropriately be called the rarest of rare case warranting death penalty. This Court also expressed that it was difficult to hold that the appellant was such a dangerous person that he will endanger the community if his life is spared. The possibility of reformation of the appellant could not be ruled out. In the circumstances, this Court converted the death sentence into life imprisonment. However, after referring to its judgment in *Sangeet & Anr. v. State of Haryana*[29], this Court observed that there is a misconception that a prisoner serving life sentence has an indefeasible right to release on completion of either 14 years' or 20 years' imprisonment. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the Cr.P.C. which in turn is subject to the procedural checks mentioned in the said provision and further substantive checks in Section 433-A of the Cr.P.C. This Court, therefore, sentenced the appellant to undergo rigorous imprisonment for life, meaning thereby imprisonment till the end of his life but subject to any remission granted by the appropriate Government satisfying the conditions prescribed in Section 432 of the Cr.P.C. and further substantive checks under Section 433-A of the Cr.P.C. by passing appropriate speaking order.

JUDGMENTS RELIED ON BY THE RESPONDENT-STATE.

74. In *Mahesh*, five persons were murdered because of marriage of a lady of a higher caste with a Harijan boy. They were axed to death in an extremely brutal manner. After the

29. (2013) 2 SCC 452.

A murders, the accused tried to break open the door of the room where two of the prosecution witnesses were hiding to save themselves and they left the place only when the door could not be opened. The accused were convicted under Section 302 of the IPC and sentenced to death by the trial court. While
B confirming the death sentence, this Court observed as under:

> "It will be a mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellants would be to render the
C justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon. But this does not mean that the Court ignore the need for a reformative approach in the
D sentencing process. But here, there is no alternative but to confirm the death sentence."

75. In *Dhananjoy Chatterjee*, the appellant had raped and murdered a young 18 year-old girl in her flat in a society where
E he was working as a security guard. The trial court found him guilty, inter alia, under Sections 302 and 376 of the IPC. The High Court confirmed the sentence of death. This Court also confirmed the death sentence by observing that the case falls in the category of rarest of rare cases. This Court observed as
F under:

> *"The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman and barbaric but it was a totally ruthless crime of rape followed*
G *by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscience. There are no extenuating or mitigating circumstances whatsoever in the case. We agree that a real and abiding concern for*
H *the dignity of human life is required to be kept in mind*

by the courts while considering the confirmation of the sentence of death but a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly makes this case a "rarest of the rare" cases which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant for the offence under Section 302 IPC."

76. In ***Molai***, a 16 year-old girl was preparing for her class 10th examination at her house. Both the accused took advantage of her being alone in the house and committed rape on her. Thereafter, they strangulated her by using her undergarment and took her to the septic tank along with the cycle and caused injuries with a sharp-edged weapon. Then, they threw the dead body into a septic tank. The trial court awarded death sentence to the accused which was confirmed by the High Court. This Court confirmed the death sentence observing that there was no mitigating circumstance, which could justify the reduction of sentence of death penalty to life imprisonment.

77. In ***Kheraj Ram***, suspecting infidelity on the part of his wife, the accused-Kheraj Ram killed her, his two children and brother-in-law. The trial court convicted him under Section 302 of the IPC and sentenced him to death. The High Court noted that the case rested on circumstantial evidence. The circumstances were not proved and, therefore, the accused was entitled to acquittal. On appeal, this Court held that the prosecution had established its case; that the murder was committed in a cruel and diabolic manner; the accused did not act on any spur-of-the-moment provocation; the murder was deliberately planned and meticulously executed and after the incident, the accused smoke *chilam* with calmness, which indicated that he had no remorse and he was satisfied with what he had done. This Court observed that the victims were two

A innocent children and a helpless woman. They were done to death in an extremely gruesome and grotesque manner. In the circumstances, this Court set aside the order of acquittal and confirmed the death sentence awarded by the trial court.

B 78. In light of the above judgments, we would now ascertain what factors which we need to take into consideration while deciding the question of sentence. Undoubtedly, we must locate the aggravating and mitigating circumstances in this case and strike the right balance. We must also consider whether there is anything uncommon in this case which renders the sentence C to life imprisonment inadequate and calls for death sentence. It is also necessary to see whether the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender.

D

79. We notice from the above judgments that mere brutality of the murder or the number of persons killed or the manner in which the body is disposed of has not always persuaded this Court to impose death penalty. Similarly, at times, in the peculiar E factual matrix, this Court has not thought it fit to award death penalty in cases, which rested on circumstantial evidence or solely on approver's evidence. Where murder, though brutal, is committed driven by extreme emotional disturbance and it does not have enormous proportion, the option of life imprisonment F has been exercised in certain cases. Extreme poverty and social status has also been taken into account amongst other circumstances for not awarding death sentence. In few cases, time spent by the accused in death cell has been taken into consideration along with other circumstances, to commute G death sentence into life imprisonment. Where the accused had no criminal antecedents; where the State had not led any evidence to show that the accused is beyond reformation and rehabilitation or that he would revert to similar crimes in future, this Court has leaned in favour of life imprisonment. In such cases, doctrine of proportionality and the theory of deterrence

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have taken a back seat. The theory of reformation and rehabilitation has prevailed over the idea of retribution.

80. On the other hand, rape followed by a cold-blooded murder of a minor girl and further followed by disrespect to the body of the victim has been often held to be an offence attracting death penalty. At times, cases exhibiting premeditation and meticulous execution of the plan to murder by levelling a calculated attack on the victim to annihilate him, have been held to be fit cases for imposing death penalty. Where innocent minor children, unarmed persons, hapless women and old and infirm persons have been killed in a brutal manner by persons in dominating position, and where after ghastly murder displaying depraved mentality, the accused have shown no remorse, death penalty has been imposed. Where it is established that the accused is a confirmed criminal and has committed murder in a diabolic manner and where it is felt that reformation and rehabilitation of such a person is impossible and if let free, he would be a menace to the society, this Court has not hesitated to confirm death sentence. Many a time, in cases of brutal murder, exhibiting depravity and sick mind, this Court has acknowledged the need to send a deterrent message to those who may embark on such crimes in future. In some cases involving brutal murders, society's cry for justice has been taken note of by this court, amongst other relevant factors. But, one thing is certain that while deciding whether death penalty should be awarded or not, this Court has in each case realizing the irreversible nature of the sentence, pondered over the issue many times over. This Court has always kept in mind the caution sounded by the Constitution Bench in *Bachan Singh* that judges should never be bloodthirsty but has wherever necessary in the interest of society located the rarest of rare case and exercised the tougher option of death penalty.

81. In the nature of things, there can be no hard and fast rules which the court can follow while considering whether an

A accused should be awarded death sentence or not. The core of a criminal case is its facts and, the facts differ from case to case. Therefore, the various factors like the age of the criminal, his social status, his background, whether he is a confirmed criminal or not, whether he had any antecedents, whether there B is any possibility of his reformation and rehabilitation or whether it is a case where the reformation is impossible and the accused is likely to revert to such crimes in future and become a threat to the society are factors which the criminal court will have to examine independently in each case. Decision whether C to impose death penalty or not must be taken in light of guiding principles laid down in several authoritative pronouncements of this Court in the facts and attendant circumstances of each case.

82. We must also bear in mind that though, the judicial D proceedings do take a long time in attaining finality, that would not be a ground for commuting the death sentence to life imprisonment. Law in this behalf has been well settled in *Triveniben*. The time taken by the courts till the final verdict is pronounced cannot come to the aid of the accused in E canvassing commutation of death sentence to life imprisonment. In *Triveniben*, the Constitution Bench made it clear that though ordinarily, it is expected that even in this Court, the matters where the capital punishment is involved, will be given top priority and shall be heard and disposed of as F expeditiously as possible but it could not be doubted that so long as the matter is pending in any court, before final adjudication, even the person who has been condemned or who has been sentenced to death has a ray of hope. It, therefore, could not be contended that he suffers that mental G torture which a person suffers when he knows that he is to be hanged but waits for the doomsday. Therefore, the appellant cannot draw any support from the fact that from the day of the crime till the final verdict, a long time has elapsed. It must be remembered that fair trial is the right of an accused. Fair trial H involves following the correct procedure and giving opportunity

to the accused to probabalize his defence. In a matter such as this, hurried decision may not be in the interest of the appellant. A

83. We must now examine the present case in light of our observations in the preceding paragraphs. The appellant was the State President of the Youth Congress in Delhi. The deceased was a qualified pilot and she was also the State General Secretary of Youth Congress (Girls Wing), Delhi. She was an independent lady, who was capable of taking her own decisions. From the evidence on record, it cannot be said that she was not in touch with people residing outside the four walls of her house. Evidence discloses that even on the date of incident at around 4.00 p.m. she had contacted PW-12 Matloob Karim. She was not a poor illiterate hapless woman. Considering the social status of the deceased, it would be difficult to come to the conclusion that the appellant was in a dominant position qua her. The appellant was deeply in love with the deceased and knowing full well that the deceased was very close to PW-12 Matloob Karim, he married her hoping that the deceased would settle down with him and lead a happy life. The evidence on record establishes that they were living together and were married but unfortunately, it appears that the deceased was still in touch with PW-12 Matloob Karim. It appears that the appellant was extremely possessive of the deceased. The evidence on record shows that the appellant suspected her fidelity and the murder was the result of this possessiveness. We have noted that when the appellant was taken to Lady Hardinge Mortuary and when the dead body was shown to him, he started weeping. It would be difficult, therefore, to say that he was remorseless. The fact that he absconded is undoubtedly a circumstance which will have to be taken against him, but the same, in our considered view, would be more relevant to the issue of culpability of the accused which we have already decided against him rather than the question of what would be the appropriate sentence to be awarded which is presently under consideration. The medical evidence does not establish that the dead body of the deceased was cut. The B C D E F G H

second post-mortem report states that no opinion could be given as to whether the dead body was cut as dislocation could be due to burning of the dead body. There is no recovery of any weapon like chopper which could suggest that the appellant had cut the dead body. It is pertinent to note that no member of the family of the deceased came forward to depose against the appellant. In fact, in his evidence, PW-81 IO Niranjan Singh stated that the brother and sister-in-law of the deceased stated that they were under the obligation of the appellant and they would not like to depose against him. Murder was the outcome of strained personal relationship. It was not an offence against the Society. The appellant has no criminal antecedents. He is not a confirmed criminal and no evidence is led by the State to indicate that he is likely to revert to such crimes in future. It is, therefore, not possible in the facts of the case to say that there is no chance of the appellant being reformed and rehabilitated. We do not think that that option is closed. Though it may not be strictly relevant, we may mention that the appellant is the only son of his parents, who are old and infirm. As of today, the appellant has spent more than 10 years in death cell. Undoubtedly, the offence is brutal but the brutality alone would not justify death sentence in this case. The above mitigating circumstances persuade us to commute the death sentence to life imprisonment. In several judgments, some of which, we have referred to hereinabove, this Court has made it clear that life sentence is for the whole of remaining life subject to the remission granted by the appropriate Government under Section 432 of the Cr.P.C., which, in turn, is subject to the procedural checks mentioned in the said provision and further substantive checks in Section 433-A of the Cr.P.C. We are inclined to issue the same direction.

84. We have already confirmed the conviction of the appellant for offence punishable under Section 302 of the IPC and for offence punishable under Section 120-B read with Section 201 of the IPC. In view of the above discussion, we commute the death sentence awarded to appellant – Sushil

Sharma to life sentence. We make it clear that life sentence is for the whole of remaining life of the appellant subject to the remission granted by the appropriate Government under Section 432 of the Cr.P.C., which, in turn, is subject to the procedural checks mentioned in the said provision and further substantive checks in Section 433-A of the Cr.P.C. A B

85. Appeal is disposed of in the aforestated terms.

Bibhuti Bhushan Bose Appeal disposed of.