ATBIR

*v.*

GOVT. OF N.C.T. OF DELHI

(Criminal Appeal No. 870 of 2006)

AUGUST 9, 2010

**[P. SATHASIVAM AND DR. B. S. CHAUHAN, JJ.]**

*Penal Code, 1860: s. 302/34 – Triple Murder – Conviction by courts below on the basis of dying declaration and the motive for murder – One accused sentenced to death while the other sentenced to life imprisonment – On appeal, held: Dying declaration of one of the deceased is reliable and admissible in evidence – The prosecution has also proved motive – Conviction imposed is justified – As regards the accused who inflicted the injuries, death sentence is just as his act was barbaric and inhuman – It is a gravest case of extreme culpability and rarest of rare case – Sentence / Sentencing – Death sentence – Evidence Act, 1872 – s.32 – Dying Declaration – Criminal Law – Motive.*

**The two appellants-accused alongwith two other accused were prosecuted for having killed three persons. The prosecution case was that the appellants-accused demanded money and transfer of certain property in their name from their father (PW-5). PW-5 though agreed to do the same, but the appellants-accused apprehended that so long as the deceased persons (their step-mother 'Sh', step-brother 'M' and step-sister 'S') were alive, their father would not give them the property. Appellants-accused with their mother (absconding accused) and another person, entered the house of their step-mother 'Sh', (deceased) bolted the door and asked for the money. On refusal by her, accused 'At' stabbed all the three inmates one by one, while the other accused persons were holding them. On**

A information of murder, the police officials went to the place of occurrence and found the dead bodies of the deceased 'Sh' and 'M'. 'S' was removed to the hospital. There she made her statement before the Police Officer on the endorsement given by the doctor (PW3) to the B effect that the patient was fit for statement. Subsequently, 'S' succumbed to the injuries. Appellants-accused were convicted by the trial court while the other accused was acquitted. The third accused (mother of the appellant-accused) remained absconding. Appellant-accused 'At' C was sentenced to death and appellant-accused 'A' was sentenced to life imprisonment. The High Court dismissed the appeal of the accused persons upholding their conviction. Death Reference was also confirmed by the High Court. Instant appeals were filed by the accused D persons.

Dismissing the appeals, the Court

HELD: 1.1. Dying declaration can be the sole basis of conviction, if it inspires the full confidence of the court. E The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. Where the court is satisfied that the declaration is true and voluntary, it can base its F conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. Where dying declaration is suspicious, it should not be acted upon without G corroborative evidence. A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement, cannot form the basis of conviction. Merely because a dying declaration does not contain all the details as to the occurrence, it is H not to be rejected. When the eye-witness affirms that the

deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail. If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration. [Para 16] 1006-H; 1007-A-H; 1008-A-B] A B

1.2. In the instant case, the trial court found the dying declaration credit-worthy and has held the same to have been made by the deceased 'S' in a fit mental state to depose. After making the declaration, she herself signed the same and it also carried an endorsement by the doctor (PW 30) to the effect that she was in a fit mental state. After careful analysis, the trial court as well as the High Court found that there is total clarity in its contents and it is not a case where the deceased was either rambling, unsure or had contradicted herself. There is no compulsion that all dying declarations have to be made before the Magistrate. In the instant case, the Inspector who recorded the statement was cross-examined and the details and his evidence was not shattered by the defence. In fact, not even a suggestion was made to the Investigation Officer about the availability of Magistrate at the relevant point of time. Since the statement of the deceased was very brief as to the circumstances and persons involved who caused brutal injuries on her body as well as her mother and brother, in addition to the same, the doctor (PW 30) has also certified that at the relevant time she was in a fit mental state and endorsed the same by putting his signatures near the signature of the deponent i.e. deceased. In such circumstances, there is no reason to disbelieve the statement of the deceased 'S', implicating the three accused persons i.e. the appellants-accused and the absconding accused. [Para 17] [1008-C; 1009-E-H; 1010-A-C] C D E F G H

A **1.3. The evidence of the doctors (PW-26 and PW-30), who had treated the deceased 'S', indicate that immediately after admission in the hospital and at the time of making statement, she was in a fit condition. It is also clear that immediately after her statement, because**
B **of the injuries, she was taken to emergency ward and she was kept therein till her death. It is also clear that in respect of injury on the 'carotid', in view of the fact that it was only partially cut and able to speak and inform what had happened at the time of the incident, her statement**
C **to the Inspector (PW-41) in the presence of the doctor PW-30 is legally permissible and admissible in evidence. [Para 22] [1013-G-H; 1014-A]**

*Munnu Raja and Anr. vs. The State of Madhya Pradesh* **(1976) 3 SCC 104;** *Paras Yadav and Ors. vs. State of Bihar*
D **(1999) 2 SCC 126;** *Balbir Singh and Anr. vs. State of Punjab* **(2006) 12 SCC 283;** *State of Rajasthan vs. Wakteng* **(2007) 14 SCC 550;** *Bijoy Das vs. State of West Bengal* **(2008) 4 SCC 511;** *Muthu Kutty and Anr. vs. State by Inspector of Police T.N.* **(2005) 9 SCC 113;** *Panneerselvam vs. State of*
E *Tamil Nadu* **(2008) 17 SCC 190;** *Paniben vs. State of Gujarat* **(1992) 2 SCC 474, relied on.**

**2. The prosecution has also proved motive. It is abundantly clear from the evidence of PW-5 that his**
F **sons, particularly, appellant-accused 'At' apprehended that because of the presence of his step-mother and her children, he might not get properties of his father (PW5), at once. Since this was in his mind and in consultation with his mother (the absconding accused), he planned to**
G **eliminate the entire family of the second wife of his father (PW 5). These aspects have been amply projected by the prosecution and rightly accepted by the trial court and the High Court. [Para 22] [1014-C-E]**

**3. The guidelines indicated in *Bachan Singh's* case**
H **have to be culled out and applied to the facts of each**

individual case where the question of imposing of death sentence arises. In the instant case, the murders committed by accused 'At' is extremely brutal and diabolical one. The cold blooded murder is committed with deliberate design in order to inherit the entire property of his father (PW5) without waiting for his death. The magnitude of the crime is also enormous in proportion since accused 'At', with the assistance of his mother and brother, committed multiple murders of all the members of the family. Apart from this, the victims are none else than his step-mother, brother and sister. The victims are innocent who could not have or has not provided even an excuse much less a provocation for murder. Further, the victims were unaware of the sudden entry of accused 'At' and others and after bolting the door from inside, they have no other way to go out or resist except subjecting themselves to the wishes of accused 'At'. Though accused 'At' was also at the age of 25 at the relevant point of time, considering his hunger and lust for property, killing his own family members when they had no occasion to provoke or resist, and causing 37 knife blows on vital parts of all the three persons, it is a gravest case of extreme culpability and rarest of rare case and death sentence alone would be proper and adequate. Taking into consideration all the facts and materials, it is crystal clear that the entire act of accused 'At' amounts to a barbaric and inhuman behaviour of the highest order. The manner in which the murder was carried out in the instant case is extremely brutal, gruesome, diabolical, and revolting as to shock the collective conscience of the community. In the circumstances, the conviction and the sentence of death imposed on accused 'At' is confirmed. The conviction and the setence of life imprisonment imposed on accused 'A' is also confirmed. [Paras 26 and 34] [1019-C; 1023-D-H]

*Bachan Singh v. State of Punjab* (1980) 2 SCC 684,

A **followed** *Machhi Singh vs. State of Punjab* **(1983) 3 SCC 470, relied on.**

**Case Law Reference:**

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|---|---|---|
| **(1976) 3 SCC 104** | **Relied on.** | **Para 9** |
| **(1999) 2 SCC 126** | **Relied on.** | **Para 10** |
| **(2006) 12 SCC 283** | **Relied on.** | **Para 11** |
| **(2007) 14 SCC 550** | **Relied on.** | **Para 12** |
| **(2008) 4 SCC 511** | **Relied on.** | **Para 13** |
| **(2005) 9 SCC 113** | **Relied on.** | **Para 14** |
| **(2008) 17 SCC 190** | **Relied on.** | **Para 15** |
| **(1992) 2 SCC 474** | **Relied on.** | **Para 15** |
| **(1980) 2 SCC 684** | **Followed.** | **Para 24** |
| **(1983) 3 SCC 470** | **Relied on.** | **Para 25** |

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 870 of 2006.

From the Judgment & Order dated 13.01.2006 of the High Court of Delhi at New Delhi in Criminal Appeal No. 805 of 2004 and Murder Reference No. 3 of 2004.

F WITH

Crl. A. No. 877 of 2006.

G K.B. Sinha, A.T.M. Rangaramanujam, J.S. Atri, V. Senthil Kumar, Ashok Kumar Singh, Shanti Kumar Jaisani, Sanjeev Kumar Sharma, Bhakti Pasrija, J.K. Mishra, Subhash Kaushik, Niraj Jha, Anil Katiyar for the appearing parties.

The Judgment of the Court was delivered by

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**P. SATHASIVAM, J.** 1. These appeals are directed against the final judgment and order dated 13.01.2006 of the High Court of Delhi at New Delhi in Criminal Appeal No. 805 of 2004, Murder Reference No. 3 of 2004 and Criminal Appeal No. 876 of 2004 whereby the High Court dismissed the criminal appeals filed by the appellants herein and confirmed the sentence awarded by the learned Additional Sessions Judge, Delhi in Murder reference.

2. The case of the prosecution is as under:

(a) Atbir, the appellant in Criminal Appeal No. 870 of 2006 is the son of one Jaswant Singh. Jaswant Singh had married accused Chandra @ Chandrawati, who is absconding and from the said wedlock, three children, namely, Satbir, Atbir and Anju were born to them. Thereafter, Jaswant Singh married Sheela Devi, the deceased and from their wedlock, one daughter Sonu @ Savita and one son Manish @ Mannu – the deceased, were born. Sheela Devi – the 2nd wife of Jaswant Singh was staying at Mukherjee Nagar, Delhi, with her children. They were having dispute over the division of their properties.

(b) On the afternoon of 22.01.1996, on receiving information of murder of a man and that of one injured at N-33, Mukherjee Nagar, Delhi, Inspector Virender Singh, Addl. S.H.O., Mukherjee Nagar Police Station along with ASI Kanwar Lal, Ct. Manoj Kumar and Ct. Jogender Singh rushed to the place of occurrence and found two dead bodies, one of female and other of a boy aged about 16 years in the adjacent room on the ground floor of N-33, Mukherjee Nagar, Delhi. Both were later identified as Smt. Sheela Devi, second wife of Jaswant Singh and her son Manish @ Mannu. It was revealed at the spot that one injured, namely, Sonu @ Savita, daughter of Sheela Devi was removed to Hindu Rao Hospital in a PCR Gypsy. After leaving ASI Kanwar Lal at the spot, Inspector Virender Singh along with his team rushed to Hindu Rao Hospital and on endorsement given by Dr. Sharat Chandra Jai Singh-PW 30

A that "patient fit for statement", recorded the statement given by Sonu @ Savita. In the statement, Sonu @ Savita alleged that Chandra @ Chandrawati her step-mother, along with her son Atbir, one Ashok-appellant herein in Crl. Appeal No. 877 of 2006 and one person whose name she did not know entered B their house and demanded money from her mother Sheela Devi but she refused. Accused persons bolted the doors from inside and Atbir took out a knife and stabbed Manish @ Mannu, who was held by Chandra @ Chandrawati, Ashok and another. Thereafter, Atbir stabbed Sheela Devi and then Sonu @ Savita C with knife. On the above statement, a case under Sections 307 and 302 of the Indian Penal Code (hereinafter referred to as "I.P.C.") was registered at Mukherjee Nagar Police Station and investigation started. On 24.01.1996, Sonu @ Savita succumbed to her injuries and died at Hindu Rao Hospital.

D (c) On completion of the formalities, the challan was filed in the Court of Metropolitan Magistrate and after completion of committal proceedings, the case was re-allocated to the Court of Additional Sessions Judge, Delhi. On 12.08.1997, a charge under Section 302 read with Section 34 I.P.C. was framed E against accused Atbir, Ashok and Chandra @ Chandrawati. On 24.08.1999, on filing the supplementary challan against accused Arvind, the charge was re-framed against all the accused persons, namely, Atbir, Ashok, Arvind and Chandra @ Chandrawati by the Court of Additional Sessions Judge, to F which they pleaded not guilty and claimed trial. Prosecution examined as many as 41 witnesses and their statements were recorded. The Additional Sessions Judge, vide order dated 27.09.2004, convicted Atbir – appellant in Crl.A. No.870/2006 with death penalty and Ashok- appellant in Crl. A. No. 877/2006 G with life imprisonment and acquitted Arvind. The accused Chandra @ Chandrawati remained absconding. Being aggrieved by the order of the Additional Sessions Judge, Delhi, the appellants herein filed appeal before the High Court. The murder reference was also sent by the Sessions Court to the H High Court. The High Court, by the impugned judgment and

order dated 13.01.2006, confirmed the findings recorded by the Additional Sessions Judge and upheld the conviction of the appellants awarded by him. Against the said judgment, the appellants have preferred these appeals by way of special leave before this Court.

3. Heard Mr. K.B. Sinha, learned senior counsel for the appellant in Crl. Appeal No. 870 of 2006, Mr. A.T.M. Rangaramanujam, learned senior counsel for the appellant in Crl. Appeal No. 877 of 2006 and Mr. J.S. Atri, learned senior counsel for the respondent-State.

4. Mr. K. B. Sinha, learned senior counsel, has raised the following contentions:-

(i) Whether the dying declaration made before the police officer without there being any corroboration from any other independent witness in itself is sufficient to convict the accused with capital punishment.

(ii) When there was sufficient time for the Magistrate to be called for recording the dying declaration, the statement made before the Investigating Officer can be treated as dying declaration and the conviction of the accused with capital punishment can be sustained.

(iii) When the Doctor-PW 30, in whose presence the alleged statement "Dying Declaration" was recorded, has stated in his deposition that the trachea of the deceased Sonu @ Savita was torn then whether the dying declaration made before the Investigation Officer inspire the confidence to base the conviction on the said sole statement.

(iv) When all the injuries responsible for causing the death, as noted in the statement of doctor C.B. Dabbas-PW 9, who conducted the post-mortem on the dead body, were on the neck then whether the dying declaration made

A before the I.O. can be relied on to base the conviction.

(v) Whether no corroboration of any kind is required to the dying declaration and the conviction can be based solely on the dying declaration.

B (vi) Whether the High Court is justified in holding that the lust for property was the motive of the accused persons for committing the murder.

(vii) Whether the courts below are justified in awarding C death sentence in the facts and circumstances of the case and principles laid down by this Court.

5. Mr. Rangaramanujam, learned senior counsel for one of the appellants reiterated very same contentions relating to recording of dying declaration by the police officer when the D Magistrate was very well available. He also submitted that in the absence of any corroborative evidence, conviction solely on the basis of dying declaration cannot be sustained. He further submitted that though, the knife, which was said to be used and recovered, prosecution has not established the E ownership of the same.

6. Mr. Atri, learned senior counsel for the State has submitted that in view of the categorical statements by way of dying declaration by Sonu @ Savita, recorded by police officer F after certifying that she was in a fit state of mind to make a statement by the doctor coupled with the admissible portion of Suresh Chauhan PW-2, Arvind Monga PW-4, Jaswant Singh PW-5, Ct. Kulvinder Singh PW-8, Dr. C.B. Dabbas PW-9, Dr. Ruma Jain PW-26 and Dr. Sharat Chandra Jai Singh PW-30, G absolutely there is no ground for interference. He also highlighted that in view of aggravating circumstances, eliminating the entire family and considering the brutality and exceptional depravity, the appellant-Atbir deserves capital punishment. The life imprisonment imposed on the other H accused, namely, Ashok is also justifiable and there is no valid

ground for interference and prayed for dismissal of both the appeals. A

7. We have carefully considered the rival contentions and perused the relevant materials.

8. Among the various contentions raised by both the sides, major part relates to two legal submissions:- B

(a) Admissibility and reliability of the dying declaration made by Sonu @ Savita before the Investigating officer.

(b) Whether death sentence insofar as Atbir and life sentence insofar as Ashok is warranted. C

**(A) "Dying Declaration".**

It is true that in the case on hand, conviction under Section 302 was based solely on the dying declaration made by Sonu @ Savita and recorded by Investigating Officer in the presence of a Doctor. Since we have already narrated the case of prosecution which led to three deaths, eliminating the second wife and the children of one Jaswant Singh, there is no need to traverse the same once again. This Court in a series of decisions enumerated and analyzed that while recording the dying declaration, factors such as mental condition of the maker, alertness of mind and memory, evidentiary value etc. have to be taken into account. D E F

9. In *Munnu Raja and Another vs. The State of Madhya Pradesh, (1976) 3 SCC 104, this Court held:-*

> "....It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated...." G

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A It is true that in the same decision, it was held, since the Investigating Officers are naturally interested in the success of the investigation and the practice of the Investigating Officer himself recording a dying declaration during the course of an investigation ought not to have been encouraged.

B 10. In *Paras Yadav and Ors. vs. State of Bihar,* (1999) 2 SCC 126, this Court held that lapse on the part of the Investigation Officer in not bringing the Magistrate to record the statement of the deceased should not be taken in favour of the accused. This Court further held that a statement of the C deceased recorded by a police officer in a routine manner as a complaint and not as a dying declaration can also be treated as dying declaration after the death of the injured and relied upon if the evidence of the prosecution witnesses clearly establishes that the deceased was conscious and was in a fit D state of health to make the statement.

11. The effect of dying declaration not recorded by the Magistrate was considered and reiterated in *Balbir Singh & Anr. Vs. State of Punjab,* (2006) 12 SCC 283. Paragraph 23 E of the said judgment is relevant which reads as under:

> "23. However, in *State of Karnataka v. Shariff,* (2003) 2 SCC 473, this Court categorically held that there was no requirement of law that a dying declaration must necessarily be made before a Magistrate. This Court therein noted its F earlier decision in *Ram Bihari Yadav v. State of Bihar,* (1998) 4 SCC 517, wherein it was also held that the dying declaration need not be in the form of questions and answers. (See also *Laxman v. State of Maharashtra,* (2002) 6 SCC 710)."

G It is clear that merely because the dying declaration was not recorded by the Magistrate, by itself cannot be a ground to reject the whole prosecution case. It also clarified that where the declaration is wholly inconsistent or contradictory statements H are made or if it appears from the records that the dying

declaration is not reliable, a question may arise as to why the Magistrate was not called for, but ordinarily the same may not be insisted upon. This Court further held that the statement of the injured, in event of her death may also be treated as FIR.

12. In *State of Rajasthan vs. Wakteng,* (2007) 14 SCC 550, the view in *Balbir Singh's case*(supra) has been reiterated. The following conclusions are relevant which read as under:

> **"14.** Though conviction can be based solely on the dying declaration, without any corroboration the same should not be suffering from any infirmity.
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> **15.** While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lie or to concoct a case so as to implicate an innocent person but the court has to be careful to ensure that the statement was not the result of either tutoring, prompting or a product of the imagination. It is, therefore, essential that the court must be satisfied that the deceased was in a fit state of mind to make the statement, had clear capacity to observe and identify the assailant and that he was making the statement without any influence or rancour. Once the court is satisfied that the dying declaration is true and voluntary it is sufficient for the purpose of conviction."

13. In *Bijoy Das vs. State of West Bengal,* (2008) 4 SCC 511, this Court after quoting various earlier decisions, reiterated the same position.

14. In *Muthu Kutty & Anr. Vs. State By Inspector of Police, T.N.,* (2005) 9 SCC 113, the following discussion and the ultimate conclusion are relevant which read as under:

> **"14 .** This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed,

A is the reason in law to accept veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only B eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

**15.** Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no C power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard D that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that E the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration F is merely a rule of prudence."

15. The same view has been reiterated by a three Judge Bench decision of this Court in *Panneerselvam vs. State of Tamil Nadu,* (2008) 17 SCC 190 and also the principles G governing the dying declaration as summed up in *Paniben vs. State of Gujarat* , (1992) 2 SCC 474.

16. The analysis of the above decisions clearly shows that,

(i) Dying declaration can be the sole basis of

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conviction if it inspires the full confidence of the Court. A

(ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. B

(iii) Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration. C

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. D

(v) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. E

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction. F

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected. G

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eye-witness affirms that the deceased was not in a fit and conscious H

A state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and B if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.

17. In the case on hand, the Additional Sessions Judge C has found the dying declaration credit worthy and has held the same to have been made by the deceased in a fit mental state to depose. The English translation of the dying declaration, as made by the deceased to Inspector V.S. Chauhan-PW-41 in the presence of Dr. Sharat Chandra Jai Singh, PW-30 and as D recorded by him, which was registered as FIR reads thus:

Ms Sonu @ Savita, d/o Shri Jaswant Singh, aged 16 years, r/o – N-33, Mukherjee Nagar, Delhi made the following statement:-

E "I reside at the aforesaid address. My father's name is Jaswant Singh and that of my mother is Sheela. Today at about 2:30 p.m. My mother Sheela, brother Mannu and myself were present in the house and were doing our work. At that time, my step mother Chandra, her son Atbir, F one Ashok and one more person, whose name I do not know, entered our house and demanded money from my mother whereupon, my mother told that she was not having money. Thereafter, Atbir took out a knife while my step mother Chandra, Ashok and the third one caught hold of G my brother Manish @ Mannu. Atbir, then stabbed upon my brother and injured him badly. Then, they caught hold of my mother. Atbir also injured my mother badly. Thereafter they caught hold of me and gave several knife blows upon me as a result of which I also got badly injured. I have

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witnessed the incidence. A. PCR Van has brought me (to the hospital). Legal action may be taken accordingly."

Sd/- Sonu
(In English)
Attested
Sd/- V.S. Chauhan
(In English)
Dt. 2.1.1996
S.H.O.
P.S. Mukherjee Nagar,Delhi

'The statement has been taken in my presence. The patient is in composed mentis.'

Sd/- Sarat Chandra
Jai Singh
(In English)
Dt. 22.1.1996
C.M.O.(5)"

After making the above declaration she herself signed the same and it also carries an endorsement by Dr. Sharat Chandra to the effect that she was in a fit mental state. After careful analysis, the trial Judge as well as the High Court found that there is total clarity in its contents and it is not a case where the deceased was either rambling, unsure or had contradicted herself. We have already adverted to the several decisions of this Court holding that there is no compulsion that all dying declarations have to be made before the Magistrate. In the case on hand, the incident occurred on 22.01.1996 at 2.30 p.m., the injured Sonu @ Savita was admitted in the hospital at 3.30 p.m. and she made declaration at 4.05 p.m. on the same day. It is also relevant to note that immediately after recording her statement, doctor referred her to Emergency Ward to save her life. However, she died on 24.01.1996 at 12.30 p.m. The Inspector who recorded the statement was cross-examined and the details and his evidence was not shattered by the defence, in fact, not even a suggestion to the Investigation Officer about

A the availability of Magistrate at the relevant point of time. Since the statement of Sonu @ Savita was very brief as to the circumstances and persons involved who caused brutal injuries on her body as well as her mother and brother, in addition to the same, Dr. Sharat Chandra has also certified that at the B relevant time she was in a fit mental state and endorsed the same by putting his signatures near the signature of the deponent Sonu @ Savita. In such circumstances, there is no reason to disbelieve the statement of Sonu @ Savita implicating the three accused persons i.e. Atbir, Ashok C (appellants herein) and Chandra @ Chandrawati (absconding accused).

18. Learned counsel appearing for the appellants, by pointing out the nature of injuries on the neck of Sonu @ Savita and her medical report, contended that it would be highly D. improbable to make such a statement after sustaining such injuries. In order to meet the above contention, the prosecution has heavily relied on the statements of Dr. C.B. Dabas-PW-9, Dr. (Mrs.) Ruma Jain-PW-26 and Dr. Sharat Chandra-PW30.

E 19. Dr. C.B. Dabas-PW-9, on 25.01.1995, conducted postmortem examination on the body of the deceased Savita. He noticed 21 external injuries. After internal examination, he found the following injuries on the neck:

F **"Neck:** Wounds of the neck were further explode and it was observed that muscles of neck on both sides were cut. Under injury No. 2, 4, 5 and 6. With evidence of surgical devridement and repair. There was infusion of blood in neck tissues and blood rest and blood was still oozing out from neck vessel of rt. Side. Both external jugular veins and G left facial artery were cut under injury No. 2 and 4 with surgical cultures present in situ. Right carotid was partially cut under injury No. 6 alongwith the muscles and smaller vessels of blood was still oozing out of the severed vessels. There was a stitched wound on tracheal thyroid. H Traches was patent. Other neck structure were intact."

Since emphasis was about damage to carotid cartridge, there is no need to refer his examination about chest, abdomen and head. It is also relevant to note question and answer and cross-examination about damage to carotid artery.

"Que: Kindly name the blood vessel which had been severed in injury No. 6?

Ans. Mainly it was right common carotid cartridge and other small vessels.

It is correct that injuries no. 2, 4 and 5 external jugular veins and left facial arteries were cut. It is correct that jugular and carotid artery are major blood vessels. Carotid artery supplies blood to the brain. Carotid artery was partially cut. It is correct that with this partial cut in the carotid artery the blood supply to the brain will be reduced.

Que: Whether this reduced blood supply to the brain will adversely affect the functioning of the brain and will induce coma?

Ans. It will depend upon the amount of blood oozing out of cut in common carotid artery.

I have not given the dimension of the cut in the common carotid artery as described. The bigger the size of the cut in the artery it will speed up the process of affecting the brain function."

It is clear that according to PW-9, right carotid was partially cut. Trachea was patent and other neck structures were intact. He has reiterated the same in cross-examination also. Inasmuch as the injury on the carotid was partial coupled with opinion of Dr. Sharat Chandra PW-30, it cannot be claimed that she was fully disabled from making any statement.

20. Dr. (Mrs.) Ruma Jain, PW-26, attached to Hindu Rao Hospital as CMO, on the date of the incident i.e. on 22.01.1996,

A in her evidence deposed that on that day at about 3.30 PM Savita was brought by ASI Shanti. She medically examined her. Though she found her general condition was not satisfactory she had stated that she was conscious and responding to verbal command. She also noted various injuries including the B injury on the neck. Though during cross-examination, she has stated that the drowsiness was excessive but in respect of a specific question by the Public Prosecutor, she answered that "I did not indicate the extent of drowsiness in the MLC Ex.PW26/A. What was mentioned by me was drowsiness and C responding to verbal command." She also clarified that before signing her statement before re-examination she had stated that the word excessive appearing in the cross-examination should not have been there. If we analyze the evidence of PW-26, which also makes it clear that at the time when Sonu @ Savita was admitted in the hospital at 3.30 PM though there was indication D of drowsiness, the fact remains that she was responding to verbal command and able to make a statement.

21. The other doctor examined by the prosecution is Dr. Sarat Chandra Jai Singh PW-30. In his evidence, he deposed E that on 22.01.1996, he was posted in Hindu Rao Hospital as Superintendent of Surgery. On that day injured Sonu was brought to the hospital and she was medically examined by Dr. Tomar, Casualty Medical Officer and he had opined injured to be fit for statement on the MLC Ex.PW-26/A. His further F statement and assertion are as follows:-

> "On that day Insp. V.S. Chauhan had met me at MLC Ward and he had told me that a dying declaration was to be recorded by him (by the Insp.). On the request of Insp. Chauhan I medically examined injured Ms. Sonu. She was G mentally fit to maker her statement i.e. she could understand the questions and could answer the questions put to her. After I certified the injured to be medically fit for statement Insp. V.S. Chauhan had recorded the statement of injured Ms. Sonu Ex. PW4/A in my presence and I made

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my endorsement Ex. PW-30/A to the erect that the statement had been taken in presence and the patient was in composed mentis and the endorsement bears my signatures at point P. Insp. Chauhan had read over statement Ex. PW 4/A to the injured Ms. Sonu and she signed statement at point Q in token of correctness of her statement."

In the cross-examination, he deposed that:

"When Insp. Chauhan was recording the statement of Ms. Sonu I heard her statement and then after the recording of this statement was over, Insp. Chauhan read over the statement to me and at that time Ms. Sonu was also there and then I signed this statement by giving my endorsement. It is correct that I did not mention in my endorsement Ex. PQ 30/A that Insp. Chauhan read over this statement. To me and Ms. Sonu. During this time, Ms. Sonu was in surgical emergency ward. Patient had stab injuries and the injuries were pleading profusely."

PW-30 also asserted that immediately after her statement, Sonu was taken to surgical emergency ward, since she had stab injuries and was bleeding profusely. It was in evidence that she was continuously in the emergency ward and ultimately died on 24.01.1996 at 12.30 PM. This was the reason that because of her critical position after admission and making her statement, the Magistrate could not be secured to record her statement.

22. The evidence of PW-26 and PW-30, who had treated Sonu, indicate that immediately after admission in the hospital at 3.30 PM on 22.01.1996 and at the time of making statement at 4.05 PM she was in a fit condition. It is also clear that immediately after her statement because of the injuries she was taken to emergency ward and she was kept therein till her death on 24.01.1996. It is also clear that in respect of injury on the carotid in view of the fact that it was only partially cut and able

A to speak and inform what had happened at 2.30 PM, her statement to Inspector P.S.Chauhan PW-41 in the presence of Dr. Sarat Chandra Jai Singh PW-30 is legally permissible and admissible in evidence. The learned trial Judge has rightly relied on those materials and the High Court correctly approved
B the same. We accept the said conclusion and reject the contentions raised by Mr. Sinha and Mr. Rangaramanujam.

(B) **"Motive"**

The prosecution has also proved motive. It is abundantly
C clear from the evidence of Jaswant Singh, PW-5 that when Satbir and his brother Atbir demanded 25-26 Bighas of agricultural land in Bulandshahar,. U.P. though agreed but executed a Will (Ex. PW-5/D) bequeathing those lands in their favour but the same was not acceptable by his sons, particularly
D Atbir and he apprehended that because of the presence of his step-mother and her children, he may not get properties of his father, both movable and immovable, at once. Since this was in his mind and in consultation with his mother Chandra @ Chandawati, he planned to eliminate the entire family of Sheela.
E These aspects have been amply projected by the prosecution and rightly accepted by the trial Court and the High Court.

(C) **Death sentence**

24. When the constitutional validity of death penalty for
F murder provided in Section 302 of the Penal Code and sentencing procedure embodied in sub-section (3) of Section 354 of the Code of Criminal Procedure, 1973, was questioned, the Constitution Bench of this Court in *Bachan Singh v. State of Punjab,* (1980) 2 SCC 684, after thorough discussion,
G rejected the challenge to the constitutionality of the said provisions and ruled that "life imprisonment is the rule and death sentence an exception". It has also noted that "Aggravating as well as "Mitigating Circumstances" to be considered for imposition of sentence of death.

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**"Aggravating Circumstances**

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

(b) If the murder involves exceptional depravity; or

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

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

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

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

**"Mitigating Circumstances"**

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

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

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

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

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

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

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

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

E 25. A three-Judge Bench in *Machhi Singh vs. State of Punjab,* (1983) 3 SCC 470 after analyzing the Constitution Bench decision in *Bachan Singh* (supra), held the following propositions for determination of rarest of rare cases:-

"Death Sentence
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32. The reasons why the community as a whole does not endorse the humanistic approach reflected in 'death sentence-in-no-case' doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the
G foundation of 'reverence for life' principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realised that every member of the community is able to live with
H safety without his or her own life being endangered

because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by 'killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so 'in rarest of rare cases' when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance:

I. Manner of commission of murder

33. When the murder is cor mitted in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house;

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death;

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner;

II. Motive for commission of murder

A 34. *When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to* B *gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course of betrayal of the motherland.*

C III. Anti-social or socially abhorrent nature of the crime

35. (a) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in circumstances which arouse social wrath. D For instance when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social E balance.

(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

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IV. Magnitude of crime

36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members G of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of victim of murder

37. When the victim of murder is (a) an innocent child who H could not have or has not provided even an excuse, much

less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-à-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons."

26. In this background, the guidelines indicated in *Bachan Singh's case* (supra) have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from *Bachan Singh's case*:

"(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme 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'.

(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 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 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 full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before

A the option is exercised."

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

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

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

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

27. In view of the principles culled out from the earlier decisions, let us find out whether the present case would fall in
E the category of rarest of the rare case warranting death sentence.

28. It is seen from the evidence of Jaswant Singh, PW-5 that he had married one Chandra @ Chandrawati in the year 1963. Three children, namely, Satbir, Atbir and Anju were born
F to them. However, in 1971 Jawant Singh had deserted his wife Chandra and in 1973 he married Sheela Devi, the deceased, as his second wife. Two children, namely, Sonu @ Savita and Manish @ Manu were born from the second wife. It is further seen from the evidence of Jaswant Singh that his first wife's
G son Satbir visited him and demanded transfer of agricultural land of 25-26 bighas in Bulandshahar, U.P. in favour of himself and Atbir. Though Jaswant Singh agreed to the request but executed a Will (Ex. PW-5/D) in 1995 bequeathing those lands in favour of Satbir and Atbir. It is further seen that these two
H sons, namely, Satbir and Atbir were insisting on immediate

transfer by way of a registered document. In addition to the same, they also demanded a house in Mathura or share in House No. N-33 Mukherjee Nagar, Delhi. It is the categorical stand of Jaswant Singh that Atbir, Satbir and Chandra used to demand money. They also threatened that if he fails to pay the money as demanded, they would kill him. The fact that Atbir was not in a position to enjoy the lands as demanded and his father refused to pay money made Atbir and her mother to take some drastic steps. It is also their grievance and in their mind that because his father wants to part with major properties in favour of Sheela, second wife, and their children Sonu @ Savita and Manish @ Mannu, it is in their mind that so long as the second wife and her children were alive, he and his brother may not get any thing and decided to do away with the family of Sheela. In other words, all the accused persons including Atbir felt that they would not get their legitimate share in the property as long as Sheela and her children are alive and, therefore, they should do away with. As rightly observed by the trial Court and the High Court, this could provide a strong motive to the accused persons for committing the crime.

29. As argued before the Courts below, learned counsel for the appellant has raised a similar contention stating that Atbir was a young man of 25 years and already spent ten years in jail, that itself is a sufficient punishment for the crime. He also highlighted that he had no past history of any crime and it cannot be claimed that it is impossible to change his state of mind in the future. He also pointed out that Atbir's main aim was to grab the property of his father immediately that too without giving a share to anyone. By pointing out these mitigating circumstances and the legal principles as formulated in *Bachan Singh's case and Machhi Singh's case,* prayed for leniency and according to him, punishment of death sentence is not warranted.

30. It is relevant to mention that Jaswant Singh, father of Atbir deserted his first wife and their children in 1971. Atbir and

A his brother Satbir had some grievance about their father for deserting their mother and living with Sheela Devi – second wife and her children. Apart from the same, Atbir demanded land and house property and money immediately, though his father Jaswant Singh agreed and executed a Will. Since the B properties would come to his hands only after the demise of his father, Atbir along with other accused persons committed this ghastly crime. As rightly observed by the courts below, among the three accused, Atbir planned for the crime which was executed in a brutal manner and decided to wipe out the C entire family so that his father would leave all the properties and money in their favour.

31. The manner in which three persons were brutally murdered shocks the conscience. The aggravated accused, under the leadership of Atbir, reached the house of Sheela Devi D and initially demanded money and bolted the door from inside and, thereafter, inflicted 11 cut injuries on Manish @Mannu by Atbir when the others caught hold of him. After finishing him, Atbir inflicted 5 grievous injuries on deceased Sheela mercilessly. He also inflicted another 21 injuries on the E deceased Sonu @ Savita ignoring her tender age. The manner in which Atbir first stabbed Manish @ Mannu followed by Sheela and then Sonu @ Savita showed that there was a determination to finish the entire family so that he and his brother enjoy the entire property and money immediately.

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32. Another aggravating circumstance is that the crime had been committed and executed after closing the doors with all the three deceased being left helpless and unarmed. Closing of the door and bolting it from inside clearly shows the G determination to complete the crime and take away the life of all the three. Among them, two of them were in the young age and they could not be provoked and instigated in any manner.

33. It is seen from the evidence of the Doctors particularly, Post-mortem Doctor, that the accused Atbir inflicted as many H as 37 knife injuries on the body of three innocent persons. A

perusal of the post-mortem reports of the three deceased clearly shows the nature of the injuries inflicted on all the vital parts and the accused Atbir continued his action mercilessly till all the three lost their breath. Fortunately, before the death of Sonu @ Savita, she was taken to the hospital where she made a statement to the effect that how they were killed by the accused particularly, by Atbir. She categorically mentioned that it was Atbir who took out the knife and inflicted stab blows on all the three deceased. We have already mentioned the fact that Atbir inflicted 37 knife blows which resulted in the death of three persons.

34. After analyzing all the relevant materials let in by the prosecution and in the light of the well established principles including aggravating and mitigating circumstances as laid by the Constitution Bench in *Bachan Singh's case* (supra) and explained in *Machhi Singh's case* (supra), we conclude the murders committed by Atbir is extremely brutal and diabolical one. The cold blooded murder is committed with deliberate design in order to inherit the entire property of Jaswant Singh without waiting for his death. The magnitude of the crime is also enormous in proportion since Atbir, with the assistance of his mother and brother, committed multiple murders of all the members of the family. Apart from this, the victims are none else than his step-mother, brother and sister. The victims are innocent who could not have or has not provided even an excuse much less a provocation for murder. Further, the victims were unaware of the sudden entry of Atbir and others and after bolting the door from inside, they have no other way to go out or resist except subjecting themselves to the wishes of Atbir. Though the accused Atbir was also at the age of 25 at the relevant point of time considering his hunger and lust for property killing his own family members when they had no occasion to provoke or resist and causing 37 knife blows on vital parts of all the three persons, we conclude that it is a gravest case of extreme culpability and rarest of rare case and death sentence alone would be proper and adequate. We have

A already noted that the accused had no justifiable ground for his action. We are also satisfied that the victims were helpless and undefended. Taking into consideration of all the facts and materials, it is crystal clear that the entire act of Atbir amounts to a barbaric and inhuman behaviour of the highest order. The
B manner in which the murder was carried out in the present case is extremely brutal, gruesome, diabolical, and revolting as to shock the collective conscience of the community.

35. In the light of the above discussion, we confirm the conviction and sentence of death imposed on Atbir and the
C same shall be executed in accordance with law. We also confirm the conviction and sentence of life imprisonment imposed on Ashok.

36. Consequently, both the appeals are dismissed.

K.K.T. Appeals dismissed.