SUPREME COURT OF INDIA

Kanhaiya Lal

Vs.

State of Rajasthan

Crl.A.No.1108 of 2006

(K.S.Radhakrishnan and Dipak Misra JJ.)

22.04.2013

JUDGMENT

DIPAK MISRA, J.

1. The case of the prosecution depicts a macabre chain of events that occurred in the intervening night of 28th and 29th June, 2001 which eventually led to the massacre of five persons, namely, Purshottam, Ram Kumar Dhaka, Kalu Lal Mali and Lokendra Sharma, all residents of village Railgaon, and Heera Lal Meghwal, resident of Rampuria, Kota. The extermination of five lives had its genesis in an incident that had occurred sometime prior to the date of occurrence where Kishan Chand, son of Ram Narayan, Sarpanch of the village, was murdered and the father nurtured deep rooted suspicion that the deceased persons had not only masterminded a well thought out plan but also executed the same and the seeds of the unquenched anger gradually got inflamed and took the shape of revenge ultimately resulting in the extinction of the life-spark of five persons. From the uncurtaining of the gruesome events, it is manifest that on the date of the occurrence, the night slowly and intensely developed into real darkness of revenge that reigned with avenge. Revenge, the pleasure of morbid minds, knows no bounds and the accused persons, clinging to the fire of revenge, possibly thinking it to be sweetest thing to relish, marched ahead on the escalator of bitterness and the ultimate eventuate was five deaths, trial of 29 persons and conviction of 17 accused out of which six accused persons, namely, Yuvraj, Hemraj, Hansraj, Radhey Shyam, Modu Nath and Mohan were imposed death sentence and the rest 11 accused, namely, Lal Chand, Dhanpal, Kanyaiyalal, Naval, Revdi Lal, Ram Lal, Babu Lal, Mangi Lal, Ghanshyam, Radhey Shyam s/0 Prahalad, and Radhey Shyam s/o Shankar Lal, were sentenced with rigorous imprisonment of life by the

learned Additional Sessions Judge, Fast Track, in Sessions Case No. 27 of 2002. Be it noted, the rest of the accused persons were acquitted of the charges.

2. As is demonstrable, all the accused persons were sent up for trial for offences punishable under Sections 147, 148, 302, 342, 427, 435 and 460 read with 149 IPC. Filtering the unnecessary details, the facts which are necessitous to be stated for disposal of these appeals are that on 28.6.2001, about 5.00 p.m., Purshottam, brother of the informant, Ram Kumar Dhakad, Kalu Lal Mali, Lokendra Sharma, and Heera Lal Meghwal had come on two motorcycles to the house of Purshottam and no sooner had they arrived in the village than Ram Narayan, Mohan Lal, Yuvraj, Hansraj, Lalchand, Dhanpal, Kanhaiya Lal, Naval, Revdi Lal, Hemraj, Radhey Shyam s/o Gopal, Bhojraj, Ramesh Chand, Ram Singh, Babu Lal Meena, Mangilal, Ghanshyam, Radhey Shyam s/o Prahalad, Modulal, Radhey Shyam s/o Shankar Lal, Jagdish, Shambhu Dayal, Amar Lal and Sita Ram along with 15-20 others came being armed with Gandasis, Swords, Sabals and sticks. They surrounded the house of Purshottam who was in the house along with children. The accused persons scaled the house of Purshottam and started pelting stones as a consequence of which the roof sheets and the tiles of the house of Purshottam were broken. Purshottam and his four other companions jumped the common wall situate in between the houses of Purshottam and Radhey Shyam, brother of Purshottam, and stayed in one room of the informant. As the evening progressed, the evil designs became more animated and the deadly desires sprang into action and at midnight, the accused persons took the informant, his wife Badribai, mother Panabai and Nirmala Bai, wife of Purshottam, and made them sit in the thatched roof of one Prabhulal Meena. Almost after half an hour, the relatives of Ram Narayan Gujjar, Sarpanch of the said village, came in a jeep along with 15-20 persons in front of the house of the informant, broke open the door, entered the house and, in the house itself, inflicted blows with Swords, Gandasis and sticks, as a result of which Kalu Lal Mali, Lokendra Sharma and Heera Lal Meghwal breathed their last inside the house. The accused dragged Purshottam and Ram Kumar outside and assaulted them with Gandasis and swords on their heads, faces, hands and feet and, eventually, those two succumbed to their injuries. They took both the motorcycles in the passage and burnt the same and, after the inhumane and barbaric act, left the scene.

3. The FIR, as is perceptible from the material brought on record, was not lodged immediately but was lodged at 6.45 a.m. on 29.6.2001. During investigation, the investigating agency prepared the site plan, got the autopsy done in respect of the dead bodies, seized the blood stained clothes, recorded the statements of the witnesses and, on the basis of the information furnished by the accused persons,

while they were in custody, recovered the weapons used in the commission of the crime and, after following the other formalities of investigation, submitted the charge-sheets on different dates before the Judicial Magistrate, Digod, who, in turn, committed the matter to the Court of Session. After committal of the case to the Court of Session, the learned trial Judge, on 3.4.2002, framed charges under Sections 147, 427, 435, 148, 302, 460 and 342 IPC and in respect of 435/149 IPC against accused numbers 1, 5-9, 11, 12, 16, 21, 23, 24 and 26. As far as the other three sets of accused persons are concerned, almost similar charges were framed on 21.09.2002. The accused persons denied their involvement in the crime, pleaded innocence and claimed to be tried.

4. In order to substantiate the offences against the accused persons, the prosecution examined 45 witnesses, got number of documents exhibited and various material objects marked. The accused persons in their defence examined 15 witnesses.

5. The learned trial Judge formulated four questions, namely, whether the accused in furtherance of the common object caused the death of the deceased persons and assaulted the other persons; whether all of them by throwing stones on the house of Purshottam and burning the Motorcycles in possession of the deceased persons committed mischief; whether the accused persons with common object to commit murder of the deceased persons committed lurking trespass into the house of Radhey Shyam in the night; and whether the offences were committed by all the accused persons. The learned trial Judge addressed the questions one to three, as formulated by him, in a composite manner and, appreciating the evidence on record, came to hold that the accused Mohan Lal, Yuvraj, Hansraj, Hemraj, Radhey Shyam s/o Gopal and Modu Nath were guilty of the offences under Sections 148, 427, 342, 460 and 302 IPC and, accordingly, convicted them to undergo three years rigorous imprisonment and a fine of Rs.500/-, two years rigorous imprisonment and a fine of Rs.500/-, one year rigorous imprisonment and a fine of Rs.500/-, ten years rigorous imprisonment and a fine of Rs.2000/- and death sentence respectively with further stipulation of consequences in default of payment of fine respectively. Accused Lal Chand, Revdi Lal, Ghanshyam and Radhey Shyam, s/o Prahlad, were convicted for offences punishable under Sections 148, 427, 342, 460 and 302/149 IPC and sentenced to suffer rigorous imprisonment for three years and a fine of Rs.500/-, two years rigorous imprisonment and a fine of Rs.500/-, one year rigorous imprisonment and a fine of Rs.500/-, ten years rigorous imprisonment and a fine of Rs.2000/- and life imprisonment and a fine of Rs.2000/- respectively with the consequences enumerated in case of default of payment of fine respectively. Accused Dhanpal, Kanhaiya Lal, Naval, Ram Lal, Babu Lal, Mangi Lal, Radheysham and four others

were found guilty of the same offences and imposed various sentences with a default clause. The maximum sentence was imprisonment for life and a fine of Rs.2000/- under Section 302/149 IPC. The rest of the accused stood acquitted.

6. At this juncture, it is worth mentioning that Ram Narayan, Sarpanch of the village Railgaon, who was sent up for trial, expired during the pendency of the trial and, accordingly, the trial was closed against him.

7. The accused appellants preferred seven criminal appeals, namely, Criminal Appeal Nos. 464 of 2003, 421 of 2003, 621 of 2003, 622 of 2003, 670 of 2003, 474 of 2003 and 520 of 2003. The State represented its case in Death Reference No. 1 of 2003, but did not question the defensibility of the acquittal recorded against 11 other accused persons. The accused-appellants before the High Court assailed the conviction in respect of all the offences and the sentence and the State defended the judgment passed by the court below.

8. The Division Bench of the High Court dealt with all the appeals and disposed all of them by a singular judgment dated 2.6.2005. The High Court, appreciating the evidence, scrutinizing the material on record and bestowing anxious consideration while dealing with the submissions canvassed by the learned counsel for the parties, partly allowed the appeals preferred by Mohan Lal and others, who were convicted under Sections 302 and 460 IPC and sentenced to death, acquitted Mohan Lal of the charges framed against him under Sections 302 and 460 IPC and as far as the other accused persons of the same category are concerned, the sentence of death was converted to life sentence and, resultantly, the death reference was declined. The accused persons, namely, Lal Chand, Revdi, Ghanshyam, Radhey Shyam, Mangilal and Babulal were given benefit of doubt and acquitted of the charges framed against them under Sections 302 and 460 IPC. As far as the other accused persons, namely, Kanhaiyalal, Naval, Ram Lal and Radhey Shyam, s/o Shankar Lal, are concerned, the conviction and sentence imposed by the trial court was maintained.

9. The High Court, on x-ray of the evidence, came to hold that all the deaths were homicidal; that imposition of death sentence by the learned trial Judge was not justified; that there was no unexplained delay in lodging the FIR; that the provisions enshrined under Section 149 of IPC were clearly attracted to the case at hand; that the plea of the defence that the prosecution had chosen only the relatives of the deceased persons who are highly interested witnesses and, hence, their version did not deserve acceptance was without any merit; that the whole crime was committed in a planned design; that the proponement that no independent

witnesses had been examined was bereft of any substratum because the witnesses could not have dared to depose against the Sarpanch who, on mere suspicion, had set himself on such a massacre and self-preservation being the basic instinct in such a situation had ruled supreme; that Dhanpal s/o Ram Pratap, accused no. 5 before the High Court, having expired, appeal at his instance abated; that the involvement of Lalchand, Revdi Lal, Ghanshyam, Radheyshyam s/o Prahlad, Mangi Lal, Babu Lal, and Mohan was doubtful and, accordingly, they deserved to be acquitted; that the other accused-appellants were involved in the commission of crime and, therefore, the conviction under Section 302 could not be interfered with. As far as the death reference is concerned, it opined that it is not a rarest of rare case warranting imposition of death sentence and, accordingly, modified it to rigorous life imprisonment. Recording such conclusions, the High Court disposed of the bunch of appeals.

10. We have heard Mr. Sushil Kumar Jain, learned counsel for the accused-appellants in Criminal Appeal No. 1108 of 2006, and Mr. Imtiaz Ahmed, learned counsel for the State in all the appeals.

11. The first submission of Mr. Jain is that the prosecution version deserves to be thrown overboard inasmuch there is delay in lodging of the FIR and the explanation offered for such delay is unacceptable, regard being had to the duration of the occurrence, proximity of the police station and the implication of number of accused persons which is indicative of embellishment. Learned counsel would further contend that innocent persons were dragged into trial and suffered immensely and hence, such a story should not be given credence to.

12. It is settled in law that mere delay in lodging the First Information Report cannot be regarded by itself as fatal to the case of the prosecution. However, it is obligatory on the part of the court to take notice of the delay and examine, in the backdrop of the case, whether any acceptable explanation has been offered, by the prosecution and if such an explanation has been offered whether the same deserves acceptance being found to be satisfactory. In this regard, we may refer with profit a passage from State of U.P. v. Gian Chand[1], wherein a three-Judge Bench of this Court has expressed thus: -

> "Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the

prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case."

13. In Ramdas and others v. State of Maharashtra[2], this Court has observed that mere delay in lodging the first information report is not necessarily fatal to the case of the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the court must take notice. This fact has to be considered in the light of other facts and circumstances of the case, and, in a given case, the court may be satisfied that the delay in lodging the report has been sufficiently explained. In the light of the totality of the evidence, the court has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation, there may be circumstances appearing on record which provide a reasonable explanation for the delay. There are cases where much time is consumed in taking the injured to the hospital for medical aid and, therefore, the witnesses find no time to lodge the report promptly. There may also be cases where on account of fear and threats, witnesses may avoid going to the police station immediately. The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report. It is also possible to conceive of cases where the victim and the members of his or her family belong to such a strata of society that they may not even be aware of their right to report the matter to the police and seek legal action, nor was any such advice available to them.

14. In Meharaj Singh v. State of U.P.[3], a two-Judge Bench of this Court has observed that FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial and the object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any, for delay in lodgment of the FIR results in embellishment which is a creation of afterthought. Emphasis was laid on the fact that on account of delay, the FIR not only gets bereft of the advantage of spontaneity but also danger of introduction of a coloured version or exaggerated story.

15. Thus, whether the delay creates a dent in the prosecution story and ushers in suspicion has to be gathered by scrutinizing the explanation offered for the delay in the light of the totality of the facts and circumstances. Greater degree of care and caution is required on the part of the court to appreciate the evidence to satisfy itself relating to the explanation of the factum of delay. In Kilakkatha Parambath Sasi and others v. State of Kerala[4], it has been observed that when an FIR has been lodged belatedly, an inference can rightly follow that the prosecution story may not be true but equally on the other side, if it is found that there is no delay in the recording of the FIR, it does not mean that the prosecution story stands immeasurably strengthened.

16. The present factual scenario is to be tested on the touchstone of the aforesaid principles. On a careful perusal of the material on record, it is clear as crystal that the occurrence had taken place at night. True it is, the house of Purshottam was surrounded sometime at 5.00 p.m. on 28.6.2001, but the real crime, the assault and the murder took place after midnight. The ghastly and gruesome crime must have sent a shiver in the spine and shattered the brains and bones of the witnesses to the crime and shock, panic and inequilibrium would have reigned simultaneously to leave them totally confounded. No one could have dared to move an inch towards the police station, for man's basic instinct prompts him to survive first and then think about any other action. The informant, brother of the deceased, has clearly deposed that he and others were in a terrible state of trauma to proceed to the police station to lodge an FIR. After the day broke, they mustered courage and proceeded towards the police station and lodged the FIR at 6.45 a.m. on 29.6.2001. The learned counsel for the appellants would contend that they could have lodged the FIR when the house was seized and not after the whole episode was over. We are not impressed by the said submission and we think that the explanation offered, by no stretch of imagination, can be regarded implausible. As noticed earlier, a delayed FIR can usher in craftsmanship, manipulation and embellishment and may make the prosecution story vulnerable, but when the delay has been adequately explained, the same deserves acceptation and, accordingly, we do so.

17. The next limb of argument of Mr. Jain, learned counsel for the appellants, is that all the alleged eye witnesses are closely related to the deceased Purshottam and the prosecution has chosen not to examine any independent witness despite number of houses situate in the close vicinity of the house of Purshottam and that itself creates a dent in the version of the prosecution. When relatives, who are alleged to be interested witnesses, are cited by the prosecution, it is the obligation of the court to scrutinize their evidence with care, caution and circumspection. In the case at hand, the entire occurrence took place in and around the house of

Purshottam. Five people had been done to death. In such a circumstance, it is totally unexpected that other villagers would come forward to give their statements and depose in the court. It is to be borne in mind that Ram Narayan, Sarpanch of the village, solely on the basis of suspicion, had seen to it that five persons meet their end. Such a situation compels one not to get oneself involved and common sense give consent to such an attitude. Thus, no exception can be taken to the fact that no independent witness was examined. As far as the relatives are concerned, Radhey Shyam, PW-1, is the brother of the deceased, Ram Lal, PW-2, is the brother of Radhey Shyam, Panna Bai, PW- 3, is the mother of Purshottam and Nirmala Bai, PW-5, is his wife, and Anita, PW-5, Badribai, PW-8, Manisha, PW-9 and Kaushalya, PW-10, are also close relatives and these witnesses have been cited as eye witnesses.

18. In Hari Obula Reddy and others v. The State of Andhra Pradesh[5], a three-Judge Bench has opined that it cannot be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of the interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.

19. In Kartik Malhar v. State of Bihar[6], this Court has stated that a close relative who is a natural witness cannot be regarded as an interested witness, for the term "interested" postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

20. In the case at hand, the witnesses have lost their father, husband and a relative. There is no earthly reason to categorise them as interested witnesses who would nurture an animus to see that the accused persons are convicted, though they are not involved in the crime. On the contrary, they would like that the real culprits are prosecuted and convicted. That is the normal phenomena of human nature and that is the expected human conduct and we do not perceive that these witnesses harboured any ill motive against the accused persons, but have deposed as witnesses to the brutal incident. We may proceed to add, as stated earlier, that this court shall be careful and cautious while scanning their testimony and we proceed to do so.

21. Radhey Shyam, the informant, has deposed with regard to the threat, climbing of some of the accused on the roof, surrounding of the house, pelting of stones, carrying of lethal weapons like swords, gandhasis, sabals and sticks, the assault inside the house, dragging of the two deceased persons and the ultimate death of the deceased. The plea that he could not have witnessed the incident as it was night and he was inside a thatched house (chhappar), has been disbelieved by the learned trial Judge as well as by the High Court. Mr. Jain, learned counsel for the appellants, made a fragile attempt to highlight that he could not have seen the assault, but on a scrutiny of the evidence, it is manifest that there was not complete darkness, as an electric bulb was burning at that time and he had the occasion to see the incident. Similar is the evidence of the other prosecution witnesses, which has been analysed with great anxiety by the High Court. On a careful perusal of the same, we do not find any reason to differ with the said evaluation solely on the ground that they are related to the deceased persons or that they could not have seen the occurrence. In a case of this nature, it is the relatives who would come forward to depose against the real culprits and would not like to falsely implicate others. They have witnessed the brutish crime committed and there is nothing on record to discard their testimony as untrustworthy. We find that their evidence is reliable and credible and it would not be inapposite not to act upon the same. Nothing has been elicited in the cross-examination to record a finding that the evidence is improbable or suspicious and deserves to be rejected. They have no motive to falsely implicate the accused and, that apart, their testimony have withstood the rigorous cross-examination in material particulars and received corroboration from the evidence of the doctor. That apart, the weapons seized lends credence to the prosecution story. Quite apart from the above, it is almost well nigh impossible to perceive that they have any animosity for some reason to see that the accused persons are convicted. Their family members have been done to death in ghastly manner, and in these circumstances, it cannot be thought of that they would leave the real culprits and implicate the accused persons.

22. It is next contended by Mr. Jain that the witnesses have not specifically stated about the exact role played by each of the accused persons inasmuch as they have not mentioned who assaulted on which part of the body and with what weapon. On a perusal of the evidence, it transpires that the witnesses have mentioned about the weapons used, the assault made and the parts of the body where injuries were inflicted. True it is, there are some discrepancies but they are absolutely minor. That apart, they had formed an unlawful assembly with a common object to put an end to the lives of the deceased persons. Their common object is writ large because they had the knowledge and they shared the common object from the beginning to the end. Applying the principles laid down in Masalti and others v. The State of

Uttar Pradesh[7], Lalji and others v. State of U.P.[8] and Ramachandran and others v. State of Kerala[9], we conclude that all the accused persons were a part of the unlawful assembly with the knowledge of the common object and, accordingly, we unhesitatingly repel the contention of the learned counsel for the appellants.

23. Presently, we shall advert to the appeals wherein the High Court has acquitted the accused persons. It is apt to mention here that the State had not preferred any appeal before the High Court assailing the judgment of acquittal by the learned trial Judge. As is seen, the High Court has acquitted seven accused, namely, Mohan, Lal Chand, Revdilal, Babulal, Mangilal, Ghanshyam and Radhey Shyam, in various criminal appeals. Before we advert to the correctness of the view taken by the High Court, we would like to state the role of the court while dealing with a judgment of acquittal.

24. In Jadunath Singh and others v. State of U.P.[10], a three-Judge Bench, while dealing with an appeal against acquittal, has held thus: -

> "22. This Court has consistently taken the view that an appeal against acquittal the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reversed. This power of the appellate court in an appeal against acquittal was formulated by the Judicial Committee of the Privy Council in Sheo Swarup v. King Emperor, 61 Ind App 398 = (AIR 1934 PC 227 (2)) and Nur Mohammad v. Emperor, AIR 1945 PC 151. These two decisions have been consistently referred to in judgments of this Court as laying down the true scope of the power of an appellate court in hearing criminal appeals: see Surajpal Singh v. State, 1952 SCR 193 = (AIR 1952 SC 52) and Sanwat Singh v. State of Rajasthan, (1961) 3 SCR 120 = (AIR 1961 SC 715)."

25. In Sohrab and another v. The State of Madhya Pradesh[11], this Court opined that under the Code of Criminal Procedure, the High Court has full power to review at large the evidence upon which the order of acquittal is founded and to reach the conclusion that on proper appreciation of the evidence, the order of acquittal should be reversed. No limitation should be placed upon that power unless it is expressly stated in the Code. After so stating, the two-Judge Bench expressed thus: -

> "But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court, should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge

as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

26. In State of M.P. v. Bacchudas alias Balram and others[12], after referring to Bhagwan Singh v. State of M.P.[13] and other pronouncements, it has been stated that the principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

27. In State of Rajasthan through Secretary, Home Department v. Abdul Mannan[14], this Court has stated that when an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of the case and the thumb rule is whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of the evidence is apparent on the face of the record, then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

28. In State of Rajasthan v. Shera Ram alias Vishnu Dutta[15], after survey of the earlier pronouncements, it has been observed that there is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal, the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate

jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

29. Keeping in view the aforesaid principles, we proceed to analyse the reasons ascribed by the High Court while recording the acquittal. In the case of Lal Chand @ Ram Niwas, the High Court has opined that though he was named along with other persons who constituted a group of 25-26 persons and had surrounded the house of Purshottam, yet none of the witnesses had mentioned that he had gone on the roof of the house or damaged the roof and, therefore, his participation in the crime appears to be doubtful. While addressing the conviction relating to Revdi Lal, the High Court has noticed that the only evidence against him is that he had gone to the house of Purshottam and thrown stones, but no other witnesse has named him barring Ramlal, PW-2. The High Court has found that in all possibility, there was exaggeration or embellishment and, accordingly, given him benefit of doubt. Dwelling upon the conviction of Ghanshyam, the Division Bench has observed that the allegations against him are omnibus in nature and do not inspire confidence and, accordingly extended benefit of doubt. On similar analysis, Radhey Shyam s/o Prahlad, Mangi Lal and Babu Lal S/o Dev Lal have been extended the benefit of doubt. As far as Mohan Lal is concerned, the High Court perceived that there are material contradictions in the evidence of the witnesses pertaining to the involvement of Mohan Lal and, hence, felt that it was not safe to convict him and, accordingly, on proper scrutiny of the evidence, gave him the benefit of doubt. Applying the principles laid down by this Court in the aforesaid authorities, it is very difficult to hold that there are 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions' or 'glaring mistakes', and the prosecution has discharged the onus and, therefore, we are of the considered opinion that the view expressed by the High Court does not suffer from any such infirmity. We are inclined to think that the approach of the High Court cannot be said to be totally implausible. It has taken note of the involvement of number of persons and, after filtering the grain from the chaff and on due consideration of the material on record, has extended the benefit of doubt to the accused persons who have been acquitted. Thus, we are not disposed to dislodge the conclusions arrived at by the High Court in recording the acquittal.

30. The next issue that emerges for consideration is whether the High Court has fallen into error by commuting the death sentence to that of life imprisonment. The High Court, while dealing with the Death Reference, has opined that when specific overt acts have not been attributed and similarly placed accused persons have been

given life sentence and Ram Narayan, who had engineered the incident, has breathed his last, it would not be appropriate to impose death sentence. The High Court has observed that the three sons of Ram Narayan had been awarded death sentence and the other two are villagers and in the backdrop of the situation, there were mitigating factors for commutation of the sentence.

31. Apart from the reasons ascribed by the High Court, we think it apposite to consider the circumstances whether in the present case, death sentence is warranted. In Bachan Singh v. State of Punjab[16], the Constitution Bench has held as follows: -

> "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."

32. In Machhi Singh and Others v. State of Punjab[17], the Court, after stating the feeling of the community and its desire for self preservation, expressed that in every case, the community does not desire to withdraw the protection of self preservation by sanctioning the death penalty. It may do so in "rarest of rare cases" when its collective conscience is so shocked that it would expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards the desirability or otherwise of retaining death penalty. After so stating, the three-Judge Bench culled out the propositions envisaged from Bachan Singh's case which are as follows: -

> "(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 the option is exercised."

33. In Haresh Mohandas Rajput v State of Maharshtra[18], the Bench referred to the principles in Bachan Singh (supra) and Machhi Singh (supra) and proceeded to state as follows:-

" "The rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society. Where an accused does not act on any spur-of-the-moment provocation and indulges himself in a deliberately planned crime and meticulously executes it, the death sentence may be the most appropriate punishment for such a ghastly crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fibre of the society e.g. crime committed for power or political ambition or indulging in organised criminal activities, death sentence should be awarded. (See C. Muniappan v. State of T.N.[19], Dara Singh v. Republic of India[20], Surendra Koli v. State of U.P.[21], Mohd. Mannan v. State of Bihar[22] and Sudam v. State of Maharashtra[23].)"

34. In Ram Pal v. State of U.P.[24], a two-Judge Bench took note of the fact that there has been termination of life of number of people and opined that the number of deaths cannot be the sole criterion for awarding the maximum punishment of death. It further ruled that while in a given case, death penalty may be the appropriate sentence even for a single murder, it would not necessarily mean that in every case of multiple murders, death penalty has to be the normal rule. The Court took note of the guidelines stated by the Constitution Bench in the case of

Bachan Singh (supra), the aggravating circumstances and the mitigating circumstances postulated therein and opined that the incident had taken place as a sequel to the murder of close relative of the appellant and the other principal accused which was suspected to have been committed by the members of the victims' family. The two- Judge Bench expressed the view that the circumstance could be treated as a circumstance which amounted to a provocation from the victim side. That apart, the two-Judge Bench observed that the appellant therein was similarly placed with the other accused persons who had been imposed sentence for life imprisonment and further, they had spent nearly seventeen years in custody.

35. In the present case, as we notice from the factual matrix, the crime had taken place because Ram Narayan had suspected that the accused persons were responsible for extinguishing the life spark of his son. It is also seen that similarly placed persons have been imposed life sentence. Quite apart from that, all the accused persons have almost spent thirteen years in custody. Regard being had to the totality of the circumstances, it cannot be said that imprisonment for life is inadequate and the circumstances are so grave that it calls for a death sentence. When we adjudge the whole scenario in proper perspective, we are inclined to think that it is not a case which can be treated to be a case of extreme culpability and there is no other option but to impose death penalty. Thus, we do not find any error in the decision of the High Court by which it has commuted the death sentence to life imprisonment.

36. Consequently, the appeal filed by the accused-appellants and the appeals filed by the State for enhancement of penalty and reversal of the judgment of acquittal rendered in favour of the accused persons are dismissed.

[1] (2001) 6 SCC 71
[2] (2007) 2 SCC 170
[3] (1994) 5 SCC 188
[4] AIR 2011 SC 1064
[5] (1981) 3 SCC 675
[6] (1996) 1 SCC 614
[7] AIR 1965 SC 202
[8] (1989) 1 SCC 437
[9] (2011) 9 SCC 257
[10] AIR 1972 SC 116
[11] AIR 1972 SC 2020

[12] (2007) 9 SCC 135
[13] (2003) 3 SCC 21
[14] (2011) 8 SCC 65
[15] (2012) 1 SCC 602
[16] (1980) 2 SCC 684
[17] (1983) 3 SCC 470
[18] (2011) 12 SCC 56
[19] (2010) 9 SCC 567
[20] (2011) 2 SCC 490
[21] (2011) 4 SCC 80
[22] (2011) 5 SCC 509
[23] (2011) 7 SCC 125
[24] (2003) 7 SCC 141