CASE NO.:
Appeal (crl.) 25-26 of 2000

PETITIONER:
NARAYAN CHETANRAM CHAUDHARY & ANR.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 05/09/2000

BENCH:
K.T. Thomas & R.P. Sethi.

JUDGMENT:

SETHI,J.
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Three desperadoes, the two appellants and one Raju (PW2) who had gone amuck, committed the heinous crime of murders in a most ghastly and shocking manner for which the appellants were charged with various offences punishable under Sections 120B, 302, 34, 342, 392, 297 and 449 of Indian Penal Code. On proof of the charge that the appellants had committed the murder of five innocent women, one of whom was pregnant, and two children of teenage of one and a half years and two and a half years, they were convicted and sentenced to death alongwith other sentences, by the Trial Court. The High Court accepted the Reference made for confirmation of the death sentence and dismissed the appeals filed by the appellants for setting aside their convictions.

On the date of occurrence the appellants were of 20-22 years of age. The deceased, victims of the crime, included Meerabai Rathi, aged about 45 years, her daughter-in-law Babita @ Nita Rathi, aged about 24 years, her unmarried daughter Preeti aged about 19 years, her married daughter Hemlata aged about 27 years, her maid servant Satyabhamabai Sutar aged about 42 years, Chirag, son of Babita aged two and a half years, Pratik, son of Hemlata aged one and a half years.

All women and children were killed one by one by inflicting numerous knife blows on their persons. All the deaths, except of Pratik (child of one and a half years) were actually caused by the brutal knife blows inflicted by Narayan Chetanram Chaudhary (hereinafter referred to as "the accused No.1"). Pratik was killed by Jitendra @ Jitu Nayansingh Gehlot (hereinafter referred to as "the accused No.2"). Raju, PW2 actively participated and facilitated the commission of the crime. The murders were apparently committed to wipe out all evidence of robbery and theft committed by the accused persons.

The prosecution case, as revealed from the investigation

and official report filed in the Court, is that complainant Sanjay Rathi (PW1) along with his father Keshrimal Rathi, his mother deceased Meerabai Rathi, his younger sister deceased Km.Preeti, his wife deceased Babita and his son deceased Chirag were residing in Flat No.6 on the Second Floor of Himanshu Apartment, Shilavihar Colony, Puad Phata, Kothrud, Pune. One of the daughters of Keshrimal Rathi, deceased Hemlata was married to Shri Shrikant Navandhar PW15 in the year 1992 and had come to her parents' house along with her son on the fateful day. Raju Rajpurohit who was Accused No.3 and later after becoming approver appeared as PW2, a resident of Muklava District, Ganganagar, Rajasthan after passing 11 standard examination in the year 1993-94 came to his elder brother Kalyan Singh at Pune for the purposes of getting further education while working or serving there. He was employed in Bombay Vihar situated at Laxmi Road, Pune since June, 1994. Accused No.1 and Accused No.2 were also working at the said Bombay Vihar during the aforesaid period as Cook and Counter Salesman respectively. After being acquainted with each other, all the three became friends. Raju, PW2 was removed from Bombay Vihar on 8th June, 1994 whereafter he got the service at Sagar Sweet Mart owned by Keshrimal Rathi and his son Sanjay Rathi (complainant). In the course of his employment he used to go to the house of Rathis to bring Chappatis for servants of the shop, daily and thus acquainted himself with the family members of the complainant as also their maid-servant. Raju worked with the Rathis for about two to two and a half months. When his request for enhancement of salary was declined by the Rathis, he left their service. At this time Accused No.2 went to him and informed that he too has left the job at Bombay Vihar and, therefore, Raju should talk to his employer to keep Jeetu in their service. Raju requested Sanjay Rathi to employ Accused No.2 but as he demanded a salary of Rs.1200/-, Sanjay Rathi expressed his inability to provide him the job. Meanwhile Raju learnt that Accused No.1 has also left the job at Bombay Vihar. Thereafter all the three went to a room in Nagpur Chawl in which Accused No.1 was residing and started living there.

After being rendered jobless and the limited amount they had with them being spent, they started thinking about their future. They hatched a conspiracy and made up a plan of robbing the house of some "seth" i.e. a businessman. On the night of 23rd August, 1994 they decided to commit theft/robbery at the house of Rathis. Accused No.1 told the other accused that before committing the theft/robbery they have to make some further preparations. He suggested to purchase a knife because all the inmates of the house were to be killed so that no- one could depose anything against them. They also decided to sprinkle chilly powder in the mouth and eyes of their victims to immobilise them for easy killings by the accused. On 24th August, 1994 all the accused persons discussed the details of the plan to commit the theft and killings at the house of Rathis. Accused No.2 agreed to sell his silver anklet and out of its sale proceeds to purchase a new knife. They went to the shop of Shrinagar Jewellers on 24th August, 1994 in the evening. Accused No.2 requested the proprietor of the shop to purchase his said silver anklet. As Accused No.2 was not having the purchase receipt of his anklet, the shopkeeper refused to purchase it. However, as the accused persons were then residing at Nagpur Chawl which was adjacent to the Shrinagar Jewellers' shop, the anklet was kept as pledge and they were given a sum of Rs.90/- as loan. They went to the

shop of Jaswant (PW5) and purchased one utility knife of Fiscer make (Article 147) for Rs.55/-.

On 25th August, 1994 at about 11 a.m. to 12 Noon, the accused persons went towards the house of Rathis to observe the situation. They stayed and surveyed the said area and found that the area remained isolated during 2.00 p.m. to 4.00 p.m. They decided to commit the act of theft after killing all the persons, whosoever were found at the house of Rathis during the aforesaid period only.

On 26th august, 1994 at about 8.45 a.m. the complainant Sanjay Rathi is stated to have left his house for his shop.@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ Thereafter Hemlata, deceased with her husband and son@@ JJJJJJJJJ
arrived at the house of Rathis in connection with tying Rakhi to her brother PW1 as she had not come for the said purpose on the day of Rakhi, Poornima Festival on 21st August, 1994. Sanjay Rathi, PW1 came to his house at about 1 p.m. to 1.30 p.m. on his motorcycle. Sanjay and his brother-in-law Shri Shrikant Navandhar, PW15 took their meals and went to the complainant's shop. Accused persons left their room at about 12 Noon for going to the house of Rathis. Accused No.1 was armed with the new knife and Accused No.2 with the old one. They had taken with them chilly powder regarding which decision had already been taken, as according to them its throwing in the eyes of victims would have facilitated the commission of the crime. They reached near the house of Rathis at about 2 p.m. They saw one motorcycle kept near the said building which was identified by Raju PW2 as belonging to Sanjay Rathi, PW1. Realising that Sanjay Rathi, PW 1 was at his house, they returned to the main road and watched. After about one hour they again returned near the building of Rathis. After noticing that the motorcycle of Sanjay Rathi was not there, they decided to execute their plan. Accused No.1 told Accused No.3 (PW2) to go-ahead into the house of Rathis and start talking with the family members in respect of his service and by that time they would reach there after chaining the doors of other flats in the said building from outside. After the doors of all other flats were chained from outside, Raju (PW2) went to the flat of Rathis. He found that the door of the flat was half open and when he peeped into the said flat he saw the maid-servant, deceased Satyabhamabai Sutar cleaning the floor with the water. He entered the flat and the appellants followed him. Appellant Jeetu closed the door from inside. Accused No.2 Jeetu threw chilly powder on the inmates of the flat who had collected into the hall on hearing the call made by the maid- servant. All the inmates were made to keep quite and surrender to the orders of the accused persons lest they may be deprived of their lives with the knives which the appellants had in their hands. The family members of Rathis were taken to different rooms in the flat. Realising that the middle aged woman Meerabai, who had raised her voice, was the lady of the house, Accused No.1 promptly asked her about valuables. Seeing a knife in his hand and realising the danger to her life as also the lives of the rest of the members of the family she immediately pointed out a finger towards an almirah inside the room. Accused Nos.1 and 2 took her to the said room. Accused No.2 handed over the packet containing remaining chilly powder to Raju, PW2 and directed him to sprinkle it on the victims if they started shouting or making any other effort. Smt.Meerabai was done to death

with the knife blows inflicted by Accused No.1 and was left to lie on bed where she died. Thereafter Babita @ Nita was taken to another room, apparently for getting the valuables and was killed by Accused No.1 by inflicting knife injuries on her person. Her son Chirag was also likewise killed by the aforesaid accused. Raju PW2 took Preeti into the bath room at the instance of Accused No.1 who cut a length of wire of washing machine and used it to choke her to death, who however, survived. When they came out of the bathroom, they heard some noise from the bathroom which prompted accused No.1 to go again inside. In the bathroom he found Preeti alive and told his other colleagues that 'she was still alive and had not died'. To accomplish the conspiracy hatched he gave knife blows to her which resulted in her death. Raju PW2 took Satyabhamabai Sutar in the kitchen where the accused No.1 had already reached and was washing the blood stained knife. Raju held Satyabhamabai Sutar and accused No.1 gave knife blows resulting in her death. Thereafter Raju and accused No.1 went towards a room where the married daughter of Rathis was held up by Accused No.2. Pratik, her son was tried to be taken from her, which she resisted. Accused No.2 assured her that he will not kill the child but will give him to his grandmother and threatened that if the child was not given to him, he will kill the child. Hemlata was also killed by inflicting knife injuries. Accused No.2 and Raju PW2 took the child into the room where Meerabai was lying dead in the pool of blood. The child was suffocated by gagging and when his movements stopped, the Accused No.2 put down the child on the floor saying he had died. Accused No.2 and Raju PW2 then came out and joined Accused No.1 who was standing before Hemlata. Upon enquiry about the child she was told by Accused No.2 that the child had been given to her grandmother. Accused No.1 then caught hold of Hemlata who put some resistence and in the process fell down. Accused No.2 gave her blows by putting his knees on her stomach and when she was immobilised this way, the Accused No.1 gave her knife blows on her neck with the result she also died. Almirahs found in the flat were emptied to the extent the accused could put articles and other cash and valuables in the air-bag obtained from the said flat. Before leaving the scene of occurrence Accused No.1 changed his pant which was blood stained and also put on him khaki jerkin clothes which were available in the house. Accused No.2 helped himself to a black shirt. Blood stained clothes of Accused No.2 were put in the air-bag along with stolen articles. At the time when they were about to leave the flat, the phone installed therein started ringing. Accused No.1 cut the telphone wires with his knife. At this stage they heard the cries of child from the room where Meerabai was lying dead. All of them went inside and found that the child, Pratik had not died. Despite the death spree caused, they did not think even to leave that child alive. Accused No.2 took the knife from Accused No.1 and gave blows to the child and killed him. After completing the crime of theft/robbery and murders, the accused persons came out of the house with the air-bag in which they had kept the blood stained clothes, knives and stolen property. Vishwajit Joshi, PW9 saw accused persons coming out of the compound wall of the concerned Himanshu Apartments where the flat of the Rathis was located. On the road they boarded a Rickshaw and came back to their room in Nagpur Chawl. As noticed earlier, Sanjay Rathi, PW1, his brother-in-law Shrikant Navandhar (PW15) had left the flat before the accused attacked the victims. Both of them went back to the house of Rathis by

6.45 p.m. Sanjay Rathi PW1 rang the door-bell and as nobody opened the door, he made inquiries from Smt.Khara and Smt.Dhade as to whether the key of the door of his flat was kept at their houses. On getting reply in the negative, Sanjay Rathi made inquiries from his relatives and family members by making phone calls from the house of Mrs.Khara as to whether his family members had gone there and on receiving the information in the negative he telephoned his father at the shop. His father told him that nobody from the family members had come to the shop nor did he receive any message from them. Sanjay Rathi went to the shop and brought the duplicate key. Meanwhile Damu Sutar, the husband of the maid-servant had also come there. Sanjay Rathi PW1 opened the door with the duplicate key in the presence of Shrikant Navandhar PW15, Damu Sutar and Smt.Sharmila Dhade. Upon entering in the flat they saw the maid- servant Satyabhamabai Sutar lying dead in a pool of blood. They rushed out crying and saying that the police be called. On hearing the cries of complainant Sanjay Rathi, the neighbourers and by-passers got collected in front of the building. Two of the neighbours went to Kothrud Police Station and informed the police that several persons had gathered in front of the Apartment in which the flat of Rathis was situated. Entry about the information was recorded in the Station Diary whereafter PI Vikram Pawar along with his staff rushed to the Apartment building. The said Sh.Vikram Pawar along with Sanjay Rathi PW1 and Shrikant Navandhar, PW15 entered the flat and saw the maid-servant Satyabhamabai Sutar, Preeti, Meerabai, Pratik, Babita, Hemlata and Chirag lying dead in pools of blood in the kitchen, bathroom, bed-room and the store of the flat of Rathis. The almirahs were found open. Sanjay Rathi was asked to verify the purportedly stolen articles. Sanjay Rathi was not in a condition to check the articles on account of the shock received after having seen the dead bodies all around in his flat. However, after the passage of some time and consolation by Vikram Pawar, Sanjay Rathi told the police that a cash of Rs.85,000/- besides gold and silver ornaments was missing. Meanwhile, after reaching Nagpur Chawl, where the accused persons were residing,@@
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Accused No.2 asked PW 2 Raju to bring liquor and some@@
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edibles for which he was given Rs.200/-. The air-bag was opened in which they had kept their blood stained clothes, mouth-organ, knives, camera, one bundle of Rs.500 currency notes denomination, one bundle of Rs.100 currency notes denomination, one bundle of Rs.50 currency notes denominations and bundles of Rs.10/- denominations, besides gold and silver ornaments. Raju kept for himself a mouth-organ, camera and a lady wrist watch of Rico make as also some coins of Nepal origin. Mangalsutra and one HMT watch was taken away by Accused No.1. Golden chain, three golden bangles and one golden ring, having S.R. written on it, were taken away by Accused No.2. Raju PW2 was asked by Accused No.1 to wash the blood stained clothes. While washing Pant of Accused No.1 Raju found one gold ring in the pocket which he took out and kept with him. As he could not wash the blood stained clothes of Accused No.1 he put back the ring in the pocket of the pant which was later on concealed in the tin roof. The accused thereafter went to the jewellery shop where the silver anklet was pledged. After making the payment they got the silver anklet released. On reaching back in the room in the Nagpur Chawl, they consumed the liquor brought by PW2 and moved around the

area for about an hour or so. Again coming back to the said room, Accused No.1 declared that he will go and hide the knives. He went away and on his return, upon inquiry, he told that the knives were hidden near the latrine. On the next day at the instance of Accused No.1 Raju brought Newspaper "Prabhat" and "Aaj Ka Anand" wherein the incident of murders and dacoity was reported without indicating the identity of the accused persons. In the afternoon they purchased the Evening Newspaper "Sandayanad" which carried further details of the incident and mentioned the name of Accused No.2 being probably responsible for the crime. After reading such news item they agreed to part company and to meet at Ahmedabad on 29th August, 1994. They met at Ahmedabad and again dispersed. Accused No.1 was arrested on 5th September, 1994, Accused No.2 on 21st November, 1994 and Raju PW2 on 15th October, 1994 from different places in Rajasthan. They made disclosure statements consequent to which various articles were recovered vide panchanamas prepared in accordance with law. In the identification parades they were identified by various witnesses. All the three accused persons were committed to the Court of Sessions for standing trial of various offences under the Indian Penal Code as noticed earlier. After the commitment but before the commencement of the trial Accused No.3 Raju Rajpurohit sent a letter to the Commissioner of Police repenting and expressing his wish to make a confessional statement. PI Shinde (PW 63) filed an application in the Trial Court along with letter of accused Raju dated 22nd November, 1995 praying the permission of the Court for getting the confessional statement of the accused Raju Rajpurohit recorded. The Trial Court accepted the application and directed the Superintendent of Prisons to allow to get the confessional statement of Raju recorded. Shri Khomane, Special Judicial Magistrate was also directed to record the confessional statement of Raju. The confessional statement, as recorded by Special Judicial Magistrate (PW41) was received by the Trial Court in a closed envelope. On 3rd January, 1996 an application under Section 307 of the Cr.P.C. was filed on behalf of the prosecution with a prayer to tender pardon to accused Raju Rajpurohit, on making necessary inquiries and on the condition of his making true and full disclosure of all the facts within his knowledge. On receipt of the said application, the Trial Court directed the Superintendent of the concerned jail to produce the aforesaid accused in the Court on 4.1.1996 at 11 a.m. The arguments on the application of the prosecution were heard after affording the advocates of the appellants an opportunity of addressing the court. The Trial Court, after hearing accused Raju observed: "On query by this Court he stated before me that he is prepared to make a full and true disclosure of the whole of the circumstances within his knowledge regarding these offences and the entire incident involved and that he is ready to accept the pardon. I have carefully perused the entire record of this case and also the confessional statement of this accused Rajendrasingh alias Rajusingh Ramlal Purohit which has been recorded by Special Judicial Magistrate, Pune. The said confessional statement was received in this Court in a closed envelope on 21.12.1995 from Shri G.H. Komne, Special Judicial Magistrate and since the said envelope was not bearing lac seals on the packet I kept the said envelope in another envelope, closed the said envelope and got the lac seals put on it. Today I opened the said sealed envelope of this Court and also the inner envelope and took out the said confessional statements in

open court and then perused the same. I am satisfied from the said confessional statements made by this accused Rajendrasingh alias Rajusingh Ramlal Purohit and other material on the record of this sessions case that this accused Rajusingh alias Raendra Singh Ramlal Purhoit has participated into the entire incident involved and thus his privy with all the happenings at the time of incident.

It is clear from the record of this sessions case that there is only circumstantial evidence and there are no eye-witnesses of this incident, and therefore, with a view of obtaining at the trial the evidence of any person who have witnessed the incident, it is necessary to tender pardon to the present accused Rajendrasingh alias Rajusingh Ramlal Purohit as prayed by the prosecution. The accused Rajusingh alias Rajendrasingh Ramlal Purhoit has also shown his willingness to become a approval and to make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offences and the every other persons concerned whether as principle or abetor in the commission thereof and further shown his willingness to accept pardon if the same is tendered to him." and ordered that accused Raju was tendered pardon on condition that he shall make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence. The aforesaid accused was directed to be sent to the District Prison, Satara and be detained there until further orders. Copies of the statement were furnished to the counsel of the appellants.

After recording the statement of the prosecution witnesses the learned Trial Judge recorded the statement of the accused under Section 313 of the Criminal Procedure Code. The Trial Court undertook a very elaborate exercise by putting almost 600 questions to the accused with respect to the evidence brought on record and the circumstances appearing against them. Accused No.1 pleaded alibi by stating that he was not in Pune. Accused No.2 admitted of being in Pune and also that he knew the Approver as they had been working together in Bombay Vihar Restaurant. He put forth a case of there being enmity with the Approver. He has admitted that Raju PW2 was working in Bombay Vihar where he also worked. Accused No.1 denied that he knew Raju PW 2 at all. None of the accused, however, led any defence evidence. On behalf of Accused No.2 besides making oral submissions his counsel submitted written arguments comprising of 470 pages (Exhibit 349 contained in Vol.IV of the paperbook).

After scanning the whole of the prosecution evidence, hearing the oral submissions and perusing the written arguments, the Trial Court, in a very lucid and detailed judgment, convicted and sentenced the appellants as under:

"The accused No.1 Narayan is convicted for the offence punishable under Section 302 of the Indian Penal Code (for causing the deaths of deceased Meeradevi Kesrimal Rathi, deceased Babita alias Nita Sanjay Rathi deceased Priti Kesrimal Rathi, deceased Chirag Rathi, deceased Hemlata Shrikant Navandhar and deceased Satyabhamabai Damu Sutar), for the offence punishable under section 302 read with 120-B of the Indian Penal Code (for causing the death of deceased Pratik Navandhar), and for the offence punishable u/s 120-B of the Indian Penal Code, and is sentenced to death and he be handed by neck till he is dead and to pay a fine of

Rs.10,000/- I/d to suffer R.I for three years on all counts.

The accused No.2, Jitu is convicted for the offence punishable under section 302 of the Indian Penal Code (for causing the death of Pratik Shrikant Navandhar) and for the offences punishable under section 302 read with 120-B of the Indian Penal Code (for causing the death of deceased Meeradevi Rathi, deceased Babita alias Nita Rathi, deceased Hemlata Shrikant Navandhar, deceased Priti Rathi, Satyabhamabai Damu Sutar and Chirag Rathi) and for the offence punishbale under section 120-B of the Indian Penal Code and is sentenced to death and be handed by neck till he is dead and to pay a fine of Rs.10,000/- I/d to suffer R.I for three years on all counts.

Both the accused persons are convicted for the offence punishable under section 397 read with 120-B of the Indian Penal Code and each is sentenced to suffer R.I. for seven years and to pay a fine of Rs.5,000 I/d to suffer further R.I. for two years for such offence.

Both the accused persons are convicted for the offence punishable under section 449 read with 120-B of the Indian Penal Code and each is sentenced to suffer R.I. for seven years and to pay a fine of Rs.5,000 I/d to suffer R.I. for two years for such offence.

Both the accused persons are further convicted for the offence punishable under section 342 read with 34 of the Indian Penal Code and each is sentenced to suffer R.I. for one year and to pay a fine of Rs.500 I/d to suffer R.I. for one month for such offence.

Substantive sentences of imprisonment and sentences of imprisonment in default of fine to run consecutively.

Accused No.1 Narayan be given set off of the period from 5.9.94 till today and the accused No.2 Jitu be given set off of the period from 21.1.94 till today during which they were in custody during investigation and trial."

Criminal Appeal Nos.462 of 1998 and 415 of 1998 filed by the Appellants 1 and 2 respectively were dismissed by the High Court vide an elaborate judgment. The High Court also accepted the Reference made to it by the Trial Court for confirmation of the death sentence. Not satisfied with the judgment of the High Court, the present appeals have been filed in this Court by special leave.

We have heard the learned counsel for the parties appearing in the case and perused the record. Mr.S.Muralidhar, Advocate who appeared as amicus curaie, has taken us through the whole record of the case besides making legal submissions to assail the concurrent judgments, impugned herein, by which the appellants have been held guilty of the commission of the offences for which they were charged and sentenced to various punishments including the death sentence.

Mr.S.Muralidhar has attacked the statement of the Approver on various grounds and submitted that it would be unsafe to award the appellants the death sentence solely on the basis of testimony of PW2. He has also referred to numerous alleged contradictions and improvements in the statement of aforesaid witness PW2. Alternatively it has

been argued that keeping in mind the young age of the appellants, they be not deprived of their lives and instead be deprived of their liberty though for longer period.

Referring to Sections 306 and 307 of the Cr.P.C. the learned counsel for the appellants submitted that as the statement of Raju PW2 was not recorded in terms of Clause (a) of Sub-section (4) of Section 306, his statement recorded by the Trial Court after tendering pardon was, illegal. According to the learned counsel the statement of every accomplice is required to be recorded firstly in the court of the Magistrate and subsequently in the Trial Court. As the statement of PW2 Raju was recorded only in the Trial Court, the appellants are reported to have lost a legal opportunity of having his second statement enabling them to elaborately cross-examine him.

In order to appreciate the submissions of the learned counsel a reference to Sections 306 and 307 Cr.P.C. is@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ necessary. Section 306 provides: "Tender of pardon to@@ JJJJJJJJJJJJJJJJJJJJJJJ accomplice (1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to:

(a) any offence triable exclusively by the court of session or by the court of a special judge appointed under the Criminal Law Amendment Act, 1952;

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every magistrate who tenders a pardon under sub-section (1) shall record--

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made;

and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1) --

(a) shall be examined as a witness in the court of the magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the magistrate taking cognizance of the offence shall, without making any further inquiry in the case, --

(a) commit it for trial--

i) to the court of session if the offence is triable exclusively by that court or if the magistrate taking cognizance is the Chief Judicial Magistrate;

ii) to a court of special Judge appointed under the Criminal Law Amendment Act, 1952, if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself."

Section 307 provides:

"Power to direct tender of pardon -- At any time after commitment of a case but before judgment is passed, the court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person."

A perusal of both the Sections clearly indicates that Section 306 is applicable in a case where the order of commitment has not been passed and Section 307 would be applicable after commitment of the case but before the judgment is pronounced. The provisions of sub-section (4)(a) of Section 306 would be attracted only at a stage when the case is not committed to the court of Sessions. After the commitment, the pardon is to be granted by the Trial Court subject to the conditions specified in sub-section (1) of Section 306, i.e. approver making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. It may be noticed that under the old Code, only the District Magistrate had the power to tender pardon, at any stage of the investigation, enquiry or trial even though he himself might not be holding such enquiry or trial. Pardon could be granted by the District Magistrate even during the pendency of the trial in the Sessions Court. By Criminal Law Amendment Act, 1952, old sections 337 to 339 were substituted by sections 306 to 308 of the Code of Criminal Procedure conferring the power to tender pardon only to Judicial Magistrates and the Trial Court. Section 307 - in its present form - does not contemplate the recording of the statement of the approver twice as argued. Accepting the submissions made on behalf of the appellant would amount to legislate something in Section 307 which the Legislature appears to have intentionally omitted. In Suresh Chandra Bahri v. State of Bihar [1995 Supp. (1) SCC 80] this Court while dealing with the case where the Approver was granted pardon by the committal court observed that every person accepting the tender of pardon made under sub-section (1) of Section 306 has to be examined as a witness in the court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any. The examination of the accomplice in such a situation was held to be mandatory which could not be dispensed with.

Referring to a Full Bench Judgment of the Gujarat High Court in Kalu Khoda v. State [AIR 1962 Guj. 283] this Court observed that: "If the said defect of not examining the approver at the committal stage by the committing Magistrate is rectified later, no prejudice can be said to be caused to an accused person and therefore the trial cannot be said to be vitiated on that account." There is no legal obligation on the Trial Court or a right in favour of the accused to insist for the compliance with the requirement of Section 306(4) of the Cr.P.C. Section 307 provides a complete procedure for recording the statement of an accomplice subject only to the compliance of conditions specified in Sub-Section (1) of Section 306. The law mandates the satisfaction of the court granting pardon, that the accused would make a full and true disclosure of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. It is not necessary to comply with the requirement of Section 306(4) when the pardon is tendered by the Trial Court. The Trial Court, in this case has taken all precautions in complying with the provisions of Section 306(1) before tendering pardon to accused Raju, who later appeared as PW2. We do not find any violation of law or illegality in the procedure for tendering the pardon and recording the statement of PW2. It has been further argued by the learned counsel for the appellants that as the statement of the Approver was recorded after an unexplained prolonged delay, the same could not be made the basis for conviction of the accused. In support of his submissions he has relied upon a judgment of this Court in Lal Chand & Ors.v. State of Haryana [1984 (1) SCC 686. In Lal Chand's case this Court while dealing with the peculiar facts and circumstances of the case found that the prosecution version of the fradulent transaction was extremely doubtful. In that context it was observed that the evidence of the Approver could not improve the prosecution case. The testimony of the Approver is required to be viewed with great caution inasmuch as he was self- confessed traitor and his earlier statements have been kept back by the prosecution which gave rise to the adverse inference that the earlier statements did not support the prosecution. Keeping in view the fact of the Approver's statements made after 20 months, while exercising due care and caution the court found that his evidence was not reliable to be made the basis for returning the finding of guilt against the accused persons. Such is not the position in the instant case. Otherwise the words of the section "at any time after commitment of the case but before judgment is passed" are clearly indicative of the legal position which the Legislature intended. No time limit is provided for recording such a statement and delay by itself is no ground to reject the testimony of the accomplice. Delay may be one of the circumstances to be kept in mind as a measure of caution for appreciating the evidence of the accomplice. Human mind cannot be expected to be reacting in a similar manner under different situations. Any person accused of an offence, may, at any time before the judgment is pronounced, repent for his action and volunteer to disclose the truth in the court. Repentance is a condition of mind differing from person to person and from situation to situation. In the instant case PW2 appears to be repenting upon his action from the very beginning as is evident from the two notes (Exhs.84 and 85) recovered from his pocket at the time of his arrest. It appears that the apprehension of his colleagues being convicted and sentenced prevented him from

taking a final decision at an early stage to make a truthful statement. The defence has not put any question to the aforesaid witness which could suggest that the delay in PW2 becoming the Approver by itself was fatal to the prosecution case. In one of the notes Exhibit 84 dated 11.10.1994 addressed to his parents and brother he is shown to have stated: "I am not worth calling your son. I have committed gruesome crime for which I could not be pardoned by God also. I was instigated by my friend Jeetu and Narayan and due to which I help them in the murder and robbery which took place in the Rathi family in Pune. I have no guts to face after this incidents. I have tremendous repentance over it for which I have decided to commit suicide. Please do not be sad after my death."

In Exhibit 85 he is reported to have informed the police:

"I have not committed murder of anyone during the crime of robbery and murder of Rathi family of Pune. I was only involved in the conspiracy of robbery and murder with my friends Narayan and Jeetu. I only assisted my friend Jeetu and Naryana in committing those seven gruesome murders on that faithful days. I had not assaulted any one but committing murder and helping to commit the same are both sine. I am burning in that sine. I have dependence over my act and I want get rid of this feeling that is why, I am thinking of committing suicide. I request you that my

family should not be harassed after my death. They have no fault of any kind. 11.10.94."

We, therefore, do not find any substance in the submissions of the learned defence counsel that as the statement of the Approver was recorded after a prolonged delay, no reliance could be placed upon it. The delay in granting the pardon may be a just criticism, where it is found that the pardon had been tendered at the end of the trial and in effect was intended to fill up the lacunae in the prosecution case. Such is not the present case. Learned defence counsel has then contended that conviction based upon the uncorroborated testimony of the Approver is neither safe nor proper particularly in a case where extreme penalty of death is awarded. Section 133 of the Evidence Act provides that an accomplice is a competent witness against an accused person and the conviction is not illegal merely because it proceeds on uncorroborated testimony of the accomplice. No distinction is made between an accomplice who is or is not an Approver. As both have been treated alike, the rule of corroboration applies to both. Accomplice's evidence is taken on record as a matter of necessity in cases where it is impossible to get sufficient evidence of a heinous crime unless one of the participators in the crime is disposed to disclose the circumstances within his knowledge on account of tender of pardon. Taylor, in his treatise has observed that "accomplices who are usually interested, and always infamous witnesses, and whose testimony is admitted from necessity, it being often impossible, without having recourse to such evidence, to bring the principal offenders to justice". [Taylor in "A Treatise on the Law of Evidence" - (1931) Vol.1 Para 967]. This Court in Suresh Chandra Bahri v. State of Bihar[1995 Supp. (1) SCC 80] observed that:@@

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"Since many a times the crime is committed in a manner for which no clue or any trace is available for its detection and, therefore, pardon is granted for apprehension of the other offenders for the recovery of the incriminating objects and the production of the evidence which otherwise is unobtainable. The dominant object is that the offenders of the heinous and grave offences do not go unpunished, the Legislature in its wisdom considered it necessary to introduce this section and confine its operation to cases mentioned in Section 306 of the Code. The object of Section 306 therefore is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. There can therefore be no objection against tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused because all that Section 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence."

The evidence of the Approver must, however, be shown to be of a reliable witness. In Jnanendra Nath Ghose vs. The State of West Bengal [1960(1) SCR 126] this Court observed that there should be corroboration in material particulars of the Approver's statement, as he is considered as a self-confessed traitor. This Court in Bhiva Doulu Patil v. State of Maharashtra [AIR 1963 SC 599] held that the combined effect of Sections 133 and 114 illustration (b) of the Evidence Act was that an accomplice is competent to give evidence but it would be unsafe to convict the accused upon his testimony alone. Though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. In this regard the court in Bhiv Doulu Patil's case observed:

"In coming to the above conclusion we have not been unmindful of the provisions of S.133 of the Evidence Act which reads:

S. 133 "An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice".

It cannot be doubted that under that section a conviction based merely on the uncorroborated testimony of an accomplice may not be illegal, the courts nevertheless cannot lose sight of the rule of prudence and practice which in the words of Martin B. in R v. Boyes, (1861) 9 Cox CC 32 "has become so hallowed as to be deserving of respect" and the words of Lord Abinger "it deserves to have all the reverence of the law". This rule of guidance is to be found in illustration (b) to S.114 of the Evidence Act which is as follows:

"The court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars."

Both sections are part of one subject and have to be considered together. The Privy Council in Bhuboni Sahu v. The King, 76 Ind App 147; (AIR 1949 PC 257) when its attention was drawn to the judgment of Madras High Court in In re Rajagopal ILR (1994) Mad 308: (AIR 1944 Mad 117) where conviction was based upon the evidence of an accomplice supported by the statement of a co-accused, said as follows:

"Their Lordships..... would nevertheless observe that Courts should be slow to depart from the rule of prudence, based on long experience, which requires some independent evidence implicating the particular accused. The danger of acting upon accomplice evidence is not merely that the accomplice is on his own admission a man of bad character who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue."

The combined effect of Ss.133 and 114, illustration (b) may be stated as follows:

According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. The law may be stated in the words of Lord Reading C.J. in R. v. Baskerville 1916-2 KB 658 as follows:

"There is no doubt that the uncorroborated evidence of an accomplice is admissible in law (R. v. James Atwood, (1787) 1 Leach 464). But it has been long a rule of practice at common law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice, and in the discretion of the Judge, to advise them not to convict upon such evidence, but the judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence (R. v. Stubbs, (1855) Dears CC 555; in re, Meunier, 1894-2 Q.B. 415)."

Again in Dagdu & Ors. v. State of Maharashtra [1977 (3) SCC 68] this Court declared:

"There is no antithesis between Section 133 and ilustration

(b) to Section 114 of the Evidence Act, because the illustration only says that the Court 'may' presume a certain state of affairs. It does not seek to raise a conclusive and irrebuttable presumption. Reading the two together the position which emerges is that though an accomplice is a competent witness and though a conviction may lawfully rest upon his uncorroborated testimony, yet the Court is entitled to presume and may indeed be justified in presuming in the generality of cases that no reliance can be

placed on the evidence of an accomplice unless that evidence is corroborated in material particulars, by which is meant that there has to be some independent evidence tending to incriminate the particular accused in the commission of the crime. It is hazardous, as a matter of prudence, to proceed upon the evidence of a self-confessed criminal, who, in so far as an approver is concerned, has to testify in terms of the pardon tendered to him. The risk involved in convicting an accused on the testimony of an accomplice, unless it is corroborated in material particulars, is so real and potent that what during the early development of law was felt to be a matter of prudence has been elevated by judicial experience into a requirement or rule of law. All the same, it is necessary to understand that what has hardened into a rule of law is not that the conviction is illegal if it proceeds upon the uncorroborated testimony of an accomplice but that the rule of corroboration must be present to the mind of the Judge and that corroboration may be dispensed with only if the peculiar circumstances of a case make if safe to dispense with it.

In King v. Baskerville (1916 2 KB 658), the accused was convicted for committing gross acts of indecency with two boys who were treated as accomplices since they were freely consenting parties. Dealing with their evidence Lord Reading, the Lord Chief Justice of England, observed that though there was no doubt that the uncorroborated evidence of an accomplice was admissible in law it was for a long time a rule of practice at common law for the Judge to warn the Jury of the danger of convicting a person on the uncorroborated testimony of an accomplice. Therefore, though the Judge was entitled to point out to the Jury that it was within their legal province to convict upon the unconfirmed evidence of an accomplice, the rule of practice had become virtually equivalent to a rule of law and therefore in the absence of a proper warning by the Judge the conviction could not be permitted to stand. If after being properly cautioned by the Judge the Jury nevertheless convicted the prisoner, the Court would not quash the conviction merely upon the ground that the accomplice's testimony was uncorroborated.

In Rameshwar v. State of Rajasthan (1952 SCR 377), this Court observed that the branch of law relating to accomplice evidence was the same in India as in England and that it was difficult to better the lucid exposition of it given in Baskerville's case by the Lord Chief Justice of England. The only clarification made by this Court was that in cases tried by a Judge without the aid of a Jury it was necessary that the Judge should give some indication in his judgment that he had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considered it safe to convict withoutcorroboration in the particular case.

In Bhuboni Sahu v. The King (76 IA 147), the Privy Council after noticing Section 133 and illustration (b) to Section 114 of the Evidence Act observed that whilst it is not illegal to act on the uncorroborated evidence of an accomplice, it is a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material respects so as to implicate the accused; and further that the evidence of one accomplice

cannot be used to corroborate the evidence of another accomplice. The rule of prudence was based on the interpretation of the phrase "corroborated in material particulars" in illustration (b). Delivering the judgment of the Judicial Committee, Sir John Beaumont observed that the danger of acting on accomplice evidence is not merely that the accomplice is on his own admission a man of bad character who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue. He may implicate ten people in an offence and the story may be true in all its details as to eight of them but untrue as to the other two whose names may have been introduced because they are enemies of the approver. The only real safeguard therefore against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates each accused.

This Court has in a series of cases expressed the same view as regards accomplice evidence. (See State of Bihar v. Basawan Singh, (1959 SCR 195); Hari Charan Kurmi v. State of Bihar (1964 6 SCR 623); Haroon Haji Abdulla v. State of Maharashtra (1968 2 SCR 641); and Ravinder Singh v. State of Haryana (1975 3 SCR 453). In Haricharan Gajendragadkar, C.J., speaking for a five-Judge Bench observed that the testimony of an accomplice is evidence under Section 3 of the Evidence Act and has to be dealt with as such. The evidence is of a tainted character and as such is very weak; but, nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars."

To the same effect is the judgment in Balwant Kaur v. Union Territory, Chandigarh [1988(1) SCC 1].

For corroborative evidence the court must look at the broad spectrum of the Approver’s version and then find out whether there is other evidence to corroborate and lend assurance to that version. The nature and extent of such corroboration may depend upon the facts of different cases. Corroboration need not be in the form of ocular testimony of witnesses and may be even in the form of circumstantial evidence. Corroborative evidence must be independent and not vague or unreliable. Relying upon its earlier judgment in Suresh Chandra Bahri’s case (supra) this Court in Niranjan Singh v. State of Punjab[JT 1996(5) SC 582] held that once the evidence of the Approver is held to be trustworthy, it must be shown that the story given by Approver so far as an accused is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. Insistence upon corroboration is based on the rule of caution and not merely a rule of law. From the judgment of the Trial Court as well as the High Court it is crystal clear that the courts were conscious of the credibility of an Approver’s witness and insisted upon the corroborative evidence in material particulars of the depositions made by PW2. The Trial Court, after referring to various judgments of this Court and the High Courts observed: "Bearing the above principles laid down in the above decisions and also in other cases

such as Chandan and Another versus State of Maharashtra (1988 (1) SC Cases 696), Abdul Sattar versus Union of Territory of Chandigarh [AIR 1986 SC 1438], Sureshchand and others versus State of Bihar [1994 (2) Crimes 1033) and Niranjan Singh versus State of Punjab [1996(2) Supreme Court Cases 13) by the Hon'ble Supreme Court and the Patna High Court and more particularly the latest decision of Hon'ble Supreme Court as stated above, in mind, we will have to consider the evidence of approver Raju Rajpurohit (PW No.2) to see as to whether his evidence is reliable and whether the same is corroborated in material particulars to assume its trueness first and then we will have to consider the other circumstantial evidence against the accused persons.

The Trial Court in its judgment from paras 68 to 401 referred to 26 corroborative circumstances and concluded:

"All the above corroborations assure the correctness and trueness of the version of approver Raju (P.W.No,2) and, therefore, from his evidence corroborated by other circumstantial evidence as discussed above, I come to the conclusion that the prosecution has proved beyond reasonable doubt the following facts and offences against the respective accused persons as given below:-

(1) That both the accused persons viz. Narayan and Jitu with approver Raju (P.W. 2) conspired on 23-8-94 to commit theft at the house of complainant Sanjay Kesrimal Rathi and to kill all the persons who so ever may be found at his house/flat at the time of such theft and thereby committed an offence punishable under section 120-B of the Indian Penal Code.

(2) That both the accused persons alongwith approver Raju (P.W. No.2) in pursuance to the conspiracy between them committed house tresspass into the house/flat of complainant Sanjay Kesrimal Rathi in order to commit the dacoity i.e. theft of valuables and to commit murders of all the persons whosoever may be found in the said flat at the time of such dacoity or theft and thereby committed an offence punishable under section 449 read with 120-B of the Indian Penal Code.

(3) Both the accused persons alongwith Raju approver (P.W.No.2) in furtherance of their common intention wrongfully restrained all the persons found in the said flat of complainant Sanjay Kesrimal Rathi like deceased Meeradevi and other victims at the relevant time by forcing them to stay at one place and not to go out of the flat by closing the door at the time of entry itself by the accused No.2 Jitu and thereby committed an offence punishable under section 342 read with 34 of the Indian Penal Code.

(4) Both the accused persons in pursuance of conspiracy with approver Raju (P.W. No.2) committed theft of cash of Rs.85,000 and other ornaments such as one wrist watch (Art.78), gold ring (Art.80) gold necklace (Art.103) foreign coins (Art.138), three coins (Art.183)(1), (B-1), Cameral (Art.160), ladies wrist watch (Art. 162)(b), mouth organ (Art.182), gold ring (Art.185), gold chain (art.186), three bangles (Art.186) etc. and for committing such theft first wrongfully restrained, thereafter put them under fear of instant death and then caused death of the persons who were

at the house/flat of complainant Sanjay Kesrimal Rathi at that time i.e. deceased Meeradevi Kesrimal Rathi, deceased Babita alias Nita wife of complainant Sanjay Kesrimal Rathi, Priti Kesarimal Rathi, Hemlata Shrikant Navandhar wife of Srikant Navandhar, Satyabhamabai Damu Sutar the maid servant, Chirag Rathi and Pratik s/o Shrikant Navandhar by a weapon (Utility knife) chhuri (Art.147) and thereby committed an offence punishable under section 397 read with 120-B of the Indian Penal Code.

5. That it was accused No.1 Narayan who voluntarily caused the deaths of deceased Meeradvei Kesarimal Rathi, deceased Babita alias Nita Sanjay Rathi wife of complainant Sanjay Rathi, deceased Preeti Kesrimal Rathi deceased Hemlata Shrikant Navandhar wife of Shrikant Navandhar, Chirag Rathi son of Sanjay Rathi and the maid servant Satyabhamabai Damu Sutar by personally causing them injuries with weapon chhuri (Art.147) with intention to cause their deaths and thereby committed offences punishable under section 302 of the Indian Penal Code for causing their deaths.

6. The accused No.1 Narayan being one of the conspirator in causing the death of all the persons whosoever were found at the said flat at the time of commission of the robbery, committed offence punishable under section 302 read with 120-B of the Indian Penal Code in concern with the death of Pratik Navandhar.

7. The accused No.2 Jitu being conspirator alongwith the accused No.1 Narayan in committing the murders of the above referred persons viz. Meeradevi Kesrimal Rathi, Hemlata Srikant Navandhar, Babita alias Sanjay Rathi, Preeti Rathi and thereby committed an offence punishable under section 302 read with 120-B of the Indian Penal Code for causing their deaths.

8. The accused No.2 Jitu voluntarily caused the death of Pratik Navandhar with intention to cause his death firstly by gagging his mouth and nostrils and subsequently by assaulting him with weapon chhuri (Art.147) and thereby committed offence punishable under section 302 of the Indian Penal Code for causing his death.

The High Court referred to the chart prepared by the prosecutor wherein 62 corroborative circumstances were@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ mentioned along with the names of the corroborative@@ JJJJJJJJJJJJJJJJJJJJJJJJJJ witnesses and the substance of corroborative evidence. All corroborative evidence, to the testimony of Raju PW2 has been considered by the High Court in its judgment in paras 60 to 188 whereafter it was concluded: "Having carefully considered the various submissions made on behalf of the accused with regard to the order of conviction and after going through the record as also judgment of the trial court and taking into consideration the submissions made by learned Public Prosecutor, we come to the conclusion that no infirmity of whatsoever is found in the judgment of the trial court. The evidence has properly been appreciated. The material placed before the trial court has carefully been considered by it. The conclusion as to the testimony of the approver getting corroboration on the material particulars, in our opinion, is unassailable."

We have minutely scrutinised the evidence of PW2 and the corroborative evidence noticed by both the Trial Court as well as the High Court and find no substance in the submission of the learned counsel for the appellants that the testimony of PW2 has not been corroborated in material particulars. The statement of PW2 is vivid in explanation and inspires full confidence of the court to pass the conviction on the appellants for the offences with which they were charged. The corroborative evidence to the aforesaid statement leaves no doubt in the mind of the court regarding the involvement of the appellants in the commission of the crime for which they have been convicted and sentenced.

Learned counsel for the appellants took us through the whole of the testimony of PW2 which is Exhibit No.74 forming part of Vol.IV of the paperbook and spread over pages 104 to 345. He has taken pains to point out some alleged discrepancies in his statement purportedly with respect to the material particulars and contended that as PW2 has made improvements in his statement on material particulars, it would not be safe to rely upon his testimony for convicting the appellants and sentencing them to death. The alleged improvements and contradictions are stated to have been elicited from the cross-examination of PW2 as noticed in his statements from paras 77 to 91 (pages 275 to 324 of Vol.IV of the paperbook). The portion of the earlier statements put to the witnesses, do not, in fact show any contradiction much less in material particulars. Most of the alleged improvements are in fact the details and description of the facts already stated by PW2 in his confessional statement or before the police during his investigation on 15.10.1994. The witness is stated to have improved by using the words "due to that" for the reason to his coming to Pune for further education and employment. Omission of the aforesaid words in the earlier statement cannot, in any way, be termed as material on facts. Some alleged omissions in relation to his statement before the court, during the trial, are referred to his statement before the police. It may be kept in mind that what was stated by him on 15.10.1994 was not the statement of PW2 in terms of Section 161 of the Cr.P.C. but was only the substance of the interrogation recorded by the investigating officer. The aforesaid statement cannot, in any way, be termed to be a statement recorded under Section 161 which could be used for the purpose of contradiction of the witness under Section 162 of the Cr.P.C. Similarly, the alleged contradiction of not mentioning the "eyes" and instead mentioning the "mouth" of the victims for the purposes of sprinkling of the chilly powder cannot be termed to be a major contradiction or improvement particularly when the witness himself says that by "mouth" he meant "eyes" as well. It may be worthwhile to notice that wherever any alleged contradiction or improvement was confronted to the witness, the learned Trial Court has made a note of it in the statement, at the time of recording of the deposition of the witness. The notes unambiguously indicate that the alleged improvement made by PW2 in his deposition at the trial, are no way in material particulars.

Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness

unreliable. When the version given by the witness in the Court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution become doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness. In this regard this Court in State of Himachal Pradesh v. Lekh Raj & Anr. [1999 (9) Supreme Today 155] (in which one of us was a party), dealing with discrepancies, contradictions and omissions held:

"Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecutions case doubtful. The normal course of the human conduct would be that while narrating a particular incidence there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese v. State of Kerala [1974 (3) SCC 767] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish vs. State of Madhya Pradesh [1981 SCC (Crl.) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan vs. Kalki & Anr. [1981 (2) SCC 752] held that in the depositions of witnesses there are always normal discrepancy, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

Referring to and relying upon the earlier judgments of this Court in State of U.P. Vs. M.K. Anthony (AIR 1985 SC 48), Tehsildar Singh and Anr. Vs. State of U.P. (AIR 1959 SC 1012), Appabhai and Anr. Vs. State of Gujarat (JT 1988 (1) SC 249), Rami alias Rameshwar Vs. State of Madhya Pradesh (JT 1999 (7) SC 247), Bhura alia Sajjan Kumar Vs. State of Madhya Pradesh (JT 1999 (7) SC 247), this Court in a recent case Leela Ram Vs. State of Haryana and Anr. (JT 1999 (8) SC 274) held:

"There is bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in

criminal cases. Minor embelishment, there may be, but variations by reason therefor should not render the evidence of eye witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.....

The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not failing within a set pattern is unproductive and a pedantic exercise." On an analysis of the statement of PW2 (which is part of Vol.IV of the paperbook), his statement under Section 161 of the Cr.P.C. and the deposition made by him on 15.10.1994 during investigation (which is part of Vol.III of the paperbook) we have come to a conclusion that there is no material improvement, much less contradiction in the deposition made by him before the Trial court after being granted pardon. The so-called improvements are in fact the details of the narrations extracted by the Public Prosecutor and the defence counsel in the course of his examination-in-chief and cross-examination.

Mr.S.Muralidhar has submitted in the alternative that even if the conviction of the appellants is upheld, they may@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ not be sentenced to death keeping in view their young age@@ JJJJJJJJJJJJJJJJJJJ and the possibility of their being reformed. He has further contended that in no case Jeetu, the appellant No.2 can be sentenced to death as he is alleged to have killed only one child. We are not impressed by this submission as well. While dealing with the question of sentence the Trial Court, after referring to various judgments of this Court held:

"In the present case, the following facts are fully established,

(1) Both the accused persons and approver Raju selected the place of crime as the house or flat of Rathi and the time in between 2.00 p.m. to 4.00 p.m. so that there could be only female members and the children at the house/flat of Rathi and no other persons except Kumari Poornima Dadhe and Mrs. Khara were in the same building.

(2) Both the accused persons and approver Raju made a planning about commission of robbery and killings by discussing about it. securing weapon i.e. Chhuri (Art.147) and also surveyed the area around the building housing the flat of Rathi on the earlier day.

(3) Both the accused and approver Raju, on the suggestion of accused No.1 Narayan agreed to kill all the persons whosoever are found at the house/flat of Rathi's at the time of commission of such robbery to eliminate all the possible eye witnesses to shield themselves from getting apprehended or prosecuted for the offence of robbery which would have made each of them to suffer imprisonment for few years. This they felt that their liberty was far more

important than the lives of those whosoever found in the house/flat of Rathi at the relevant time. One could have understood if the accused No. 1 Narayan would have said and all of them would have agreed to take Chhuri (Art.147) and other weapon by way of precaution and would have decided to assault the inmates if they cry for help or obstruct their act of robbery or theft. However it was not so and they proceeded to the spot with clear intention that they will finish all the persons whosoever found at the house/flat of Rathi at the time of such commission of theft or robbery.

(4) Both the accused in addition to other injury or injuries, invariably caused injuries on the necks of the victims which fact clearly shows that were intending to cause their deaths only.

(5) The evidence of approver Raju (P.W. No.2) which is accepted by this Court discloses that the accused No.1 Narayan, killed deceased Meeradevi Kesrimal Rathi, deceased Nita alias Babita Rathi, deceased. Hemlata Shrikant Navandhar deceased Satyabhamabai Damu Sutar, deceased Priti Rathi and a small child Chirag Rathi by taking them to various rooms in the flat and accused No.2 Jitu killed the child Pratik Navandhar, even though all the said ladies were saying that the accused persons may take away all that they wanted but should not kill them. Thus inspite of this, they have killed the said persons even it was not necessary for them for committing the robbery. They have naturally co-operated with each other actively in such killings.

(6) The evidence of approver Raju (P.W.No.2) further disclosed that in the beginning he asked deceased Meeradevi, the eldest lady member in the family to come with them to their bedroom and thereafter he and accused No. 2 Jitu took her to her bedroom and then the accused No.1 Narayan assaulted her with Churri (Art.147) and at last pulled her to the bed in the said room. He has done so eventhough deceased Meeradevi for all the time was pleading for mercy and was showing her willingness to allow the accused persons and approver Raju to take away whatever they wanted.

(7) The evidence of approver Raju (P.W.No.2) further discloses that the accused No.1 Narayan assaulted Nita alias Babita with Churri (Art.147) eventhough she was ready to give whatever she was having and was praying for mercy because she was having a small child aged 1Â½ years old and she was pregnant and expected a child very soon. However, the accused No.1 Narayan or any of the accused did not feel any mercy for her and accused No.1 Narayan assaulted her with Churri (Art.147) including giving stroke into her stomach as if he wanted to kill the foetus, and also after she fell down, also assaulted her son Chirag with the Churri (Art. 147).

(8) The accused No.1 Narayan assaulted the maid servant with the Churri (Art,147) so forcibly that he caused her as many as 12 external injuries and 5 internal injuries. The medical evidence shows that out of the external injuries, four external injuries were on the palm showing that the said maid servant Satyabhamabai Sutar tried to save herself getting Churri blows on her vital part of her body by taking the same on her palm. The said fact however did not make the accused No.1 Narayan giving further blows/assault to her with the Churri. It shows merciless killing.

(9) The evidence further discloses that deceased Priti was first strangulated with the wire of washing machine to such extent the blood started oozing from her mouth and subsequently on hearing the voice coming from her mouth, the accused No.1 Narayan assaulted her with the Churri on her neck which resulted into her death.

(10) The prosecution evidence further discloses that the accused No.2 Jitu demanded her son from deceased Hemlata Navandhar and when she refused to give him by saying that they may kill him, on that the accused No. 2 Jitu falsely stated her that he would give her child to his grandmother knowing fully well that they have already done her to death and further threatened that they will kill her son if she does not give her son to him, therefore she gave her son to accused No.2 Jitu and thereafter the accused Jitu after going into the bedroom of deceased Meeradvi gagged the mouth and nostrils of deceased Pratik as a result of which his movements stopped and on that the accused No.2 Jitu put him on the floor. Subsequently when they were about to leave the said flat, on hearing the cry of the small child Pratik, accused No.2 Jitu alongwith the other accused Narayan and approver Raju went near him and there the accused No.2 Jitu took the Churri (Art.147) from accused No.1 Narayan and assault Pratik on his neck causing his instant death. The words uttered by him at that the like "the child was still alive" shows his merciless and cruel nature.

(11) The accused No.1 Narayan and accused No.2 Jitu killed deceased Chirag Rathi and deceased Pratik who were aged 1Â½ to 2Â½ years old even though they were not having any fear or identification of themselves.

(12) Thus, both the accused killed helpless five ladies and two children who being the weaker section of the society in fact who needs protection from the society.

Thus the acts of both the accused in killing the said five ladies and two children was of extreme brutal involving exception depravity as contemplated by the Hon'ble Supreme Court in the above referred Bachansingh's case, it was nothing less that butchering them."

The High Court while dealing with this aspect observed:

"It was a calculated Plan of committing robbery and also as a part of it to do away with the witness who will identify them which plan was clearly worked out with diabolical clarity and detail. It was also executed in the manner stated hereinabove. Taking away the child from Hemlata before killing her and then killing the child, the Accused were on a murder spree and were apparently relishing the same. This rules out either compunction or compassion on their parts.

From the point of victims, as per Item No.V of the said judgment, the innocent children have been killed and so are helpless women. As has been noticed so far, the victims had been five helpless women and two very young children. Referring to the aforesaid two mitigating circumstances as to the past of the accused as also their possibility of reformation, in our opinion, an inference has to be drawn on the basis of the material on record. It is the past that

portends for the future. From the defence, virtually no material is produced. The evidence on record, if any, suggests that none of the accused had least regard for the human lives. They were so self-centered on the idea of self preservation that doing away with all inmates of the house was settled upon them as an important part of the plan from the beginning. The manner in executing the plan has also been since beginning.

It cannot be forgotten that in deciding upon the aforesaid course of action, the accused were confident of the fact that the persons to be done away with would be women and, therefore, it was an easy target to handle it. To use the current parlance of terrorism, the intended victims were a "soft target".

Coupled with the fact that the victims, all women, were typical representative of an Indian household, they were women read up in the atmosphere of domesticity. The eldest of them, Mirabai, aged 45 years, has already become a grand-mother twice. In the traditional Indian family, daughters are to be married out by the age of 20 or thereabout, soon they attain the motherhood and start looking after the household in the family. This typical Indian family, happily placed financially, would complete the picture of women for the Rathis. It is these women who have been targeted and done away with.

The accused hardly held any reservation in considering the plan and did whatever was required in executing the same. If anything contrary is the situation like a mad animal on prowl having tasted blood, had gone amuck. We have ample testimony with regard to this, as discussed earlier.

It was urged on behalf of the Accused that at the time of occurrence, they were aged about 20 to 22 years. This fact should be borne in mind while considering the question of awarding the sentence. In our opinion, their youth may explain rashness. However, the manner of conceiving the plot, the preparation for the same and its cold blooded execution, in our opinion, more than upsets us. Except the young ages referred to by Learned Advocate for the defence, there is nothing on record to indicate about either their past behaviours or the behaviour in course of the trial."

and concluded:

"The evidence has been thoroughly discussed by the trial court. While considering the aspect of the corroboration, we too have done so to the extent necessary. The circumstances that have been narrated above clearly suggest that the crime was definitely for gain. The accused did gain out of it. Whatever little that the police have recovered is before the court by way of articles. For the rest, there is nothing on record. Killing of adult as possible witnesses can be explained away by the accused but the manner in which each of them were dealt with several blows coupled with cruelty done to the children which was totally wanton and senseless, and blows given in the stomach of a pregnant woman, who has been inflicted a fatal wound, it all taken together along with the position culled out from the various judicial pronouncements referred to above, in our opinion there is no escape from coming to the

conclusion that they fall in the category of the rarest of the rare cases."

Referring to the judgment delivered in Bachan Singh v. State of Punjab [1980 (2) SCC 684] this Court in Ram Deo Chauhan v. State of Assam [2000 (5) Supreme Today 312] has held:

"Commission of the crime in a brutal manner or on a helpless child or the woman or the like were held to be such circumstances which justify the imposition of maximum penalty. In Magahar Singh v. State of Punjab [1975 (4) SCC 234] this Court held that "for pre-planned cold blooded murder death sentence is proper".

The Trial Court, after referring to various judgments, concluded:

"In the case in our hand, it is apparently a pre-planned, cold-blooded, brutal quadruple murder. It is relevant that the murder was committed in the most brutal manner with severe cruelty inflicting number of injuries on each victim including a female baby hardly of 2-1/2 years of age and two helpless women. They were murdered while they were in deep sleep after lunch keeping the doors and windows of the house open without suspecting any foul play from any quarter. It is, in my view, a rarest of the rare cases which is of exceptional nature. Facts and circumstances of the case justify the extreme penalty provided under Section 302 IPC. The accused seems to be a menace to the society and in my view, sentence of life imprisonment would be altogether inadequate, because the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community. Extreme penalty, in my view, is necessary in such cases to protect the community and to deter others from committing such crime."

The High Court also referred to various judgments of this Court and found on facts:

"There cannot be any manner of doubt that in the present case murders have been committed by the accused after pre-meditation with a motive to commit a theft. The crime can be described to be heinous, dastardly, gruesome and cruel. The persons asleep have been killed in a merciless manner by the accused who has no value for human lives. The crime committed by the accused falls within the aggravating circumstances as it has been committed after previous planning involving extreme cruelty. The murders in the present case involve exceptional depravity. In view of all this the question arises whether the single circumstance of the accused being too young should be good enough for us to award lighter punishment or not. We have not been able to lay our hands upon any observations of the Apex Court and none has been brought to our notice during the course of arguments that even if all the aggravating circumstances are present in a particular given case, single circumstance of the accused being too young or too old would outweigh other aggravating circumstances and the court must on the basis of a single circumstance grant lighter punishment. Having given our deep and thoughtful consideration and after giving due weight to the mitigating as well as aggravating circumstances which have been referred to above, we are of the view that the accused in the present case must be given

death sentence. The present is one of the rarest of rare cases in which infliction of extreme penalty is called for."

It is true that in a civilised society a tooth for tooth, and a nail for nail or death for death is not the rule but it is equally true that when a man becomes a beast and menace to the society, he can be deprived of his life according to the procedure established by law, as Constitution itself has recognised the death sentence as a permissible punishment for which sufficient Constitutional provision for an appeal, reprieve and the like have been provided under the law. It is true that life sentence is the rule and death sentence is an exception. We are satisfied that the present case is an exceptional case which warrants the awarding of maximum penalty under the law to the accused/appellant. The crime committed by the appellant is not only shocking but it has also jeopardised the society. The awarding of lesser sentence only on the ground of the appellant being a youth at the time of occurrence cannot be considered as a mitigating circumstance in view of our findings that the murders committed by him were most cruel, heinous and dastardly. We have no doubt that the present case is the rarest of the rare requiring the maximum penalty, imposable under law." After going through whole of the evidence, perusing the record, thoughtfully considering the submissions made before us and before the Trial Court as well as the High Court, we have come to an unmistakable conclusion that the present case is one of the rarest of rare cases warranting the extreme penalty imposable by law. The case of the appellant No.2 Jeetu is not distinguishable. But for his active participation in the conspiracy and its execution, accused No.1 could not have succeeded in committing the murder of six persons including a pregnant woman and a teenaged child. The manner in which Jeetu, appellant No.2 committed the murder of Pratik is not only ghastly but reflects his beast like mental attitude. The appellants do not deserve any sympathy from the law and society.

There is no merit in these appeals which are accordingly dismissed by upholding the conviction and sentence awarded to the appellants by the Trial Court and confirmed by the High Court.

We record our appreciation of Mr.S.Muralidhar, learned counsel appearing for the appellant for his hard work and@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ the assistance rendered to us in disposal of the present@@ JJJJJJJJJJJJJ case.