2022 INSC 606

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 248-250 OF 2015

MANOJ & ORS. **...APPELLANT(S)**

VERSUS

STATE OF MADHYA PRADESH **...RESPONDENT(S)**

J U D G M E N T

S. RAVINDRA BHAT, J.

1. The present judgment will dispose of three appeals[1] preferred by three accused persons. They were convicted under Section 302 of Indian Penal Code (IPC) (3 counts) imposed with death penalty by the judgment and orders of the First Additional Sessions Judge, Indore[2]. This was confirmed by a Division Bench of the High Court of Madhya Pradesh at Indore[3].

2. The appellants (Manoj, Rahul @ Govind and Neha Verma, hereafter referred by their names) were convicted for offence punishable under Section 302 IPC (three counts) for committing the murder, during the course of robbery, of Megha Deshpande, Ashlesha Deshpande and Smt. Rohini Phadke on 19.06.2011. All three appellants were sentenced to capital punishment with fine of ₹1000/- on each count, and in default of payment of fine, to undergo 6 months additional rigorous imprisonment (RI) on each count. Under Section 397 IPC, they were sentenced to undergo 10 years RI with fine of ₹ 1000/- and in default of payment of fine, 6 months additional RI. Under Section 449 IPC, they were sentenced to undergo 10 years RI with fine of ₹1000/-, and in default of payment of fine, 6 months additional RI. Manoj and Rahul @ Govind were

1 Criminal Appeal No. 248-250/2015
2 Dated 13.12.2013 passed in Sessions Case No. 536/2011
3 Dated 29.09.2014 passed in Criminal Appeal No. 3/2014, 266/2014 & Criminal Reference No. 04/2013

also convicted for offence punishable under Section 25(1-B) (B) of the Arms Act and sentenced to undergo 1 year RI with fine of ₹1000/- and in default of payment of fine, 6 months additional RI. Rahul was also convicted under Section 27 of the Arms Act and sentenced to undergo 3 years RI with fine of ₹3000/- and in default of payment of fine, 6 months additional RI.

Facts

3. The facts are that PW-1 Niranjan Deshpande rented a part of House no. 24 Shrinagar Main from its landlord PW-5 Vishal Pandey, few days before the date of incident i.e., 19.06.2011. Niranjan's wife Megha, daughter Ashlesha and mother-in-law Smt. Rohini Phadke were at those premises, residing there. In the evening of that day another tenant PW-2 Dipti Kapil who lived on the same floor told PW-5 Vishal Pandey that Niranjan's flat was bolted from the outside and reported seeing patches of blood on the door. On receiving this information, the landlord went to enquire. When no one opened the door, he looked through the open window and saw the dead bodies of the deceased persons lying near the bedroom door and blood was on the floor. He called his neighbour PW-9 Mahesh Parmar and Mukesh on the spot, before telephoning PW-1 Niranjan Deshpande to reach there immediately. PW-5 Vishal Pandey also lodged a first information report (FIR) at Police Station MIG Colony, Indore[4] which was recorded by PW-31 Inspector Mohan Singh Yadav (investigating officer "IO"). The FIR alleging that some unknown persons murdered the three deceased ladies with sharp weapons and fled the scene, registered offences punishable under Section 302 IPC and 25 Arms Act.

4. The police reached the premises and prepared a spot map of the crime scene. Several articles found at the spot were seized. It was later (on the next day) reported that Megha's golden bangles and *Mangalsutra*, Rohini Phadke's

4 FIR No. 401/2011 dated 19.06.2011

two gold bangles, and Ashlesha's mobile phone, camera and ATM cards were missing. Investigation started and on 22.06.2011 at around 06:00 AM, PW-28 Vijay Chauhan while on patrolling duty, spotted Neha Verma outside an ATM near L.I.G, under suspicious circumstances. On receiving this information, the IO (PW-31) along with PW-4 Banno Solanki and others, reached the spot. Neha Verma was searched. This yielded an ATM card, which belonged to the deceased Ashlesha. Neha was taken for questioning; her disclosure statements led to her subsequent arrest. Based on information she provided, the police recovered some robbed articles from her house.

5. Upon disclosure statements of Neha the other accused i.e., Rahul @ Govind and Manoj were arrested and from their possession the robbed jewellery, knife and a pistol was seized. Investigation revealed that during the alleged incident Rahul @ Govind inadvertently shot his own foot and recorded a false FIR in this regard at the Annapurna Police Station by *dehatinalisi* dated 19.06.2011[5] against unknown persons. Accordingly, an FIR[6] was registered by PW-30 ASI R. S. Makwana for offences punishable under Sections 294, 307 and 34 IPC. Manoj was also injured during the incident and secured treatment from PW-8 Dr. Achutmal Tejwani. The clothes and shoes worn by the accused were seized; and parts of the broken and disposed mobile phone and camera were also recovered and seized pursuant to their disclosure statements. The appellants underwent identification parade. Their fingerprints were examined, the seized articles were sent for chemical and DNA test and permission for prosecution was taken.

6. After conclusion of investigation, the police filed a final report indicting the appellants for commission of offence under Sections 302, 397 and 449 IPC and Section 25, 27 of Arms Act. The trial court framed charges against the accused under Sections 397/34 in alternative 302/34 and 449 IPC, and besides

5 Ex. P103-C
6 Ex. P107

these charges Manoj was charged under section 25(1-B) (B) of Arms Act, 1959 and Rahul @ Govind was charged under S. 25(1-B) (B) and 27 of Arms Act. All the appellants abjured their guilt and claimed trial. The prosecution examined 36 witnesses and produced certain documents (Ex. P1-P129) in support of their case. After recording the evidence of prosecution, the appellants' statements were recorded under Section 313 Criminal Procedure Code (CrPC). The appellants examined a total of 6 defence witnesses and produced certain documents (Ex. D1-D50) in support of their case.

Trial Court's findings

7. As the entire case was based on circumstantial evidence, upon appreciation of the material evidence adduced by the prosecution, the trial court concluded that the accused persons were present at the scene of occurrence on 19.06.2011 at about 5:00-5:15 PM and that evidence of experts who lifted the fingerprints of the accused (from the house) along with the testimonies of PW-1, PW-2, PW-5, PW-9 and PW-31 proved that they had entered into the house. Upon recovery of the knife and firearm which caused the death, it was established by way of chemical, DNA as well as ballistic examination that those articles were used and that during the sequence of the incident, blood of the deceased persons was found on the clothes of the accused persons. The trial court further concluded that the footprints at the crime scene were similar to those of the shoes recovered from the accused persons, and the gun shot injury caused by the bullet which hit the foot of Rahul @ Govind as well as the bullet which hit the body of the deceased, were fired from the same weapon, which was recovered from his possession. It was held that this left no doubt in establishing the guilt of Rahul and Manoj, and during the whole incident The evidence also proved Neha's presence at that time. The trial court held that this

established her involvement in the crime along with the accused persons; every hypothesis of the innocence of the accused was ruled out.

8. After considering the evidence on record, the trial court convicted the appellants of committing the offences they were charged with. On the point of sentence, the trial court took the view that given the magnitude and diabolic manner in which the offences were committed, the case on hand fell under the category of rarest of the rare case and warranted death penalty.

High Court's findings confirming the Trial Court's order

9. The Division Bench of the High Court[7] confirmed the sentences imposed on the appellants and the reference made by the trial court was answered in the affirmative. The High Court concluded that the forensic experts as well as the neighbours and the investigating officer had seen the blood-stained floor, walls, and bedsheets, and that the evidence produced on record with respect to them did not leave any major lacuna in the case of the prosecution; further, the presence of the accused in the house, their intention of committing such a heinous crime, and the manner in which the accused persons had caused the death, had been duly proved.

10. The High Court relied upon the statements of fingerprint expert PW-24 K.K. Dwivedi who visited the site and lifted the chance fingerprints which matched with the appellants' fingerprints, as well as jewellery recovered from their possession -which was identified by PW-1 and PW-3 as belonging to the deceased. The weapons (knife and country made pistol) used for the commission of the offence were recovered from the accused and the same was proved. Also, the accused persons were duly identified in open court by the witnesses pursuant to their depositions.

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7 High Court of Madhya Pradesh, Bench at Indore vide order dt. 29.09.2014 in Criminal Appeal No. 3/2014, Criminal Reference No. 4/2013 and Criminal Appeal No. 266/2014.

11. The High Court further held that the accused, during their examination under Section 313 CrPC failed to explain their conduct and even gave incorrect and false answers. It therefore affirmed the trial court's conclusions and findings.

12. Upon examination of whether this case would fall in the category of "rarest of rare case" to justify the imposition of capital punishment on the appellants, the High Court was of the view that as the incident shook the collective conscience of the community and the acts of murder committed by the appellants were so gruesome, merciless and brutal, the aggravating circumstances far outweighed the mitigating circumstances and hence, this case fell under the category of rarest of the rare case which manifests society's abhorrence of such crime.

Contentions on behalf of the Appellants

13. Ms. Anjana Prakash, learned senior counsel appearing *pro bono* for Rahul and Manoj, contended that the evidence of witnesses, i.e., police witnesses and private witnesses in this case raise questions as to whether Neha was arrested at the time and at the spot claimed by the prosecution, whether her disclosure statements were genuine, whether the disclosures were made as claimed, and whether subsequent arrests and recoveries were in the manner claimed by the prosecution.

14. It was urged that PW-4 lady constable Banno Solanki deposed to having gone to the ATM machine, searched Neha, leading to recovery of Ashlesha's ATM card. However, she contradicted the IO and other witnesses about the place of her interrogation. PW-4 deposed that Neha was interrogated at the Police Station where she said that some ornaments and ATM cards were in her house. This was confirmed by PW-6 Triyambak @ Prafulla and PW-36

Mulayam Singh Yadav. However, the prosecution did not explain why no arrest memo/ information memo was prepared at the Police Station. It is argued that this is pertinent as there is a serious dispute about the arrests and recoveries itself, as also the manner claimed by the prosecution. Also, PW-4 the female constable escorting the female accused, did not corroborate the prosecution that any recoveries were made from Neha's house after her interrogation. She was silent about whether she was part of the police team which went to the house of Neha in her examination-in-chief. In cross examination she deposed to sitting in the same vehicle as Neha while going to her house. The presence of PW-4 is only confirmed by witnesses of the search team (i.e., PW-3 Dr Deepak Hari Ranadey and PW-31 IO Mohan Singh). PW-4 further did not support the prosecution that Neha had disclosed the names of Rahul and Manoj or having accompanied Neha (which would be expected, the accused being a woman) to the house of the two accused and the resulting subsequent recoveries. She deposed that the police party returned to the police station from Neha's house in the private vehicle. This suggests that the arrest memo (Ex. P9) and Information Memo (Ex. P10) made at that time and place is false and as a result, the subsequent story of Neha leading the police party to the houses of Rahul and Manoj are also false.

15. It was further stated that PW-31 deposed that PW-28 Vijay Chauhan, informed PW-19 Y.R. Gaikwad, about spotting a girl standing suspiciously near an ATM for which PW-19 made a Station Diary entry and informed him via wireless. PW-31 therefore went to the police station, constituting a team – comprising himself, PW-4, PW-19, PW-28 and PW-36 – which left for the ATM spot and thereafter to Neha's house (and those of Rahul and Manoj). It is submitted that neither was the Station Diary produced, nor did PW-19 corroborate the deposition of PW-31 at all. Likewise, there was variance between the statement of PW-28 and PW-31, on whether he was in the raiding party that went to Neha's house.

16. Counsel further argued that PW-31 deposed about various persons accompanying him, when he learnt about Neha loitering suspiciously. However, he omitted to mention PW-19, who received information and told him about Neha's movement, at PW-28's behest. This suggests that Neha was in fact, interrogated at the Police Station. So, there was no reason for not preparing an arrest memo or recording disclosure statement at that point in time, in the police station itself, even though the ATM card had been recovered. PW-31 did not offer any explanation as to why the disclosure was made on the way in the police vehicle. Counsel also referred to PW-4's deposition, which was silent on this aspect. Furthermore, counsel highlighted that though family members, particularly Neha's father were available, they were not intimated about her arrest, nor were their signatures taken on the arrest memo. It was urged that all these in fact corroborate the defence submission that Neha's arrest did not take place as contended by the prosecution.

17. Moving on to the arrest of Rahul and Manoj, some discrepancies in the form of injuries found on their person and the manner their occurrence was recorded before their disclosure statements (Ex. P12-P13 in the case of Rahul and Ex. P15-P16 in the case of Manoj), were pointed out. How these injuries occurred in fact was recorded before the disclosure statement. It was submitted that after Neha's arrest, recoveries were made from Rahul's house (Ex. P14) at 09:10 AM. Here, Ex. P12 i.e., arrest memo dated 22.06.2011 of Rahul @ Govind made no mention of any injury on Rahul's foot despite mentioning an old firearm wound on the left elbow in column 9 of the arrest memo, which is where the police noted the injuries. It was urged that this was an irreconcilable circumstance against the prosecution's case that Rahul had a bullet injury on his left leg.

18. It was submitted that Manoj's arrest then took place at 10:05 AM from his house (Ex. P15). His disclosure statement was recorded at 10:15 AM (Ex. P16)

and seizures were made at 10:35 AM (Ex. P17). The arrest memo of Manoj (Ex. P15), however, does not record the injury on the elbow even while it notes signs of an injury on the nose in column 9 of the arrest memo which is where the police is supposed to record injuries present on the body of the accused at the time of arrest. The prosecution case is that on 22.06.2011 from 6:00 AM till 4:40 PM various seizures were made and documents were prepared. However, there is evidence to show that a press conference was held in the office of DW-3 Sanjay Rana, IG Indore between 12:30 PM to post 1:00 PM and even before the press conference, PW-31 IO had informed him that the investigation was done and Neha was arrested, and that he had conducted the seizure procedure from the accused. This falsifies the story of the recovery of shoe at the instance of Rahul Ex. P21 [reliance is placed on DW-3 and DW-5].

19. Ms. Prakash contended that PW-31 IO deposed to interrogating Rahul on 23.06.2011 before two witnesses - but did not name them. Rahul reportedly disclosed that he had kept his clothes and knife in a bag in his motorcycle and Manoj had broken the stolen mobile and camera and thrown them near a Maruti Showroom. He then prepared the information memo (Ex. P28) at 07:50 AM. He interrogated Manoj in the presence of two witnesses (who he did not name) who allegedly confessed that he had concealed the clothes and shoes worn by him in his father's almirah and had thrown a broken mobile near the Maruti showroom at Rau. He then prepared information memo (Ex. P31), recorded at 08:05 AM. PW-31 also interrogated Neha in the presence of two witnesses (who were again, not named) who revealed that she had kept her clothes and sandals worn by her in the dicky of her Scooty. He then prepared information memo (Ex. P34) at 08:15 AM. It was submitted that since the accused had made their disclosures on the date of their arrest, it appears strange and unnatural that truncated recovery statements would be given at different stages of investigation. Counsel urged that there was no explanation as to why PW-31 IO

does not reveal either the time of recording of statements or the names of the witnesses.

20. Commenting on the recoveries made on 23.06.2011, it was submitted that no explanation was furnished as to why truncated recoveries were made on different dates, as was claimed by the prosecution. Further, the witness to these recoveries PW-7 Sandeep Narulkar, appears to be a stock witness who stated that he reached the police station at 8:45 AM on 23.06.2011, i.e., after the disclosure statements (Ex. P28, P31 and P34) were recorded. In the chief examination, this witness deposed that Rahul disclosed before him that he could get the clothes, knife, lens of camera recovered. Manoj disclosed keeping his clothes in his father's house and Neha about having kept her clothes in her vehicle parked behind a hospital. Then police prepared memos Ex. P28, P31 and P34 respectively and recovered articles of which memos were prepared as Ex. P29, P31 & P34 respectively. It is pointed out that PW-7 does not say anything about a lady police officer in the team which would have been required on account of involvement of female accused Neha. It was urged that non-examination of the other witness (Prakash lchke) assumes great significance and without any explanation for his non-examination it cannot be said that the recoveries are reliable.

21. Counsel cast serious doubts as to the recovery by police on 22.06.2011 and 23.06.2011. She particularly pointed to the fact that a photograph of Rahul wearing a black beaded bracelet was found from his house and seized as Ex. P14. This was not made pursuant to any disclosure and apparently was seized during the process of seizing other items. During the cross-examination of PW-31 IO, a suggestion was made that this picture was clicked when the bracelet was forced to be worn by the accused. The IO denied the suggestion. Likewise, a photograph of Manoj, wearing sunglasses was seized from his house and exhibited as Ex. P17. This was in the course of his disclosure statement leading

to recovery of other articles. However, in Rahul's case, there was no disclosure statement. Neither of the seizure memos mentioned from where in the premises, these articles were found. Further, the recoveries were not spoken about in the depositions of the recovery witnesses.

22. It was next argued that neither PW-3 nor PW-6 said anything regarding the sealing of the seized items Ex. P11, P14 and P17) in their presence on 22.06.2011 and 23.06.2011. Similarly, the witness (for recoveries made on 23.06.2011) PW-7, did not mention who placed seals on the items Ex. P29, P30, P32, P33 and P35. PW-6 could not recollect the sealing of the articles on 22.06.2011. Likewise in Ex. P35 disclosure by Neha and recovery of items on 23.06.2011 do not mention the sealing of the items. Counsel also compared the depositions of the *panch* witnesses with the evidence of PW-12 Tehsildar and PW-36 Mulayam Singh Yadav (head constable, MIG). It was submitted that these witnesses nowhere mentioned the particulars of sealing, what kind of seals were placed or the signatures of persons, who had witnessed the recovery and sealing of the articles. It is therefore argued that the recoveries on 22.06.2011 are unreliable. Learned counsel submitted that in all likelihood, the accused were in police custody for a longer period than what was projected, which raises doubts over the veracity and voluntariness of the disclosure statements by them. She also submitted that recoveries of next day i.e., 23.06.2011 are similarly unreliable as they were not recorded in the presence of witnesses PW-7 and Prakash Ichke. PW-7 arrived at the police station that day at 8:45 AM, the disclosure statements however were recorded earlier between 7:50 and 8:15 AM – evidenced by Ex. P28, P31 and P34. Signatures of the witnesses were taken on those documents. It was submitted that the oral evidence completely undermines and falsifies preparation of documents at the date and time mentioned. Therefore, recoveries are dubious inasmuch as they purport to have been made pursuant to disclosure statements on the same day, which were recorded before the witnesses even reached the police station. Another

suspicious circumstance according to counsel was that recoveries were made in the afternoon, starting from 02:45 PM after a gap of 6 hours. The timing of Ex. P29, P30, P32, P33 and P35, are shown in this regard. It is argued that when the disclosure statements were recorded latest at 8:15 AM, the police did not offer any explanation why the recoveries took place in the afternoon only after a lapse of six hours.

23. It was further submitted that recoveries are also suspect because the details were published in newspapers, both on 22.06.2011 and 23.06.2011. Learned counsel relied on Ex. D4, published on 22.6.2011 which mentions the recovery of a pistol and knife from the accused. These recoveries were made that day at 9:30 AM and 10:35 AM. Importantly, the learned counsel argued that the chain of custody of the shoe allegedly belonging to Rahul which was seized from an open place within jurisdiction of the Annapurna police station on 22.6.2011 as propounded by the prosecution, is suspect as it was soon photographed in a newspaper published on 23.6.2011, while in the hands of the police officer. Reliance is placed on Ex. D6 in this regard.

24. It was next pointed out that the accused were produced before a magistrate on 23.6.2011. The record reveals that the arrests were made in the morning of 22.06.2011, and several articles were seized pursuant to the disclosure statements of the accused and consequently, recoveries effected. However, the magistrate was not shown these articles nor was any memo produced before the magistrate at the time of the production of the accused on 23.6.2011. This procedural irregularity as highlighted by the senior counsel is contrary to Section 102(3) CrPC which requires every police officer to forthwith report seizure of any article to a magistrate having jurisdiction. Counsel relies on *Umesh Tukaram Padwal & Anr. v. State of Maharashtra*[8], to say that non-compliance is fatal to the prosecution story.

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8 (2019) 8 SCC 567

25. Ms. Prakash also contended that PW-10 Dilip Sen is a chance witness whose testimony is unreliable because it contains contradictions and material improvements. It contains a material contradiction regarding his reporting to the police about seeing all the three accused. In his examination-in-chief, he stated that he read about the incident in the newspaper and therefore, went and informed the police about the incident. In his cross examination, however, he said that he did not read the newspaper and went to the police station without reading the newspaper. He also mentions going to the police station for another reason (to get a *gumasta* license) and upon overhearing discussions going on there about this case, he volunteered information. Further his testimony is unbelievable as, given the description of the scene of crime, the clothes of the accused should have also been smeared with blood. The recovery memos of the clothes of the accused (Ex. P29, P32, and P35) shows that the clothes worn by the accused on the day of the incident were light in colour on which blood would have been easily visible. Moreover, PW-10 explained his presence near the place of occurrence since he wanted to check if House No. 23 was available for rental purposes. However, the prosecution has not sufficiently established his presence near the place of occurrence as the owner of House No. 23 was not examined and no other evidence was led to confirm the presence of PW-10 at the place of occurrence. PW-10 further improved from his statement under Section 161 CrPC (Ex. D7) with respect to Neha's presence at the place. Likewise, learned counsel submitted that PW-8 Achyutmal Tejwani (whose deposition was relied on by the prosecution, to say that he treated Manoj), is an unreliable witness. His credentials as a medical practitioner, was doubted: counsel relied on the witnesses' cross-examination and submitted that this witness had migrated to India from Pakistan, and in all probability was beholden to the police.

26. Learned counsel submitted that the delay of 25 days in conducting the test identification parade (TIP) is unexplained. The delay assumes significance since

unveiled photographs of the accused were published across newspapers starting from 23.06.2011. In this regard, reliance is placed on Ex. D6, D45 and D48 which are newspaper articles containing photographs. Furthermore, it was submitted that the procedure of the TIP was questionable as Rahul and Manoj were made to stand together in the TIP line-up. The identification memo does not record the appearances of the other persons. Ms. Prakash submitted that Rahul and Manoj do not look similar - she relied on the arrest memos Ex. P12 and P15 to support her argument. PW-10 in his cross examination stated that some persons were tall, others were short; some were fair and others, dark. Therefore, the combined TIP procedure was faulty and could not have been relied on. In this regard, counsel relied on *Lal Singh and others v. State of U.P*[9], *Muthuswami v. State of Madras*[10] and *Mohammed Abdul Hafeez v. State of AP*[11] to say that in the absence of individual distinguishing features, a TIP of the accused conducted after a relatively long time may not be relied upon by the courts.

27. Learned senior counsel submitted that there was serious doubt about the identity of Rahul, who was referred to as "Govind" in all documents until the preparation of his arrest memo Ex. P12 on 22.06.2011. There was no reason why an alias for Rahul was associated with him in the arrest memo. This raises doubt about the identity of the individual. All documents relating to the medical treatment for the bullet injury as well as the case proceeding (Crime No. 377/2011 registered by PW-29 crucially on the date of occurrence) refer to him as Govind. These were Ex. P103 - *dehatinalisi* at 10:30 PM on 19.06.2011; Ex. P97 - letter of police to the District Hospital & report of District Hospital Indore after examination of wounds and referring him to M.Y Hospital; Ex. P104 - Crime details recorded at 11 PM on 19.06.2011; Ex. P105 - FIR of the shooting incident at 12:15 AM on 20.06.2011; Ex. P101 - case closure report on

9 2003 (12) SCC 554
10 AIR 1954 SC 4
11 (1983) 1 SCC 143

29.06.2011; Ex. P113 at MY hospital signed by PW-32 Dr. Nilesh Guru on 20.06.2011.

28. Learned counsel submitted that the non-identification by the treating doctors (PW-26 and PW-32) of Rahul, or even of PW-30 RS Makwana (of PS Annapurna) in TIP or in court, on the one hand, and his identification by PW 29 Gourishankar Chadar (of PS Annapurna) in court as Govind @ Rahul, assumes significance. Rahul was allegedly admitted in MY Hospital and there was ample opportunity for the treating doctors, nurses, and other hospital staff to identify him. Their omission to do so, raises serious doubts.

29. Ms. Prakash argued that material was suppressed regarding admission in hospital. In this regard, it is pointed out that Ex. P113 only mentions the date of admission as 20.06.2011 and the name of the patient is mentioned as Govind. There is no information on record regarding the treatment given to him and the time of his discharge. This is more crucial as no one from the hospital has deposed in order to prove the identity of the person being treated. Likewise, chain of custody of the bullet extracted from Rahul was not proved. In this regard it was contended that PW-32 Dr. Nilesh Guru extracted the bullet and deposited it in the medico-legal case section at MY Hospital on 20.06.2011. He did not depose to sealing the bullet at all. A sealed bullet was collected by PW-30 from MY Hospital from an unknown doctor on 23.06.2011. The bullet was not sealed in front of PW-30. Therefore, there is no evidence on record to prove who sealed the bullet and when. It was urged that the magistrate's remand order dated 23.06.2011 omits mentioning of any injuries, especially on Appellant 2 Rahul @ Govind which would have been visible since he had been hospitalised. Furthermore, no MLCs of the accused persons were produced during the trial. It was also contended that the prosecution version regarding reporting of a false case and seeking medical treatment and informing PS Annapurna to alert them of the bullet by Rahul is unbelievable. Ex. P97 shows that it was prepared at PS

Annapurna. From the document it appears that Govind was sent to the District Hospital with a forwarding letter that curiously has a note seeking opinion on whether the injury is self-inflicted. This directly contradicts the story of PW-29 that Rahul @ Govind had shouted and alerted the police that he was going to the District Hospital.

30. In terms of Ex. P104 Rahul had signed the spot map prepared on 19.06.2011 at 11:00 PM. However, it is also the case of the prosecution that Rahul was going to get his injured foot treated and was admitted in hospital during that time. It appears that Constable Dinesh took Rahul to the District Hospital and subsequently to MY Hospital. That constable has not been examined and no reasons for non-examination were given. Learned counsel submitted that there is no material about how Rahul went from District Hospital to the MY Hospital with a gunshot injury, or who took him from the District Hospital to MY Hospital and who conducted his x-ray.

31. It was next argued that as far as seizure memo of the right shoe is concerned, the memo (Ex. P75) was drawn at PS Annapurna at the behest of Abhay Tiwari, who too was not examined by the prosecution. This makes the contents of the document inadmissible. PW-20 Harbhajan Singh did not remember the logo on the shoe. He also did not depose as to which foot (left or right foot) did the shoe fit, or its size. He did not say whether it was a sports or leather shoe and also does not describe laces. PW-20 deposed that it was seized in his presence, however, he does not mention whether the same was sealed in front of him. PW-29 merely described that Abhay Tiwari found the shoe and it was contended that this was hearsay evidence. Importantly, there was no inquiry by the prosecution to prove that the seized shoe was even the same size as Rahul @ Govind’s. His foot size could have been measured under Sections 2(a) and 4 of the Identification of Prisoners Act, 1920 which was not done.

32. It was next urged that there were serious gaps in the TIP of the jewellery held on 09.07.2011 by PW-12 Tehsildar. In this regard, it was pointed that PW-3 Deepak Ranade deposed those two bangles were removed from Rohini's hand and one *kudi* (earring) was removed from her body and handed over to him. During jewellery identification proceedings, PW-1 identified Megha's four (4) bangles and Rohini's two (2) bangles. It is unclear if bangles identified by PW-1 included those handed over to PW-3. Further, if the bangles of deceased Rohini given to PW-3 were not the same as those identified by PW-1, the two recovered bangles from the accused were not matched with those given to PW-3. It was also unclear if the jewellery was mixed with other items having similar designs, as required by law. Similar pieces of broken *mangalsutra* should have been kept during the identification proceedings as well. Further, the identification memo (Ex. P1) did not indicate how many similar pieces of jewellery were mixed along with the jewellery identified. There is discrepancy in the evidence of PW-1 and PW-3 as to what was said to have been stolen when questioned on 21.06.2011. According to PW-3, on 21.06.2011 when he went along with PW-1 to the house of the deceased, PW-1 only informed about the missing camera.

33. Challenging reliance on the DNA analysis report, counsel submitted that there was inordinate delay in sending items to the forensic science laboratory (FSL). The items seized on 23.06.2011 were sent for examination to the FSL on 13.07.2011 (after 20 days) as seen by Ex. P115. This delay was not explained by the prosecution. Therefore, it was urged that records of the police *malkhana* and conditions of safekeeping of items were important in this case. Also, statistical analysis was not conducted which is an integral part of the scientific process. The lack of cross examination of the DNA expert PW-35 Dr. Pankaj Shrivastava on this was argued to be immaterial since this goes to admissibility of the DNA report as scientific evidence and this court should consider this serious gap in the scientific process. Counsel submitted that blood reference samples of the

deceased were not collected and tested. The blood collected on cotton swabs found next to the dead bodies at the crime scene were used as reference samples, which is unreliable. Lastly, counsel urged that no laboratory records were submitted – PW-35 mentioned that in the observation sheet details of the samples received and the testing were noted. This sheet was not submitted with the laboratory report. Also, electropherograms were not submitted with the laboratory reports.

34. Turning next to the ballistic reports and the prosecution's claim that the bullet extracted from Rahul's foot, and that recovered from Megha's body were fired from the same weapon, it was argued, that these circumstances were not proved, because of the unreliability with regard to the manner of Rahul's arrest, doubts about his identity, manner of seizure of the bullet from his foot, its sealing, custody, and production in court. Counsel submitted that the articles were received by the ballistic expert only on 14.07.2011; the ballistics report Ex. P120 is dated 30.07.2011.

35. Doubts were expressed about seals on the items seized from the crime scene, which included the fired cartridges. According to the counsel their consequent matching with the test fire cartridge was unreliable. It was urged that the presence of copper during the chemical analysis of the shoe is unreliable since the shoe was seized at Annapurna PS and the witness Abhay Tiwari was not examined. Further, the live cartridge's primer cap (seized from the place of occurrence) had fallen during examination by PW-16 Bheem Bahadur who was from the Arms Branch and had sealed the cartridge. He, however, did not say that he had reloaded it. During the ballistics examination however, it was found that Article A-6 contained a live 7.65 mm caliber pistol cartridge which was marked LR1 (in Ex. P120). The description of LR1 states that it is a reloaded live cartridge. The seals of the arms branch on the live bullet were intact when they were sent to the FSL on 13.07.2011 (Ex. P115). These

facts raised doubts about the chain of custody of Article A-6 (the live cartridge) given the discrepancies in its condition. Further, it is unclear as to what was used for the test firing by the FSL: if the live cartridge was used, it would not be possible since the primer cap had fallen off, making it unusable. The Report (Ex. P120) did not mention the use of another test ammunition for the firing test, whose description should have been provided as part of the report to ensure that the same ammunition is being used. Counsel submitted that the fired cartridges found at the left side and the legs of the deceased were not photographed - as evident from scene of crime report (Ex. P77) and crime scene photos (Ex. P56). PW-9 did not see the bullet in his hand and said that it was small in size. It is not explained how he recalls the caliber (KF 7.65) written on the bullet and fired cartridge.

36. Learned senior counsel submitted that the circumstances relating to lifting of fingerprints, their being forwarded for expert examination, and the report, were not proved beyond reasonable doubt. It is urged that with regards to chance prints found at the place of occurrence, PW-5 Vishal Pandey did not mention signing of the fingerprint slips. Elimination prints were not taken from anyone present at the crime scene. To prove that fingerprints were of the accused, the identity of the specimen prints were not proved since neither the signature of the accused nor their photographs were affixed on Ex. P41, P42, or P43, contrary to what was stated by PW-13 Vijay Singh Chauhan (constable) who mentioned that he took signatures of the accused persons. The specimen prints were not taken before the magistrate on 23.06.2011, and rather on the next day (24.06.2011) at PS MIG. Sending of fingerprints for examination: No witness (PW-13, PW-24, or PW-31) has deposed anything suggesting that prints were sent to the fingerprint branch in a sealed condition. The rule of prudence of taking prints before the magistrate under Section 5 of Identification of Prisoners Act, 1920 was breached. Further, specimen fingerprints of the accused were sent to the fingerprint branch after an unexplained delay of 3 days, i.e., 27.06.2011

despite both departments being in Indore. The fingerprint expert's report (Ex. P84) is not credible because elimination of the deceased's prints was not explained by PW-24 KK Dwivedi (fingerprint expert) or in his report Ex. P84. Only the final conclusion of elimination has been written about. There is no scientific evidence that fingerprints are unique for all individuals and therefore, heavy reliance cannot be placed on it. It is only corroborative in nature. Further, the counsel highlighted that the fingerprints were not lifted from the knives, pistol and ornaments seized from the accused. Counsel relied on *Mohd. Aman & Anr. v. State of Rajasthan*[12] and *Chandran @ Surendran & Anr. v. State of Kerala*[13], for arguing that fingerprint proof cannot *ipso facto* lead to conviction.

37. Learned senior counsel then argued that the shoeprint report (Ex. P125) mentioned that the chance shoeprints were incomplete and unclear, despite which the expert proceeded with the examination and came to a finding of the prints being identical to F6 (right), G4 (right), and H3 (which does not specify which side, as per Ex. 125). Rahul's foot impression was not taken as per Section 4 read with Section 2(a) of Identification of Prisoners Act along with Rule 822(4) of MP Police Regulations Rules. It was urged that this was important in proving that Rahul wore shoe size 44. PW-5 mentioned that there was a lot of blood on the floor. Elimination prints of shoes were not collected from PW-5 or anyone else present at the scene of occurrence. At this point it is worth noting that among others, five persons had entered the place of occurrence to act as witnesses to the inquest proceedings. The scene of crime report (Ex. P77) mentioned that the shoeprints were bloodied and partial in nature. All these cast doubts about authenticity and reliability of the footprint expert's report.

38. Mr. Shri Singh, learned counsel arguing *pro bono* on behalf of the appellant Neha, supplemented the contentions of Ms. Anjana Prakash. He

12 (1997) 10 SCC 44
13 (1991) Supp (1) SCC 39

questioned the prosecution version about Neha's arrest. He submitted that officially Neha's arrest memo (Ex. P9) was prepared at Devendra Nagar. When Neha was arrested, a personal Seizure Memo (Ex. P10) and a Disclosure Memo (Ex. P11) was prepared. No explanation as to why Neha's search outside the ATM (Ex. P22) did not yield the phone seized through Ex. P9, was given. PW-31 IO admitted that this was not recorded in Neha's arrest memo. Pertinently, the prosecution neither conducted a technical investigation of the seized phone nor provided any explanation as to why investigation was not conducted in this regard. Further, DW-1 SI Deepika Shinde admitted to conducting an analysis of the CDRs[14].The CDRs were not produced before the trial court.

39. It was urged that these omissions impel the court to draw an adverse inference, under Section 114 (g) of the Evidence Act 1872 against the police, casting grave doubt over Neha's apprehension, her arrest, and subsequent recoveries. Reliance is placed in this regard on *Noor Aga* v. *State of Punjab*[15] and *Chunthuram v. State of Chhattisgarh*[16].

40. Learned counsel further argued that PW-4 Banno Solanki (lady constable) was cross-examined on 30.09.2011 i.e., just three months after the incident. In cross-examination, the suggestion given was that Neha was brought to the police station on the evening of 21.06.2011 by DW-1 SI Deepika Shinde. PW-4 was silent regarding her role in searching Neha's residence on 22.06.2011, though she claimed she was present during Neha's apprehension earlier. PW-28, during cross-examination about DW-1's role, deposed that he and DW-1 received an out-of-turn promotion. PW-6, too during cross-examination, admitted that DW-1 was a part of the raiding team. These facts were effaced from the record. This was consistently the line of defence during the trial. Both courts below disregarded this aspect of Neha's defence – though the involvement of DW-1, in the investigation of this case was proved conclusively.

14 Call detail records, which list out the incoming and outgoing calls received and made from the instrument.
15 (2008) 16 SCC 417
16 (2020) 10 SCC 733

Further, despite several opportunities, the prosecution failed to explain the acts of DW-1 during the investigation, or why her role was specifically erased. Reliance is placed in this regard on *Reena Hazarika* v. *State of Assam*[17]. It was urged that this warrants adverse inference against the prosecution, creating doubt over its reliability.

41. It was argued that the testimony of DW-1 Deepika Shinde in fact shows that technical evidence was analysed on the date of the incident itself. This does not square with the complete absence of telephonic evidence in the testimonies of the investigating team including PW-4, PW-28, PW-31. Telephonic evidence about whether the accused spoke to each other, or knew each other, or whether the deceased spoke to any of the accused, or the triangulation of location was not collected during the investigation and has been kept out of the trial. It was urged that in its place, this court now had to rely upon the *ipse dixit* of the investigation team, knowing that electronic evidence was not only available, but was surreptitiously used to Neha's detriment. It was pointed out that PW-31 IO made no reference to the presence of officials of the Crime Branch on 19.06.2011, 20.06.2011, or 21.06.2011. However, PW-28, Vijay Singh Chauhan made reference to his Crime Branch posting, and informing PW-19 YR Gaikwad, what he (i.e., PW-28) saw on 22.06.2011. However, PW-19 in his testimony was silent on receiving any information from PW-28 on 22.06.2011. DW-1's capacity for conducting investigation was questioned on the ground that the CrPC does not permit parallel/multiple investigations in the same case.

42. It was submitted that despite recovery of the "Oriflame" document from Neha, the prosecution did not rely on the document as an exhibit. The prosecution did not examine any official from the company to provide any context whatsoever as to the forms, catalogue or, perfume recovered from Neha's residence on 22.06.2011 (Ex. P11). There is no evidence to suggest that the form seized from Neha was filled in by the deceased Megha; nor was the

17 (2019) 13 SCC 289

latter’s signature identified or proved. Counsel stressed that the independent witnesses who deposed to such a form do not indicate that there were any signatures on it. PW-3 merely stated that a paper/document (of “Oriflame”) was recovered from Neha’s residence. He did not indicate whether the form was filled. PW-6 stated that certain articles including the form were seized in his presence but did not indicate their nature/details. While PW-3 identified the form in court, no question for the purpose of identifying the handwriting on such form was put to him. The signatures of the independent witnesses, as well as the police personnel at the time of such seizure were not found on the *pullanda* containing the form. The only witness providing any details with reference to the “Oriflame” form is PW-31 IO. It was urged that these “details” too were mere surmises of PW-31 untested during the investigation or trial. It was also pointed out that all questions put to Neha, relating to the recovery of the Oriflame form, were denied. While PW-1, in his examination-in-chief states that his wife was a consultant at Oriflame, the form seized from Neha’s house was not shown to him. Evidence in this regard may have been forthcoming from him. In fact, neither PW-1, nor any Oriflame employee admitted the handwriting of Megha. The prosecution did not conduct any forensic examination of the form to establish the alleged handwriting/signature of Megha. Further, PW-l was also involved in a TIP for the seizures of articles seized, where certain jewellery, allegedly belonging to the deceased, was purportedly identified by him. Inexplicably the "Oriflame" form was not put to him by the prosecution in these proceedings. Therefore, it is evident that the "Oriflame" document does not connect the deceased, Megha, or her relation of dealing with Neha as there was no investigation on this document. Therefore, barring the *ipse dixit* of PW-31 IO, there is nothing suggesting that the "Oriflame" form was filled for Megha, or filled or signed by her.

43. Mr. Shri Singh next urged that DW-1 Deepika Shinde had admitted to going to the spot on 19.06.2011, based on a request made by the control

room. She also sought information from the officials at PS MIG, and thereafter spoke to the deceased persons' neighbours. However, DW-1 could not provide any details in this regard during her examination-in-chief. Though DW-1 stated that she examined the CDRs of the accused persons, she provided no specific details of such analysis in her testimony. DW-1 also admitted interrogating Neha. DW-1 further confirmed that she was informed by a source that Neha would leave her house wearing a pair of jeans and a maroon top. This information was received by DW-1 prior to Neha's arrest, and therefore presumably DW-1, by her own admission, was involved in the investigation even beyond 22.06.2011. Further, DW-1 stated that she shared the source information with her colleagues and subordinates. PW-28, while giving patently false testimony in court also stated that when he saw Neha at LIG Tiraha, she was dressed in "black jeans and a maroon top". PW-28's deposition shows how he allegedly spotted Neha, which is belied by DW-1's testimony. Despite such a deposition, the prosecution elected not to cross-examine DW-1.

44. It was argued that DW-1 Deepika Shinde's presence during the investigation was confirmed by PW-7's testimony. He is alleged to be an independent witness to the recoveries from Neha's residence on 22.06.2011. At paragraph 14 of his testimony and during cross-examination, he admitted that DW-1 was a part of the raiding team - a fact that has been kept out of the record. Counsel submitted that all these facts can be simply answered by Neha's illegal custody before 22.06.2011. It was strongly urged that Neha's personal search and the recoveries from her residence were tainted and the records and seizures pertaining to these purported proceedings could not be relied upon. The staccato manner in which the purported record of the prosecution reflected events taking place on 22.06.2011 indicated that the police fabricated the record, resulting in Neha's false implication.

45. Mr. Singh next argued that the prosecution did not prove any prior relationship between the accused. Neither was any material produced to suggest that the three accused knew each other or had any prior plan, agreement or common intention to commit a robbery at the place of incident. The prosecution admittedly had access to the CDRs of the accused persons and could have demonstrated the fact whether there was a relationship, which there was none. Either way the CDR evidence was crucial to the prosecution and the lack of explanation as to why it was not a part of the investigation casts doubts on the investigation and its fairness. It was stated that while the official investigation claimed that no CDRs were accessed (PW-31's statement is relied on for this), the unofficial investigation (or, that material kept away from court) conducted by DW-1 admitted having access to and analysing the CDRs. This aspect lends credence to the defence that the present investigation was improper and that it would be unsafe to rely upon it to render findings of the accused's guilt. Reliance is placed on *Suresh Sakharam Nangare v. State of Maharashtra*[18] in this regard.

46. It was further argued that while convicting Neha under Section 302 read with 34 IPC, the courts below failed to appreciate that there is no material to suggest that she had any common intention with the co-accused persons, much less a common intention to commit murder. Further, the nature of Neha's conviction highlights that no weapon was recovered from her; she did not suffer any injury and none of her personal items of belonging were recovered from the crime scene.

47. Supplementing Ms. Prakash's arguments regarding PW-10, it was argued that the testimony of this chance witness was unreliable due to gaps and contradictions. PW-10's cross-examination revealed that his examination-in-chief was an improvement over his statement under Section 161 CrPC – the witness had embellished his version of the incident, such as the fact of the

18 (2012) 9 SCC 249 (para 21)

injury of the accused persons, and more pertinently, Neha's statement having arrived on her Scooty and telling one of the boys to take the other injured boy to the hospital. PW-10 also contradicted himself regarding what brought him to the police station and regarding the TIP. In his examination-in-chief, he stated that a woman constable was present at the TIP, whereas during cross-examination, the witness stated that no woman constable was present at such proceedings. Further, while PW-12 the tehsildar, PW-18 Pratap Kumar Agasia, and PW-11 Raju Sen, stated that both PW-10 and PW-11 appeared for the TIP together, PW-10 did not mention the presence of PW-11 on such day. It was furthermore, urged that PW-10's credibility was questionable as he appeared to be a stock witness – he deposed during his cross-examination that he had previously appeared as a witness for the prosecution in another case registered at PS Palasia.

48. Mr. Singh urged that the prosecution did not give any explanation about the delay in conducting the TIP proceedings, given that PW-10 had informed about him sighting three persons on 20.06.2011, barely a day after the incident; whereas the TIP was conducted much later on 14.07.2011, by which date the photographs of the accused had been published in newspapers. Reliance was placed on the judgments of this court which observed that a delay in a TIP must be explained to place reliance on the testimony of a witness. Reference is made to this court's judgments in *State of Andhra Pradesh v. Dr. M.V. Ramana Reddy & Ors.*[19] and *Rajesh Govind Jagesha v. State of Maharashtra*[20]. It was submitted that apart from being delayed, and procedurally questionable, the TIP conducted on 14.07.2011 did not yield any information that was not already part of the public domain. Counsel relied on *Matru @ Girish Chandra v. State of Uttar Pradesh*[21] where this court observed that identification tests are not substantive

19 (1991) 4 SCC 536 (para 23)
20 (1999) 8 SCC 428 (para 4-5)
21 (1971) 2 SCC 75 (para 17)

evidence and may only be used for the purpose of helping the investigating agency with the progress of the investigation.

49. It was argued that the Shoeprint Report (Ex. P125) contains contradictory statements, making it unreliable. Further, it did not provide any conclusive material regarding the shoeprints found at the scene of crime and were found to be negative for matches. It was pointed out that for shoeprints obtained by the police, no moulds were made from the available physical prints at the site and instead colour photos of the footprints were obtained. The camera used for taking such photos did not have the time/date, though such features were available. During analysis of colour photos, the photographs were found insufficient to reach any conclusion regarding the footprints in Ex. P118. It was argued that no individual shoe characteristics were found from the prints. The print or design of the soles were missing in the photoprints, and it could not be ascertained if the sole print of the sandal at H3 matched with any print found at the scene of crime. However, inexplicably the report concludes that E8 and E9 are photos identical to H3. The shoeprint said to have been obtained from Neha does not specify whether it is of the right or the left foot. It was submitted that this court in *Pritam Singh v. State of Punjab*[22] and *Balbir Singh v. State of Punjab*[23] found that footprints are a weak and rudimentary evidence. Counsel urged that the evidence led by the prosecution itself is weak and admits that there was insufficient material to conduct the comparison, yet the comparison was carried out as in terms of Ex. P125, the Examination Report, SFSL, Sagar. Further, the seizures relating to the shoeprints were only sent to FSL, Sagar on 13.07.2011- as seen from Ex. P115 - after an unexplained delay.

50. Mr. Singh next argued that the fingerprint report relating to chance prints was not reliable, and at best can only be used as corroborative evidence. In this regard, it was argued that the fingerprints obtained from the crime scene were

22 AIR 1956 SC 415
23 1996 (6) SCALE 72

from an open place, accessible to the public, between the period when the door had been opened by PW-5 till the arrival of the investigating agency. While collecting chance fingerprints, no fingerprints of the persons present/ neighbours, or other members of the household, were taken in order to eliminate such prints. PW-3, PW-5, and PW-24 were cross-examined on this account. They deposed that the fingerprints of others to whom the place was accessible, were not taken. With regard to the report (Ex. P84) prepared by the finger-print expert, PW 24 K. K. Dwivedi while conducting the analysis of the fingerprints, some concerns were pointed out. *Firstly,* failure to describe the method/procedure for lifting of the prints; *secondly* failure to obtain elimination prints of other persons, for which no explanation has been provided by the police; *thirdly,* that the expert was unable to provide an explanation about the fact that none of the fingerprints analysed matched those of any of the deceased persons; and *fourthly,* the expert did not explain why the process under the Madhya Pradesh Police Rules regarding dissection of fingerprint of corpses i.e., Rule 824, was not followed while obtaining the prints of the deceased persons. It was further urged that the expert did not provide a robust process for analysis. The analysis described by fingerprint expert PW-24 claims to rely on an 8-point method. The method followed by PW-24 merely describes Level I of the ACE-V Method (Analysis, Comparison, Evaluation and Verification Method), used by investigating agencies across jurisdictions. Level 2 and 3 of the ACE-V method was not followed. The 8-point matching system, followed for the analysis, was argued to be insufficient and not in compliance with such method. Counsel relied on *Hari Om v. State of Uttar Pradesh*[24] to argue that the question of confirmation bias in this regard cannot be ruled out, given that the prints of the accused were not anonymised while providing such information to the expert analysing the fingerprints.

24 (2021) 4 SCC 345 (para 25, 38-41, 43)

51. Counsel for the appellants urged that in the present case, crucial circumstances, such as Neha's arrest (which constituted the breakthrough in the investigation), the narration and deposition of the chance witness PW-10, and the inconsistences relating to the recoveries, as well as the expert reports, lead to grave doubts. It was submitted that in cases based on circumstantial evidence, the five "golden principles" enunciated by this court in *Sharad Birdichand Sarda v. State of Maharashtra*[25] have to be fully established and that the court should be convinced that the accused "*must be*" guilty and not "may be" guilty. Further, the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say *they should not be explainable on any other hypothesis except that the accused is guilty*. The circumstances should be of a conclusive nature and tendency. The circumstances should exclude every possible hypothesis except the one to be proved, and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

52. It was submitted that the complete "blackout" of the role of DW-1, in the face of her admission to being involved with the investigation, her receiving an out-of-turn promotion for solving the case, her deposition that she had analysed the CDRs which were never produced, or relied on, and her involvement before Neha's arrest, as well as her involvement during the arrest and subsequent questioning, all pointed to grave doubts about the circumstances which actually led to Neha's arrest. It was strongly urged that this cast a doubt on her entire role. Likewise, the piecemeal recoveries affected on two different dates, at the behest of the three accused, the improbability of the accused retaining incriminating articles like weapons, even while allegedly getting rid of clothes, shoes, and vehicles etc., cast doubts and suspicions about the genuineness of recovery of the articles. It was argued that all this, coupled with the

25 (1984) 4 SCC 116

untrustworthiness of the chance witness PW-10 – his contradictions in deposition, admission to being a stock police witness, and who by his admission saw the accused for a very brief while, as well as the inexplicable delay in holding TIP – together undermine the prosecution story about identification of the accused, and their alleged role in the crime.

Submissions of the state

53. Ms. Swarupama Chaturvedi, learned Additional Advocate General (AAG) for the State of Madhya Pradesh, argued that this court should not disturb the concurrent findings of the appellant's guilt recorded by the learned Additional Sessions Judge, and confirmed by the High Court in its impugned judgment. She submitted that though the case is based on circumstantial evidence, the prosecution was successful in proving beyond reasonable doubt, every circumstance, and also in conclusively establishing the guilt of the accused/appellants, on a cumulative reading of all circumstances. She emphasized that the conclusive nature of the evidence is such that any hypothesis of the appellants' innocence is ruled out and that the only conclusion that can be reached is that they and none others, are guilty of the crime of triple murder, which they were charged with.

54. Heavy reliance was placed on the findings in the ballistic report, wherein each circumstance was proved by the expert evidence. In this regard, counsel relied on Ex. P25, the map of the crime spot prepared by PW-31 IO which found two fired cartridges (at Point 7) and one live bullet (at Point 6). The bullets were seized and recorded at Ex. P27, the seizure memo. The post-mortem report Ex. P44 indicated and forwarded a bullet, recovered from Megha's body. The recovery of this bullet was also deposed to by PW-15 Dr. P. S. Thakur. The bullet was seized under memo Ex. P127. Likewise, PW-32 had extracted a bullet from Rahul's foot, in the early hours of 20.06.2011 at MY

Hospital. The bullet was deposited under memo Ex. P113, in the hospital's medico-legal cell. It was later seized under memo Ex. P108 on 23.06.2011. The seizure of a knife and pistol from Rahul's possession was recorded at Ex. P14. This pistol was examined and test fired: a report, Ex. P120 was given by the ballistic expert, confirming that the spent bullets (the cartridges of which were seized from the crime scene), the live bullet (also seized from the crime scene), the bullet extracted from Rahul's foot, and the bullet extracted from Megha's body, were all fired from the same pistol, which was recovered and seized at the behest of Rahul (Ex. P14). Counsel also relied on Ex. P52 the report of the armourer. It was argued further that the seizure, sealing and proper custody of these articles was spoken to by PW-3, PW-5, and PW-19, besides PW-31 IO. There is neither any contradiction nor any gap in their testimonies; further the ballistic report fully support the prosecution version that the bullets recovered were fired from the weapon seized at the behest of Rahul, from his house.

55. The AAG argued that the ballistic report as well as medical opinion establishes the fact that except one injury on deceased Megha's forehead, all injuries which caused death of all three deceased were due to the two knives recovered at the instance of accused Rahul and Manoj. Learned counsel relied on the testimony of PW-15, the doctor who conducted the post-mortems on the deceased, as well as his report (Ex. P44). It was argued that from the crime scene till report and thereafter, seals were maintained and the chain of custody of articles were constantly intact, without any break. Seizure witnesses supported these facts in their statements.

56. Regarding the shoeprints, counsel for the state relied on Ex. P31 and P32 (regarding seizure of shoes at the behest of Manoj); Ex. P34 and P35 (regarding seizure of shoe at the behest of Neha); Ex. P21 (seizure on 22.06.2011); Ex. P77 (inspection report of the crime scene by PW-21 Senior scientific officer); Ex. P115 (forwarding of these samples for testing); Ex. P75 seizure memo of a shoe

recorded by PS Annapurna on 23-06-2011; deposition of PW-20, who witnessed seizure of shoe; shoe print report (Ex. P125); and the deposition of the PW-31 IO. It was submitted that these witnesses did not contradict themselves, and the prosecution had fully and satisfactorily established the presence of the shoe print reports, as well as their matching, from the prints obtained from the crime scene. These proved that the accused and no other were present in the premises, when the crime was committed.

57. The AAG argued that the main motive behind the murders was robbery. This was established by the recovery of the stolen articles pursuant to the disclosure statements proved by Ex. P10 and Ex. P11 which were seized after Neha's disclosure statement; the seizure of articles pursuant to statement of Rahul (Ex. P13 and Ex. P14); and recovery pursuant to statement of Manoj (Ex. P16 and P17). During the TIP of the articles, PW-1 Niranjan Deshpande identified the looted articles (such as jewellery items) as those belonging to the deceased, which was also corroborated by the testimony of PW-12, the *tehsildar.* Furthermore, PW-4 Banno Solanki also supported the seizure of the ATM card from Neha, when she was detained and later, arrested on 22.06.2011. PW-27, a bank officer, deposed that the ATM card (Ex. P98) recovered pursuant to Neha's disclosure statement, was issued by his bank. It was urged that all these proved beyond reasonable doubt, the prosecution allegations that the accused had conspired and entered the premises where the deceased lived, with the motive of looting. The disclosure and recovery of the looted articles, as well as their recoveries and later identification, from the premises of the accused, disclosed their direct link with the murders, and established that they were the perpetrators.

58. It was submitted that the appellants have sought to discredit the prosecution by alleging that Neha was arrested earlier, and for that purpose, exaggerated the role played by DW-1 Deepika Shinde. The appellants sought to

insinuate that that officer played a prominent role in the investigation, and was taken off it, and that her role in solving the crime, earned her an out of turn promotion. The AAG urged that the appellants relied upon the statement of DW-1 Deepika Shinde, who had never claimed that she had made any arrest in the present case. As an officer of the crime branch she was involved initially in assisting or helping ascertain the basic details, as the victims were women. DW-1 was posted with a unit called *"We care for you"*, which focusses upon women's protection. Soon after Neha's arrest, the IO felt that DW-1 was not needed to do anything further. Her promotion was based upon her contribution and role in many cases and this being just one for her initial response cannot be considered that significant. It was submitted that her hidden role, alleged by the appellants, is a bogey. While she admitted to analysing call details, it is forthcoming from the trial proceedings, that the call details had no role – much less any significance, in the investigation, or pinning the accused, their arrest, or recovery of articles at their behest. Therefore, the theory of the appellants' counsels that Neha was not actually arrested as projected by the prosecution, or as found, is without any basis, but merely argumentative.

59. The AAG submitted that chance witness PW-10 witnessed the immediate aftermath of the crime, as he saw the three accused leaving after committing the crime. He described, at the earliest opportunity- on 20.06.2011, that two boys (one injured at the ankle, and the other at the elbow, and both bleeding as a result of the injuries) were sitting on a bike, when a girl in a Scooty appeared, and asked them to go to a doctor for examination. The so-called discrepancies highlighted by the appellants, are neither material, nor of such importance to discredit the entire version given by him, in the course of his deposition in court. It was urged that nothing worthwhile was elicited in PW-10's cross-examination. He clearly identified the three individuals, at the earliest opportunity, i.e. after knowing about the occurrence of the crime and also unhesitatingly identified them in court, in the presence of PW-18, the *Naib*

Tehsildar. The latter witness corroborated the testimony of PW-10 as regards identification.

60. The IO also proved seizure of Suzuki service book and clothes, at Neha's behest on 23.06.2011 which linked with the recovery of the scooty (again, at her behest) later on that day, from a place where it had been hidden. The seizures were also corroborated by the testimony of PW-7, who further identified the articles (Ex. Z-1, Z-2 and Z-3) in court.

61. Ms. Chaturvedi submitted that the fingerprint expert's evidence unerringly pointed to all appellants' complicity and guilt. It was highlighted that four sets of fingerprints were lifted, by PW-24 (i.e., Ex P80) on 19.06.2011. The fingerprints of the deceased (Ex. P81, Ex. P82 and Ex. P83) were lifted on 20.06.2011, by Constable Dinesh. The fingerprints of the three accused/appellants were obtained on 24.06.2011 (Ex. P41, Ex. P42 and Ex. P43) by PW-13 constable Vijay Singh. His deposition was sought to be discredited by the appellants, by pointing out that while the fingerprint samples were obtained, according to him, the accused had signed on the forms (but which were not actually found); and further, that the forms did not contain the photographs of the accused. The learned AAG pointed out that the form used, is the one as required in the Madhya Pradesh Police manual, and there is no requirement of a witness, at the time of obtaining fingerprint samples. Furthermore, the cross examination of this witness was not worthwhile as nothing significant was elicited from them.

62. The AAG emphasized that the report of the fingerprint expert (Ex. P84) dated 11.07.2011 by PW-24 K.K. Trivedi, fully supported the prosecution. It established that four fingerprints could be developed and compared with chance fingerprints found at the crime scene. The report clearly stated that two fingerprints lifted from the site (A and B) matched with the sample fingerprint of Rahul; fingerprint D matched with the fingerprint of Manoj and fingerprint E

matched with the fingerprint of Neha. PW-17 Satyanarayan Patel had photographed the crime scene, including the spots where prints were collected, which corroborated beyond any doubt, that the appellants were present at the crime scene.

63. It was argued that a crucial circumstance that has to be considered is that appellants Rahul @ Govind and Manoj were also injured. PW-30 R.S. Makwana, ASI who was posted at Annapurna PS stated that the appellant No. 2 Rahul @ Govind's leg was wounded. This was also informed to T.I. Gaurishankar Chadar, who wrote *dehatinalisi* (Ex. P103); Crime no. 377/11 under Sections 294, 307, 34 IPC was registered. PW-26 Mukesh Bhachawat deposed that on 19.06.2011 Constable Dinesh of Annapurana PS brought accused Rahul; he found an injury on his right toe, which had a charring firearm wound. The statement of the IO was that on the basis of information received from Rahul, a shoe (size 44) for the left leg was recovered in the presence of witnesses from the nearby RTO Office. Both the shoes which were seized were brown coloured with three holes and seized within the jurisdiction of PS Annapurna. One shoe had a gunshot mark and the other shoe belonged to Rahul. From the statement of the medical officer, the right toe of right leg of Rahul @ Govind had a gunshot injury and the recovered right shoe had a gunshot hole. Rahul's medical report supported the fact that he had sustained one gunshot injury on the toe of his right leg.

64. It is argued that the DNA reports established that the blood stains found on shoes and clothes of accused, matched the body fluid of the deceased. The DNA report, coupled with deposition of PW-35 established that body fluid of deceased Megha was found on Rahul's articles (Ex. F4, F5); body fluid of deceased Ashlesha was found on Manoj's articles (Ex. G1, G3); and Neha's sandal (Ex. H2) had traces of deceased Megha's body fluids.

65. The learned counsel argued that the facts of the case were proved by the prosecution beyond reasonable doubt to indicate that the accused and none else, were the three persons who had committed the crime for which both courts below had convicted them. It was argued that no prosecution can prove facts perfectly and that some lapses or inconsistencies are bound to occur, given the tricks memories play because of which witnesses may not recollect events perfectly or in chronological order. To make her point, the AAG relied on the observations cited by this court in *Moosa Patel v. State of Gujarat*[26].

66. It was lastly argued that the appellants offered no explanation when the incriminating circumstances were put to them, under Section 313 CrPC. It was stressed that this court in many decisions has in fact held that examination of accused under Section 313 CrPC manifests the principles of natural justice- *audi alteram partem*, by curtailing all interferences at that stage from counsel, prosecutors, witnesses, third parties, etc. The accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. Therefore, by essentially establishing a dialogue between the accused and trial court, the examination of accused under Section 313 CrPC is not a mere formality and the answers given by the accused have a practical utility. It was submitted that the complete lack of any explanation, much less a reasonable explanation, only meant that the accused could not justify their conduct; they had no argument to offer.

67. In view of these submissions, the AAG concluded that this court should not interfere, under its special leave appellate jurisdiction with the concurrent findings of guilt, recorded by the courts below, based on a full and fair appreciation of all the evidence and material on the record.

Analysis and Findings

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26 (2011) 2 SCC 198 (para 22)

I. *Neha's arrest*

68. PW-28 (Vijay Singh Chauhan) deposed that he saw Neha loitering suspiciously at 6.00 AM on 23.06.2011, near an ATM. He relayed this to P.S. MIG, where the information was received by PW-19 Gaikwad. The IO (PW-31), formed a team consisting of PW-13 (Vijay Singh), PW-36 (Mulayam Singh), Constable Devendra and PW-4 (Banno Solanki, the woman constable). This party went to the site, and confronted Neha; her body search was conducted by PW-4 which yielded Ashlesha's ATM Card. The search memo (in which time recorded is 06.40 AM) was produced as Ex. P22. Neha was taken in for questioning and later arrested.

69. PW-28's testimony is supported by PW-4, PW-31 and PW-36. However, deposition of PW-19 (Y.R. Gaikwad) is silent about the reporting of Neha's suspicious activity – and what was deposed by PW-28, as corroborated by others. Constable Devendra was not examined. This omission is per se, insignificant because while proving certain facts and events if by and large, witnesses are consistent, any omission can be overlooked.

70. Nevertheless, a few aspects urged by the appellants with respect to the events proximate to, and surrounding Neha's arrest bear scrutiny. DW-1 Deepika Shinde (who was promoted as inspector when she deposed) – admitted to analysing call detail records and importantly, to receiving information -from an undisclosed 'source'- that Neha would be at the spot – from where she was ultimately arrested on 22.06.2011, and that she would be in jeans and a maroon-coloured top. DW-1 deposed that she had received this tip off prior to Neha's arrest, i.e., before 6:30 AM, and she shared this this information with the police. PW-28, however, denied the involvement of DW-1. During the trial, the defence had relied on certain documents – notably Ex. D-32 and Ex. D-46, to say that DW-1 received an out of turn promotion for her role in solving the crime. That out of turn promotion was given to DW-1 and PW-28, was admitted by both of

them. It is evident, therefore, that DW-1 received prior information regarding Neha's likely whereabouts and further details even to the extent of a description of her attire. The prosecution's studied silence with respect to her role is not just mystifying but is a matter of concern.

71. The prosecution sought to establish through the testimonies of the IO as well as PW-3 (Deepak Ranade) and PW-6 (Triyambak @ Prafulla), that Neha was taken to the police station and questioned. They then proceeded to Neha's house. As per the IO's testimony, the raiding party included PW-19 and PW-4. The further prosecution case in the statements of PW-31, PW-3 and PW-6 was that Neha was interrogated on the way to her house and later arrested, after which her disclosure statement was recorded leading to the recovery of the stolen articles at her behest. At this instance also there was not even a slight whisper by any prosecution witness about DW-1 Deepika Shinde's role.

72. During her deposition, DW-1 affirmed that she had gone to the crime scene on 19.06.2011 itself. She also admitted that

> *"I had analysed call records in the instant case. Today, I cannot tell as to which call and as to how it was analysed by me. I had not investigated the instant matter. I recall that I had interrogated one accused in this matter later. I might have interrogated lady accused (Neha Verma) present in the Court is the same person whom I had interrogated."*

Later, DW-1 was unable to state the precise time in terms of number of hours after the incident when she had interrogated Neha. However, she was clear that she did so after Neha's arrest by PS MIG. She further clarified that she had *"interrogated Neha Verma in MIG Police Station itself."* PW-7 Sandeep Narulkar who concededly joined the investigation as a *panch witness* on 23.06.2011, admitted in the cross-examination that DW-1 *"Police Sub-Inspector was not with us, she was in other vehicle"*. This witness was cross-examined on 02.03.2012 but he failed to identify her on that day. He, however, admitted that he could not remember how many lady officers were present

during the investigation on 23.06.2011 i.e., the day on which he was asked to present as a witness.

73. As observed earlier, an interesting feature is the fact that close on the heels of the arrest of the present appellants and recovery of incriminating articles, the police department promoted some of its officers and employees including DW-1 and DW-28. Both these personnel did not belong to the MIG Police Station but were positioned in the Crime Branch. Ex. D30 (proved by DW-4 Pawan Srivastava, Inspector General of Police who had issued it) which was placed on record during the cross-examination of PW-1, is the order issued by the office of the Senior Superintendent of Police, District-Indore on 26.06.2011 bearing S.No.SSP/Indore/PA/Reward/11/2005A. Its *inter alia* pertinently reads as follows: -

> *"In the afternoon on 19.06.2011, gruesome murder of Bank Officer Niranjan Deshpande's wife Megha Deshpande, daughter-Ashlesha Despande and mother-in-law Rohini Fadke residing in the first floor of House No. 24, Shrinagar Main Colony in posh area of the city was committed by stabbing with knife. Total 22 stab wounds were found the person of Ashlesha.*
>
> *On coming to know about this triple murder, within no time resident near to the place of incidents gathered, the crowd was so big which created law and order problem. The murders committed in the broad daylight, raised many questions on the functioning of Indore Police and pubic started questioning that when women are not safe in posh colony situated in the center of the city then how the women residing in other part or the city will feel themselves to be safe. All the police officers rushed to the place of incident and started taking control of law and order. Electronic Media and Newspapers widely aired the said incident which resulted fear in the mind of public also their trust in the police administration weakened. Keeping in mind priority and gravity of the said incident, Senior Officers Constituted a police team of able officers & officials in which Sub-Inspector Deepika Shinde (In-charge We Care for You) and R. 2906 Vijay Singh were specially included in the team and at the same time the declaration of reward to the police officer solving the incident, was made.*
>
> *Immediately after the incident, at about 20.00 hours in the night on 19.06.2011, through Police control Room, directions were issued to Sub- Inspector Deepika Shinde to reach at the place of incident i.e. 24 Shrinagar Main immediately. After reaching the place of incident, she discussed with the family members and neighbours about the people Visited at the time of incident whereupon it revealed that before the incident a friend (female) of deceased Ashlesha was seen leaving her house and secret information about her other activities were gathered.*

Under the supervision of Manoj Rai, Additional District Crime Branch Superintendent of Police, District Crime Branch and Jitendra Singh, Dy. S.P,. District Crime Branch, call details of mobile numbers 9981147765, 9669191385 and 9826635615 of deceased Ashlesha Deshpande and Megha Deshpande respectively were obtained. Sub-Inspector Deepika Shinde was deputed to analyse and gather detailed information about college mates of deceased Ashlesha and deceased Megha Deshpande's colleagues working in Oriflame company who using her professional skill and technique, noticed a mobile No.8103807143 regularly talking to deceased Megha on the date of the incident and prior thereto stated location of the said suspected mobile phone to be at the place of incident. Later Sub-Inspector Deepika Shinde established through call details location and IMEI search, the said suspected mobile was being used by Neha's father Anil Verma r/o Indore and at present mobile Nos. 9009090142 & 9826065288 stated to be used in the said mobile.
On 22.06.2011, through analysis of call details of the Suspected mobile number, Sub-Inspector Deepika Shinde, established Neha Verma r/o H.N.10 Devendra Nagar Indore to be Connected with the said incident. In addition, Sub-Inspector Deepika Shinde using her information system and intelligent inputs, gather this information that today on 22 (illegible) Neha Verma wearing black jeans pant and maroon colour top has left home and on analysing the call details of suspected Neha Verma, present location of suspected Neha Verma to be near LIG Tiraha Indore to R. 2906 Vijay Singh.

After the incident, not finding any clue or the incident despite all out efforts for three days by the Indore Police, crisis of law and order has been created due to pressure and protest from public, media and other social organisations. In such circumstances, Sub-inspector Deepika Shinde by her all-out efforts and devotion for continuous 72 hours, established a lead in the form of Neha Verma for identification & arrest of the killers and working on the same this triple murder case was solved and succeeded in arrest of Neha Verma and other Rahul @ Govind Maratha and Manoj Balai involved in the case.

While interrogating female accused Neha Verma extensively by applying psychological method, S.I. Deepika Shinde extracted information about accomplices and also extensively interrogating other two accused, collected information about the incident which led to solving in the case.

Sub-inspector Deepika Shinde showing her proficiency in analysis showing her proficiency in analysing call details and professional skill with her hard work and devotion gathered and made available information of identification, appearance, name and address of the first suspect Neha Verma and her involvement incident on the basis of which only a direction for search for accused of the incident be fixed.

XXXXXXX XXXXXXX XXXXXXX

Sub-Inspector Deepika Shinde establishing identity of the accused of the unknown accused in the said triple murder has played a significant role in solving the case which shows her professional excellence, perseverance and devotion for duty. Had she not established identity of Neha Verma, accused in the said triple murder case, arrest of the accused in the said was impossible and by her ability, she has established identity of the accused persons and solving the said case, a good

message went in the public and their confidence was re-stored in police. In the past as well, service of the Sub-Inspector has been excellent.

In view of the said brave and commendable work by Sub-Inspector Deepika Shinde, under Para No. 70 (a) of Police Regulation, she is recommended for out of turn promotion to the post of Inspector keep her morale high and in future, while discharging her police duties with diligence and perseverance, she brings laurels to the department."

74. Similarly, in reply to an R.T.I. query by DW-6 Anil Verma (Neha's father), the P.I.O., Police Headquarters at Bhopal sent a response (dated 22.05.2012), No.PH/10/Record/RTI/70/12/506/12. The material part of this document, produced as Ex. D-46, is extracted below:

"Subject: Information under Section 6 (1) Right to Information Act, 2005.

Reference: Your application dated 29.02.12,16.03. 2012, 23.03.12 and 26.03. 12.
Kindly peruse above referred applications information received sought on two points by you, is as under:
1. Photocopy of Committee Report dated 24.12.2011 regarding out of turn promotion to Sub-Inspector Deepika Shinde, is enclosed.
2. On 19.06.2011, Smt. Deepika Shinde, Sub-Inspector on searching arrested Neha Verma, Rahul @ Govind and Manoj Balai, the main accused of triple murder case of Bank Officer Nilanjay Despande's wife Megha Deshpande, daughter-Ashlesha Deshpande and mother-in-law Rohini Phadke residing in House No. 24, Shrinagar Main Colony, under PS-MIG, Indore City."

75. The admissions by DW-1 on three aspects i.e., (a) analysing call details in respect of certain mobile numbers; (b) obtaining source information from an informer which was passed on to MIG Police Station; (c) interrogation of Neha after her arrest, in the MIG police station, thus stand proved. PW-7's deposition also suggests that DW-1 was with the investigation team even on 23.06.2011 and hence, provides independent corroboration in supporting the appellants' arguments in this regard.

76. DW-1's role in the pre-arrest, intelligence-information gathering, the arrest, interrogation of Neha, which the prosecution tried to studiously keep away from the court thus, leads one to conclude that its version with respect to apprehension and arrest of Neha are not believable. It is also a matter of record that DW-3, the then Inspector General of Police Sanjay Rana admitted that the

police department had issued Ex. D32 on 04.10.2011 containing a list including at S. No. 26 - an unnamed informant -of persons given awards for their contribution. In the present case, all these materials i.e., evidence of DW-1 and DW-7 as well as the documents issued by the police departments/state governments itself, clearly points towards the involvement of DW-1, not merely at a peripheral stage, but on a pervasive basis, even after, in regard to the enquiry in the immediate aftermath of the crime, gathering intelligence information with respect to the probable accused; analysing call details, participating in the arrest, interrogation of the accused and even an involvement with further investigating steps leading to recovery of articles.

77. DW-6 Anil Verma (Neha's father) in his statement had deposed that Neha was taken away for questioning much earlier, on 19.6.2011 itself. He deposed that on 21.06.2011 one Kishan Panwar from Crime Branch went to him and said that Neha was using a stolen mobile phone for which an inquiry was being conducted. At his behest, DW-6 asked Neha to reach home immediately. Once she reached, DW-6 contacted Kishan Panwar and informed him about her return from the office. He reached DW-6's house 15-20 minutes later with DW-1. They checked Neha's mobile phone and then left the place stating that Neha would be taken for about an hour and a half for inquiry. DW-1 did not disclose where she would be taken but allowed the witness DW-6 to accompany them at a distance. According to DW-6, Neha was taken to SP's Office at Regal Crossing and taken upstairs. The witness was not allowed to go there, and instead was asked to leave, at which point he went home along with his son. He stated further that on 23.06.2011 at 07:30 AM or so he was asked telephonically to keep Neha's clothes outside, as the police was coming to collect them. The police reached DW-6's house in the evening at which point they took a maroon top and one pair of jeans. The witness was cross-examined by prosecution to suggest that his deposition was false; he denied it.

78. What is evident from an overall reading of the prosecution version as compared to the testimonies of DW-1, DW-3 and DW-4 as well as the documentary evidence is that the "breakthrough", claimed by the prosecution resulting from Neha's arrest on 22.06.2011 is not correct. The police had knowledge about the sim cards of deceased Aslesha and Megha. Apparently, the call details of these were analysed by DW-1. However, the prosecution kept these details away from the trial. Likewise, although PW-28 and PW-31 both elaborately described how Neha was arrested (especially role played by PW-4, PW-19 who relayed the information and the participation of PW-3, PW-6 as well as PW-36), all of them were conspicuously silent about DW-1. Whereas DW-1 admitted, in no uncertain terms, at two different places, to having participated in the interrogation of Neha and also having given information regarding her likely whereabouts- including the clothes that she would wear, leading to her arrest. The cat was out of the bag, so to say when PW-7 admitted that DW-1 participated in the recovery of articles on 23.06.2011, a day after the arrest of all the appellants.

79. Having regard to all these circumstances, the prosecution version with respect to Neha's arrest and interrogation cannot be believed. The suppression of these facts, from the court, attracts an adverse inference that the prosecution's version with respect to manner of Neha's arrest, and the role of DW-1, is unreliable.

80. The question which then arises is: what is the impact of the rejection of the manner of Neha's arrest in the prosecution's case? The appellant urged that, the entire story – i.e., disclosure statements and the recoveries effected on 22.06.2011 and 23.06.2011, has to be rejected. This court is of the opinion that such a drastic approach is uncalled for. Concededly the present case is entirely based on circumstantial evidence. The rejection of the prosecution version with respect to Neha's arrest would mean that only that circumstance is held not to be

proved. It is not that Neha's arrest provided sole foundation of the prosecution case. In some ways, it is an entry point; its rejection would mean that the court should proceed cautiously with other evidence, objectively determine whether all other circumstances were proved beyond reasonable doubt, and whether in the end the guilt of the accused and not others, has been so proved.

II. *Circumstances relating to arrest of the other appellants*

81. If the circumstances leading to Neha's arrest on 22.06.2011 be disbelieved, what remains as a matter of the record is that she was interrogated in the presence of PW-3 and PW-6 that day. It is necessary to analyse the depositions of these witnesses. PW-3 is a relative of the deceased, as well as Niranjan Deshpande (PW-1). He was present on 19.06.2011 and witnessed the seizure and sealing of blood samples, fingerprints and the articles found at the crime scene. He was also a witness to the inquest proceedings. He deposed that the IO (PW-31) asked him, in the morning of 22.06.2011 to reach the Police Station, with some other person. PW-31, however, did not support PW-3 about asking him to bring another person. Nevertheless, PW-3 and PW-6 reached the police station at around 7:30 AM. Neha's arrest is shown at 08:10 AM; the disclosure statement and recovery of two golden bangles, a broken *mangalsutra*, 3 *guriyas*, gold pendant, an ATM card belonging to deceased Megha, an Oriflame perfume bottle and an Oriflame form (apparently with Megha's signature) were witnessed by PW-3. He also deposed with respect to the arrest of Rahul (at 9:00 AM), disclosure statement by him and recovery of various articles i.e., a pistol, a knife, two golden bangles, part of a broken *mangalsutra* containing a "*guriya*" and chain (weighing approximately 9 grams), a black *guriya*, and Rahul's photograph (wearing a black beaded bracelet on his right hand). He further testified to the arrest of Manoj at 10:05 AM, on 22.06.2011, his disclosure and pointing to articles, leading to their recovery (Ex. P16 & Ex. P17). The recovered articles included two golden bangles, portion of a broken

mangalsutra, a knife and a photograph with Manoj in sunglasses. PW-6 corroborated those facts.

82. PW-3's testimony was impeached pointing to the discrepancy in time. He reached the police station after 7:30 AM. Further, in cross-examination, the witness was not able to depose about particulars of the houses the police party went to, who were there, etc. Likewise, a question mark was raised about PW-6. It was urged that the IO never asked another witness to accompany PW-3. It was urged these witnesses are interested persons, as they are related to the deceased and PW-1. Another argument regarding the recoveries on 22.06.2011 were that it is unbelievable that Rahul and Manoj would have kept the looted articles and the weapons used to assault and kill the deceased, given that they tried to dispose of other articles such as shoes, camera, clothes, etc. and hide the bike and scooty, etc. In the opinion of the court, the manner of arrest of these individuals, has been spoken to by and large consistently by the two witnesses PW-3 and PW-6 who have corroborated the IO's deposition. However, in respect of Neha, what is not explained is why PW-4 (Banno Solanki) did not participate in her arrest and search of her premises. After having called PW-4, to ensure compliance with the law that a woman police constable should apprehend, search and arrest a female accused, the prosecution has offered no explanation as to why PW-4 was not involved in the further proceedings. PW-4 admitted that she was sitting in the car when the team proceeded to Neha's house. Her presence in the team is confirmed by PW-3 as well as the IO. PW-4 herself does not corroborate the prosecution version about recoveries made from Neha's house.

83. As observed earlier, the seizure memos detailing the articles seized at the behest of the accused: Ex. P11 (Neha) included an ATM Card which belonged to Megha, the deceased; Ex. P14 (Rahul) included looted jewellery (golden bangles, part of broken *mangalsutra*), a country made pistol, a knife measuring

35.5 cm, and a photograph of him wearing a black diamond-like beaded bracelet on his right hand; Ex. P17 (Manoj) included looted jewellery (two gold bangles, part of a broken *mangalsutra*), an iron knife of overall length of 34.5 cm and a photograph of him wearing brown coloured sunglasses. As per the prosecution, these articles are related to their crime.

84. PW-3 and PW-6, both depose that after the seizure of the article each of them remained with the police till 5:00 PM on 22.06.2011. The prosecution version is that the arrest of all three accused persons were completed by 10:05 AM, their disclosure statements recorded, and all the articles seized by 10.35 AM (as per Ex. P17). There is no explanation as to why further investigation was not taken up. All that seems to have occurred on 22.06.2011 thereafter, i.e,. after 10:35 AM, was the nails of the accused were cut and seizure memos prepared (as deposed to by PW-3 and PW-6). The seizure memos in this regard are Ex. P18, P19 and P20. These were drawn in the early afternoon: Ex. P18 (13:05 hrs); Ex. P19 (13:15 hrs) and Ex. P20 (13:25 hrs). The prosecution alleged that later at Rahul's behest the left shoe worn by him during the incident was seized at 16:40 hrs from an open area near his house (Ex. P21).

85. The prosecution did not explain why there were breaks in the investigation, given that the disclosure statements of all accused, and consequent recoveries took place in the morning of 22.06.2011. It is also a matter of record that though the accused were arrested that day they were only produced before the magistrate on the next day. In other words, there was no impediment for the police to have proceeded further or taken immediate steps to secure all evidence. This aspect is, in this Court's opinion, important because even if the manner in which Neha was arrested was to be discounted (as discussed earlier) the fact that they were arrested in the presence of PW-3 and PW-6, further proceedings and investigative steps including the seizure of articles at the behest of the accused and pursuant to their statements, stand

proved. These are reasons why the events of 22.06.2011 (after the arrest of the accused, and recoveries were made at their behest) have to be segregated and seen differently from the events and circumstances relied upon by the prosecution on other dates.

86. The credibility of PW-3 and PW-6, in this Court's opinion, cannot be doubted. PW-3 was present on 19.06.2011, after discovery of the murderous attack and PW-1 Niranjan Deshpande stayed with him after reaching Indore. He (PW-3) was the deceased Rohini's nephew and even performed the funeral rites of the deceased. Likewise, PW-6 lived in Village Barlai which is about 45 minutes by bus, from Jaora (where PW-3 resided). He knew PW-3 and had known Rohini for about 10-15 years. He reached PW-3's house when the latter asked him to ccompanyy him to the police station, since Neha had been caught and her search had yielded an ATM card which belonged to Ashlesha. Of these two witnesses, PW-3 is related to the deceased; however, PW-6 was not. Both witnesses corroborated each other's testimony and prove the prosecution story about Neha's questioning, her arrest, disclosure statement, recoveries made pursuant to her statement, as well as the arrest, disclosure statements and recoveries made from Rahul and Manoj. Furthermore, there is no discrepancy between their testimonies and that of the IO (PW-31). Another piece of evidence is that PW-27, an officer of Bank of India, Ujjain deposed that he issued a letter (Ex. P98) to the SHO containing the ATM card numbers. Megha's ATM card, recovered pursuant to Neha's disclosure statement, was issued by his bank; this was among the articles seized on 22.06.2011.

87. An overall analysis of the testimonies of PW-3 and PW-6 shows that despite some inconsistencies, which can be put down to imperfect or faulty recollection of sequence of events, or about the people present etc., their testimonies are credible. The effect of their depositions is that they witnessed the disclosure statements of Neha, Rahul and Manoj, and also witnessed the

recovery of articles and their seizure by the police, which were recorded in seizure memos (Ex. P11, P14 and P17).

III. *Recoveries of 23.06.2011*

88. PW-7 Sandeep Narulkar is an independent witness, who testified to the disclosure statements of the accused Rahul and Manoj on 23.06.2011 and the recoveries made pursuant to it. He deposed to witnessing Rahul telling the police about the incident of 19.06.2011 and that in that incident, a camera and two mobile sets were looted. Rahul gave information about the camera, motorcycle, clothes worn, and knife used at the time of incident; he said that he could get the articles recovered. Then police prepared a disclosure memo (Ex. P28) witnessed and signed by PW-7. He said that on Rahul's direction, the police recovered the motorcycle in question from beneath a small bridge over Pithampur road, one dark brown coloured trouser, a full sleeved grey coloured shirt, and a blood-stained iron knife with metal handle (Ex. P29). Further, the police also seized a lens of a broken camera (Ex. P30). Both seizure memos (Ex. P29, P30) contained PW-7's signature. When shown in Court, he also identified the articles (brown colour full pant, knife, one lens of broken camera). He further stated that police interrogated Manoj before him and Manoj gave information about robbery and murder, and about the clothes and shoes worn at the time of incident and told that he could get them recovered. The police then prepared memorandum Ex. P31 containing the witnesses' signature. As per Manoj's direction, the police seized a "*firoji*" coloured t-shirt, a black coloured blood-stained full pant, a blue underwear and a pair of micro-leather black coloured shoes from his father's house; the seizure memo for these articles (Ex. P32) also contained his signature. He identified the articles - clothes, shoes and a broken Samsung mobile phone, recovered by police from a vacant plot near Maruti showroom under seizure *panchnama* (Ex. P33) with the witnesses'

signature. He mentioned that the mobile phone's IMEI number was 352450/03/115949/9.

89. PW-7 also witnessed Neha's interrogation where she provided information about committing robbery and murder; and told the police that she had hidden and could point out clothes and sandals worn at the time of incident, and Suzuki Access vehicle (Ex. P34). At her pointing out, the police seized the Suzuki Access Scooty in question, from behind the old OPD of M.Y. Hospital, from which: one service book, one blood-stained pink full sleeve shirt with white lining, a light blue coloured jeans with three buttons on the back pocket, a pair of ladies black coloured high heeled sandals with brown strip attached at the front and in the back of which, above the heels a chain was attached containing blood stains. These were seized by police (Ex. P35) containing the witnesses' signature. PW-7 identified these articles in court.

90. An overall reading of the depositions of PW-7 and PW-13 shows that disclosure statements were made by all the accused in the morning of 23.06.2011. However, the recovery of articles pursuant to the disclosure statements were in the afternoon: Ex. P29 (which relates to Rahul and evidenced the seizure of the motorcycle, a knife and his clothing) was at 15:30 hrs; Ex. P30 (which too at the behest of Rahul leading to seizure of a broken camera) at 16:40 hrs; Ex. P32 (pair of shoes, a t-shirt, a trouser and an underwear seized at the behest of Manoj) at 14:45 hrs; Ex. P33 (the other seizure at Manoj's behest, of broken mobile phone) at 16:00 hrs; and Ex. P35 (seizure of clothing items, blood-stained black sandals and Suzuki Scooty, at Neha's behest) at 17.30 hrs. The prosecution made no attempt to show why piecemeal recoveries were made when according to its witnesses, on the very first day i.e., on 22.06.2011, all the three accused had disclosed their roles in the crime and their willingness to cooperate as well as the recovery of the articles related to the crime - including those belonging to them or hidden by them.

91. The second unexplained feature is why two sets of witnesses were joined in the proceedings, on two consecutive dates. PW-3 and PW-6, witnessed the arrest of the three accused, their disclosure statements and recoveries made on the first day i.e., on 22.06.2011. An entirely different set of witnesses were called on the next day i.e., 23.06.2011 (PW-7 and Prakash Ichke). Furthermore, one of the recovery witnesses for 23.06.2011 (Prakash Ichke) was not examined. As noted previously, the recovery witnesses received phone call at around 7-8 AM and were asked to report to the Police Station which they did at around 8-8.30 AM on 23-06-2011; the disclosure statements made by the accused on that day were recorded at different points of time but before 10.00 AM. However, the prosecution does not explain the absence of any activity between around 10 AM and 1.30 PM when the first recovery was made that day. PW-7 on his own admission stated that he was acquainted with the deceased family; apparently, his cell phone numbers was known to them. As noted earlier, he also admitted that DW-1 Dipika Shinde had participated in the investigation proceedings that day.

92. All these factors, in the opinion of this court cast doubt on the prosecution version as to what occurred on the next day i.e., 23.06.2011. Given that the accused were detained and arrested in the early morning of 22.06.2011, that they made disclosure statements, and there were recoveries that day at their behest, which were completed that morning itself, the instalment or episodic procedure adopted by the investigation, throws doubts about its veracity. Nothing prevented the prosecution from acting on the statements made by the accused and collecting all the evidence – which by its admission was readily available and easily accessible (given the knowledge of the accused which they were willing to share) on the day of their arrest on 22.06.2011. Even if there were some impediments, in terms of, lack of time or otherwise, the involvement of an entirely different set of *panch* witnesses, without explaining why the other witnesses who had evidenced recoveries on 22.06.2011 could not be asked to

participate, underlines that doubt. The doubt gets further heightened by the fact that PW-7 knew the deceased family - and also claimed that his mobile number was available with them. The IO (PW-31) does not in his statement say anything about this. He was silent as to why PW-7 instead of the other three was involved in the proceedings in 23.06.2011, and regarding the non-examination of Prakash Ichke, the other witness to the recoveries. Since all the recoveries were made from open areas with no special features to highlight whether they were from certain hidden spaces, such recoveries of articles cannot be equated with the kind of recoveries made on 22.06.2011. This aspect is important because clothes seized by the police (which according to the prosecution were lying in open area, and thus exposed to elements) were articles from which samples for DNA were collected to ascertain if there were any matches with the DNA markers found on samples collected from the deceased and the crime scene.

IV. *Testimony of PW-10, the eyewitness*

93. The prosecution relied heavily upon the testimony of PW-10. This witness claimed that in the evening of 19.06.2011, he saw two boys trying to start a motorcycle one of them was bleeding from the ankle, and the other, at the forearm. He added that a girl arrived on a Scooty and advised them that it would be better to go to the hospital. The witness alleged that he had informed the police on the day after the incident i.e., 20.06.2011. He stated in cross-examination that after learning about the murder he claimed that he went to the police station. Later, he said that he went there to obtain a "*gumasta*" license. He admitted that he did not read newspapers but added that when he went to the police station, there was some discussion going on about the murder, upon which he volunteered to provide information and got his statement recorded. The witness said that he owned a tea shop and worked as a property broker; he later admitted that he did not have any registration as property broker. He also admitted to having previously deposed as a witness on behalf of the police in

some other case. PW-10's presence near the scene of crime, or rather after it, is explained by him, somewhat unconvincingly, as his effort to ascertain if some property was vacant. He is what one can call as a chance witness.

94. A chance witness is one, who appears on the scene suddenly. This species of witness was described in *Puran v. State of Punjab*[27] in the following terms:

> *"Such witnesses have the habit of appearing suddenly on the scene when something is happening and then of disappearing after noticing the occurrence about which they are called later on to give evidence."*

This court has sounded a note of caution about dealing with the testimony of chance witnesses. In *Darya Singh v. State of Punjab*[28] it was observed that:

> *"…where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence.…..If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised."*

In *Jarnail Singh v. State of Punjab*[29] again, this court held that:

> *"22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (Satbir v. Surat Singh*[30]*, Harjinder Singh v. State of Gujarat, Acharaparambath Pradeepan and Anr. v. State of Kerala*[31] *and Sarvesh Narain Shukla v. Daroga Singh*[32]*). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide Shankarlal v. State of Rajasthan*[33]*)."*

95. In the opinion of this court the deposition of this witness (PW-10) cannot be taken at face value. PW-10 improved upon his statement made to the police and was confronted in this regard. His initial statement to the police did not mention the presence of the girl (whom he identified as Neha in court).

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27 AIR 1953 SC 459
28 1964 (7) SCR 397
29 (2009) 9 SCC 719
30 (1997) 4 SCC 192
31 (2006) 13 SCC 643
32 (2007) 13 SCC 360
33 (2004) 10 SCC 632

Likewise, he improves upon his statement, by deposing in court that the girl had asked two boys to one injured seriously to the hospital. In addition, his contradictions as to what led him to the police station on 20.0.2011 – obtaining a *gumasta* license, or to report the crime; and his presence at the scene of the crime – as a property broker checking vacancy of a property, who admittedly had no license for this business, are material. These contradictions are serious inasmuch as they strike at the root of the witness's credibility. His prevarications and improvements especially about the presence of a girl are too serious and fundamental to overlook. Very crucially this witness appears to be a stock witness. For all the aforesaid reasons the depositions of PW-10 cannot be accepted.

V. *Identification of Manoj by PW-8*

96. The prosecution relied on the testimony of PW-8 Achyutmal Tejwani to say that Manoj had obtained treatment from him. The witness, during his deposition stated that he had studied from a Science College in Pakistan. He admitted to not being licensed to practise medicine, by the Medical Council of India; he also admitted that he did not hold any permission to practise as a doctor, but ran Kavita clinic. He identified Manoj in court, and said that on 19.06.2011, Manoj had secured treatment for an injury on his elbow, and another boy (who spoke in Sindhi) accompanied him. He proved Ex. P37, the slip issued by him, containing the prescription for Manoj, which was seized on 25.06.2011 (Ex. P36) by the IO (PW-31), who deposed to it.

97. This court is of the opinion that PW-8 is not a reliable witness. Apart from the fact that he is admittedly an unqualified professional, and an unlicensed one - at best a quack, counsel for the appellants quite correctly point out that his previous links with the police cannot be ruled out, for the reason that he migrated, later than during Partition, from Pakistan. The probability of him practising his profession under the shadow of police patronage, for some kind of

quid pro quo, i.e., being a convenient witness, leaves a lurking suspicion. The police did not involve him during the test identification parade; admittedly, Manoj was in fact taken to him during the investigation. In these circumstances, the testimony of this witness is not credible. This circumstance is therefore, held not to be proved.

VI. *Test Identification Parade of the accused*

98. The prosecution relied upon the testimonies of PW-10 and PW-18 (Pratap Kumar Agasiya, Naib Tehsildar). Both deposed that PW-10 had correctly identified Manoj and Rahul by specifically tapping their heads. According to PW-18, both the accused were made to stand with 10 other persons resembling them. The result of this identification memo i.e., the test identification parade ("TIP") proceedings were recorded as Ex. P38, where Manoj and Rahul were identified by PW-10, and Ex. P40 where only Manoj was identified by PW-11 Raju Sen. Likewise, PW-18 deposed that in a separate proceeding recorded as Ex. P39, PW-10 had identified Neha from amongst five other girls who had similar physical features.

99. The main argument against the TIP proceedings was that it was held after an inordinate delay. The appellants were arrested on 22.06.2011 and remained in custody till 30.06.2011. It was urged that no attempt was made to involve a magistrate, to have their TIPs either at that time, or thereafter and that the TIP was held only on 14.07.2011. Ex. P38, the TIP relating to Rahul and Manoj, records the names of 10 other men who the accused were made to stand with, anywhere as per their choice. Each person was covered with a blanket, upto their neck. It records that no police personnel were present when the proceedings took place, and the witness correctly identified the accused.

100. A popular and widely used method of accused identification, by witness, in criminal trials, is the identification parade. TIP procedures are used, where witnesses who claim to have seen the accused at, or about the time of

occurrence to identify such accused from the midst of other individuals, who bear physical attributes similar to them, without any aid or other source. TIPs are meant to test witness veracity and their capability to identify unknown persons. TIPs should normally be conducted at the earliest possible time to eliminate the chance of accused being shown to witnesses before the identification parade, which might otherwise affect such witnesses' memory. TIPs are conducted during investigation; however, there is no provision of law enabling an accused to claim it as a matter of right, as held in *Malkhan Singh v. State of MP*.[34] In *Ramanathan* v. *State of Tamil Nadu*[35] this court outlined the utility and weight of a TIP. There is no hard and fast rule that delay or failure in holding the TIP *ipso facto* renders the evidence inadmissible or unacceptable; it however, affects the credibility and weight attached to such identification, as held in *Shyamlal Ghosh v. State of West Bengal*[36].

101. This court has discussed earlier, with respect to credibility PW-10's testimony and why it cannot be taken at face value. Even otherwise, the fact remains that he omitted to mention basic details about the distance from between where he was, and where he saw the accused. Further, his account suggests that he apparently saw the accused, fleetingly. No attempt was made by the prosecution to draw a sketch or to show the approximate distance from where this witness (who is vital to its case) observed the accused. Given these facts, and the delay (unexplained by the prosecution, which had by its account, wrapped up the case by end of June 2011) to conduct the TIP after the accused's arrest, renders the TIP suspect. It cannot be said that the TIPs conducted and the subsequent dock identification, by PW-10 of the accused, are among the circumstances proved beyond reasonable doubt.

VII. *Recovery of articles and their Test Identification*

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34 (2003) 5 SCC 746 (para 7).
35 (1978) 3 SCC 86 (para 18).
36 (2012) 7 SCC 646

102. On the day of their arrest (22.06.2011), the accused made disclosure statements and pointed out to the police the places where the articles looted, or those relatable to the crime, were kept or hidden. These articles were seized on the same morning. In terms of Ex. P11, the articles recovered at Neha's behest *inter alia* were, two bent golden bangles approximately worth ₹ 50,000/-, a golden pendant, three *guriya, and* part of a *mangalsutra* with chain and *guriya* approximately worth ₹22,000, Megha's ATM card issued by Bank of India. Similarly, Ex. P14 (recoveries made at Rahul's behest) evidences two bent golden bangles having *aeronuma* design approximately worth ₹ 50,000/-, a *guriya*, part of a *mangalsutra* with chain approximately worth ₹ 20,000/-. Lastly, Ex. P17 (recoveries made at Manoj's behest) included *inter alia*, two bent golden bangles having round design approximately worth ₹ 50,000/-, a *guriya*, part of a *mangalsutra* with chain approximately worth ₹20,000/-.

103. On the previous day (21.06.2011), PW-1 Niranjan Deshpande had reported that some articles - 2 ATM cards (Megha and Ashlesha), Megha's mobile, Ashlesha's camera and specific jewellery items (belonging to Megha and Rohini), were missing from the premises.

104. On 09.07.2011, a TIP of the articles was conducted, under the supervision of PW-12 Zamil Khan, who was informed that the procedure was to be conducted. He deposed that the TIP was carried out at the Bharatiya Sangeet Kala Academy, Sector G, MIG colony, where a policeman from MIG police Station reached with a sealed packet. One Anil Soni also reached there with a similar packet. He said that two packets were opened and their contents were mixed together. Thereafter PW-1 reached the place; he observed the articles and identified them. PW-12 deposed as follows:

> *"In the identification, identifier Niranjay Deshpande had identified two gold bangles crumbled, one gold pendal (sic pendent), one broken Mangalsutra of a chain and stud with Guriya, two gold Arrow like bangles, one broken gold Mangalsutra, two gold designed bangles, one broken gold Mangalsutra of chain and one Guriya."*

105. The witness also deposed that after the identification was completed, the jewellery was re-sealed and the jewellery items brought by Anil Soni were taken away. He also identified the jewellery (which had been identified by PW-1 before him) in court. PW-1 deposed among similar lines. The only difference between the two depositions is that PW-1 stated that PW-7 was present (as a matter of fact, he was not, as is evident from the testimony of PW-7). Apart from urging this to be an inconsistency, counsel for appellants also cast suspicion on the TIP of the jewellery, urging that neither Anil Soni nor the police constable who took the sealed items to the venue of the TIP was examined. In this court's opinion, these omissions are minor, and do not shake the essential credibility of the proper identification of the jewellery. In fact, during cross examination, PW-12 clearly deposed that besides him no one was present during the TIP of the articles and that after PW-1 completed the identification, he drew the memo (Ex. P1) and kept the jewellery separately; the rest were taken away by Anil Soni.

106. In this court's opinion, a joint reading of the testimonies of PW-1 and PW-12, on the one hand, and the TIP proceedings on the other (Ex. P1, dated 09.07.2011) establishes that the prosecution proved that the identification of the looted articles, were correctly identified by PW-1. The accused's counsel had sought to urge that the articles were common pieces of jewellery, without any distinctive features and that PW-1 could hardly know these- particularly, jewellery of his mother-in-law. If one keeps in mind that PW-1 had reported the loss of the articles, and listed them specifically, in his statement which was given to the police on 21.06.2011, their subsequent recovery, at the behest and pointing out of the accused, and their correct identification by PW-1 before PW-12, there cannot be doubts on its credibility. During cross examination, PW-1 was not questioned about how he could identify jewellery articles of his wife, daughter and mother-in-law. There can be various reasons, why someone may

be able to recollect or remember jewellery or other valuables. There cannot be any general assumption that a husband would not be able to remember or recollect the personal articles of his wife, or that a wife cannot be expected to recollect and identify the personal effects of her husband. It all depends on the personality and individual traits of human being, which uniquely differ from each other. It is possible that PW-1 had an eye for detail; it is equally possible that he was present when the valuables were bought; or yet, it is further possible that they were part of a set, presented to the deceased individuals. The recollection, reporting and identification of the *mangalsutra*, is more specific. PW-1 could reasonably be assumed to be aware of that article, belonging to Megha, his wife. In these circumstances, the evidence relating to the recovery of items belonging to the deceased, recovered from the accused's premises at their behest, and their correct identification by PW-1 during TIP were proved beyond reasonable doubt, by the prosecution.

VIII. The circumstances relating to expert evidence regarding the appellants' fingerprints

107. PW-21 Dr. Sudhir Sharma, Senior Scientific Officer in Scene of Crime Mobile Unit, deposed that when he reached the crime scene on 19.06.2011 at 6:35 PM, the main door of the flat was open and not sealed. In his deposition he mentioned the shoe marks and other physical evidence which existed, and also was cross examined about whether they were tampered with. Additionally, he stated that a computer was in the flat, which could have been seized, but he was unaware as to whether it was seized or not.

108. PW-24 KK Dwivedi (the fingerprint expert) searched the crime scene for possibility of lifting impressions of fingerprints. A set of five fingerprints (i.e., Ex. P80, "chance fingerprints") were lifted by him, and signed by two witnesses (PW-5 and PW-9) as well as himself. He claimed that PW-17 Satyanarayan Patel (photographer of crime scene) had taken photographs of the spots, from

where the prints were collected. However, this is neither corroborated by the testimony of PW-17, nor in the exhibits on record.

109. Prints A and B were lifted from the inner back portion of door of bedroom adjoining the bathroom on the first floor; Prints C and D were lifted from the outer portion of door of bedroom adjoining the kitchen; and Print E was lifted from the inner portion of the same door. Upon examination, A, B, D, and E were found suitable for comparison.

110. The fingerprints of the deceased [Ex. P81 (Megha), Ex. P82 (Rohini) and Ex. P83 (Ashlesha)] were lifted by constable Dinesh on 20.06.2011. Constable Dinesh, however, was not examined by the prosecution in the course of trial. The fingerprints of the three appellants [Ex. P41 (Rahul), Ex. P42 (Manoj), and Ex. P43 (Neha)] were obtained by PW-13 constable Vijay Singh on 24.06.2011 who deposed in chief examination that he took the signatures of the three accused persons (who were present in court and identified by him), on their respective fingerprint slips, and later sent them to the SSP Office. In cross-examination he deposed to being trained by the fingerprint department and that he was competent to take prints. He observed an injury/cut caused by a knife, on the ring finger of Rahul's right hand, and no other injuries on the fingers of the three accused. It also mentioned that he did not obtain any written consent from the accused.

111. The report of the fingerprint expert (Ex. P84) dated 11.07.2011 by PW-24 K.K. Trivedi, coupled with his testimony, forms the crux of the prosecution case regarding fingerprints. On 27.06.2011, fingerprints of the accused were received and compared with the chance fingerprints by PW-24, who used the 8-point method and found that prints A and B matched with the index and middle finger respectively of Rahul's right hand; fingerprint D matched with the middle finger of Manoj's right hand, and Print E matched with Neha's right thumb. The fingerprint report was sent to the Director, Finger Print Bureau Bhopal by PW-

24 on 06.07.2011 which was verified by the former vide letter dated 11.07.2011. The prosecution relied on these findings to corroborate the presence of the appellants at the crime scene.

112. Interestingly, PW-24 KK Dwivedi in his chief examination has stated that letter no. AC Branch/E/80/11 dated 20.06.2011 was sent by Finger Print Branch Indore to MIG Police Station for comparison of chance fingerprints with the fingerprints of family members/suspects. However, his cross-examination reveals no such letter was on the record. The cross-examination also shows that he did not obtain fingerprints of any other person (including family members of the deceased) or article that was present at the place of the incident, for the purpose of comparison - a point which has been urged by the counsels on behalf of the appellants, laboriously. He also deposed that there was neither a mark of the whole palm on the door, nor bloody fingerprints on the door; and the other fingerprints available on the door were unfit for lifting.

113. The appellants' counsel questioned the circumstances relating to the fingerprint evidence, on grounds such as (i) absence of any elimination print; (ii) irregularity in obtaining the appellant's fingerprints; (iii) non-examination of constable Dinesh (who collected the fingerprints of the deceased for the process of elimination) by the prosecution; (iv) the absence of covering letter, along with the fingerprint expert's report, when produced in court; and (v) the fingerprints of the appellants were not procured in accordance with law, as there was no compliance with Identification of Prisoners Act, 1920.

114. This court would take up the last argument, at the outset. In *Sonvir v. State (NCT) of Delhi*[37], it was held that the provisions of the Identification of Prisoners Act, 1920, were not mandatory, but rather directory, and that they only affirm the *bona fides* of the sample-taking (of the fingerprints of an accused) and eliminate the possibility of evidence fabrication. This court however, made

37 (2018) 8 SCC 24

it clear that not following or complying with the provisions of the Act, would not *per se* vitiate the evidence, in a given case. This was again affirmed in *Ashish Jain & Ors. v. Makrand Singh*[38].

115. In the present case, PW-24's deposition corroborates the lifting of the fingerprints by constable Dinesh in his presence. Therefore, the non-examination of constable Dinesh is not fatal to the prosecution's case regarding fingerprints. As far as the integrity of the crime scene is concerned, PW-21 deposed that though the door to the flat was open, when he reached there, the police were standing outside and it was not possible that the crime scene was contaminated. The IO (PW-31) admitted that the crime scene was not sealed when the investigation took place on the evening of 19.06.2011; however, he clarified that the forensic department personnel who reached the site before him had secured the place. Given this consistent evidence, this court is of opinion that the possibility of members of the public or unauthorized persons, contaminating the crime scene, so soon after the incident was reported, is remote.

116. Fingerprints collected at a crime scene from all personnel who were at the scene and who might have inadvertently touched physical evidence, are known as 'elimination prints'. In the present case, elimination prints of the deceased were obtained on 20.06.2021; they were part of the record. The record would show that PW-3, PW-5, PW-9 were present at the crime scene, but admittedly their fingerprints were not obtained. It appears from the testimony of PW-9 that initially, the witnesses were asked to be outside, but later, asked to join the proceedings, to witness the seizures made. All the three witnesses, consistently deposed regarding fingerprint experts' visit to the site, the use of powder on the surfaces and lifting of fingerprints. PW-5, in cross examination said that his fingerprint was not obtained. During hearing, counsel for the appellants had repeatedly emphasized that elimination prints were not taken from others

38 (2019) 3 SCC 770

present at the crime scene; they also highlighted that fingerprint were not lifted from the knives, pistol and ornaments seized from the accused. In the opinion of this court, nothing material turns on this aspect. In a recent judgment - which the appellants relied on-, i.e. *Hari Om @ Hero v State of UP*[39] this court acquitted the accused, on the ground that the fingerprint expert's opinion, even if accepted, would could not have been the sole basis of conviction. What is important is whether the crime scene was secured, and whether the lifting of prints was witnessed. On both counts, the prosecution evidence is credible and worthy of acceptance. These are also corroborated by the testimony of PW-21, the Senior Scientific Officer, and the crime scene report dated 20.06.2021 (Ex. P77) tendered by him.

117. The other aspect, relating to fingerprint evidence is that the fingerprint report (Ex. P84) was prepared on 11.07.2011. Ex. P85 to Ex. P92 are photographs of the fingerprints lifted (these were annexed to the fingerprint report Ex. P84). The fingerprint report was enclosed with a letter (Ex. P93). Given that the expert deposed to lifting the prints, which were corroborated by the three witnesses (PW-3, PW-5 and PW-9) apart from the IO, the credibility of this circumstance, i.e., the lifting of the prints from the crime scene, their match with the sample prints of the accused, and the expert's testimony stand proved. The appellant's arguments questioning the credibility of this part, on the ground of delay in the report, the prints being chance prints, lack of elimination prints, or the crime scene not being shown to have been secured, etc, are insubstantial and are rejected.

IX. Circumstances relating to injuries on the deceased

118. The post-mortem report (Ex. P44) indicates the extent of injuries on the bodies of the deceased. Megha (aged 46) had a firearm injury on the forehead and 4 deep stab wounds (abdomen, shoulder and chest). Rohini (aged 76) had

39 (2021) 4 SCC 345

stab wounds across her body - ranging from her fingers and hands, arms, and numerous injuries on her abdomen and chest which had pierced her vital organs. Similarly, Ashlesha (aged 22) received numerous stab injuries across her body – including, her fingers, hands and forearms, hip, neck, abdomen and chest which pierced her vital organs, back, and many superficial stab wounds on her thighs.

119. The expert opinion of PW-15 Dr. Thakur (the doctor who conducted the post-mortem) was that the cause of death of Megha, was shock caused by firearm injuries and haemorrhage. Rohini and Ashlesha's death was due to shock and haemorrhage from their numerous stab injuries. All three deaths were homicidal in nature. This witness confirmed- both in his opinion and his testimony that all injuries on the three deceased, except the gunshot injury (No. 1- on the body of Megha) could have been caused by the two knives, seized from the possession of Rahul and Manoj, respectively (Articles A and B, forwarded to him for opinion under query Ex. P47).

X. The Ballistic report

A. *The recovery of bullets from the crime scene and the deceased Megha*

120. Three cartridges (one live, and two shells) were seized by the IO (PW-31) on 19.06.2011 from the crime scene. He prepared the site map (Ex. P25 and Ex. P-26) and recovery memo (Ex. P27) witnessed by PW-5 (landlord Vishal Pandey) and PW-9 (one Mahesh Parmar, neighbour of informant Vishal Pandey). The IO deposed to preparing the site map witnessed by PW-5 and to seizing one empty, spent cartridge (lying on the floor near the body of Ashlesha), one empty, spent cartridge from near bed, and one unused, live cartridge from near the body (head) of Rohini. He also deposed that all the cartridges had the inscription 'K.F. 7.65' on them. PW-5 deposed that the spot map was prepared in front of him and similarly deposed as to the location of two cartridges – found under the bed and near Rohini's body. However, the

appellants did not cross-examine PW-5 about the number of bullets seized, i.e., on the third bullet. PW-9 also deposed on similar lines.

121. PW-15 (doctor conducting the post-mortem examination) deposed that on 20.06.2011, PW-33 S.S Kujur brought the dead body of Megha Deshpande with a cover letter at 11:00 AM; and the post-mortem began at around 11:45 AM. Post-mortem was conducted along with Dr. Prashant Rajput and Dr. N. Fadse (both were not examined). On post-mortem of deceased Megha's body, a bullet was recovered. The extraction of bullet is described as wound no. 1 and the bullet was recovered from anterior of cranium. PW-15 deposed that all the articles were sealed, labelled and handed over to PW-33. The post-mortem report (Ex. P44) was prepared and taken from MY hospital to the police station by PW-33, and a seizure memo (Ex. P127) was prepared by PW-34 Mahesh Prasad Yadav. The seizure report was witnessed by Head Constable Shambhunath and Constable Ramjan, both of whom were not examined. PW-33's deposition corroborated the facts relating to him and his involvement.

122. Further, PW-15 in his cross-examination stated that the weapon was shot in contact with the body and that he could not state which weapon caused injuries to Megha. In cross-examination, PW-33 admitted that no specimen seal was obtained by him from the doctor and no receipt was given to the doctor upon receiving the said articles. Further, he stated that on 19.06.2011 he took the bodies to the hospital by police vehicle after 6:00 PM. He deposed to going home after locking the mortuary (as it was night time) and leaving the keys in the hospital. PW-34 Mahesh Prasad Yadav deposed about preparing of seizure memo (Ex. P127) on 20.06.2011 upon presentation of the articles by PW-33; and in cross-examination he admitted to not sending a copy of seizure memo to the hospital, not filling column no. 10 regarding description of the seized items, the sample seal not being marked, and that he did not mark the number of articles on the items mentioned in the seizure memo. He further deposed that he

did not open the packets to see what was inside and also did not receive the post-mortem report himself, but only made a *roznamcha* entry regarding seizure of items. The joint reading of the testimonies of PW-15, PW-33 and PW-34 establishes that a bullet was extracted by the doctor (PW-15), and a seizure memo was prepared in connection; the articles seized were then sealed (although no mark was placed on the seal).

B. *Recovery of bullet from Rahul and facts relating to it*

123. Parallel to the recovery of the cartridges from the crime scene, the prosecution story was that the accused Rahul suffered a bullet injury during the incident. The prosecution alleged that Rahul went to Annapurna police station and reported a false case of shooting. As to this, PW-30 R.S. Makwana, (A.S.I Annapurna PS) deposed that on 19.06.2011 he saw Rahul @ Govind coming to the police station in an autorickshaw alleging that someone shot him in the foot and that he was going to the District Hospital for treatment. He gave the information to PW-29 Gauri Shankar Chadar. PW-30 along with Constable Dinesh (who was not examined) went to the District Hospital. A *dehatinalsi* was prepared (Ex. P103). Later PW-30 went back to the police station to register the FIR (Ex. P107). PW-26 Dr Mukesh Bachawat (Medical Officer in the Dist. Hospital) examined Rahul at around 22:40 hrs, and prepared medical report (Ex. P97), before referring Rahul to MY Hospital. Constable Dinesh accompanied Rahul to MY Hospital for his treatment. During the early hours of 20.06.2011, PW-32 Dr Nilesh Guru examined Rahul and removed the bullet from his right foot. It was deposited in the MLC Section of the hospital (Ex. P113). PW-30 stated that he took the sealed packet from MY Hospital on 23.06.2011 which contained the bullet extracted from Rahul @ Govind's foot. Shivraj Singh Raghuwanshi (not examined) prepared the seizure memo which was exhibited as Ex. P108 (Article Z-7) and PW-22 witnessed it. In the cross examination,

PW-30 was questioned about the condition of the bullet, whether it had traces of blood, etc.

124. The appellants argued that the prosecution failed to establish that the bullet in fact was extracted from Rahul's right foot and it was the one sent to the ballistic expert. The case made out was that the boy examined by PW-26 and PW-32 was not Rahul at all. However, on that score, there cannot be any doubt because PW-29 G.S. Chadar, who recorded the *dehatinalsi* identified Rahul in the court as Govind, who had reported that he was shot on the foot by an unknown person and reported the matter to PS Annapurna. Furthermore, the signatures of the complainant on the *dehatinalsi* (Ex-P103) are identical to the signatures of the appellant Rahul in his statement under Section 313 CrPC. The doubt sought to be raised with respect to the manner of seizure of bullet in this Court's opinion, is not merited. The identification of Rahul by PW-29, the deposition of PW-30 and PW-31 (IO) show that the doctor who extracted the bullet initially kept it in safe custody with the hospital itself in the MLC Section, which was later retrieved by PW-30 on 23.06.2011 and the seizure made on the same day in the MIG Police Station. PW-22 Bharat Singh Thakur was in fact a witness to the seizure memo (Ex. P78, seized as Ex. P108 by PS MIG Police Station). Thus, an overall reading of the testimonies and articles seized, in the opinion of the Court, lends credence to the fact that Rahul suffered a bullet injury on 19.06.2011, and proves the circumstances surrounding it, as presented by the prosecution.

125. The Ballistics Report (Ex. P52) was prepared by PW-16 Bheem Bahadur, Head Constable at DRP Line, Indore. It described the nature of the firearm seized, and cartridges recovered. The Examination Report prepared by the State Forensic Science Laboratory (Ex. 120) stated that on chemical examination of blood found on a piece of bandage (swab of gunshot wound of deceased), it was not found positive for nitrate, copper or lead. However, the report stated that

two bullets were compatible to the certified bulled of 7.65 mm calibre cartridge, and Bullet TB-A1 were found similar. Three pieces of skin, found copper positive. Importantly, according to the report, two bullets (EB2 and EB1) recovered from the body of Megha, the deceased, and Rahul's right foot respectively, were fired from pistol Ex. A1. The report also stated that the bullet fired at the right shoe (seized on 22.06.2011 under seizure memo Ex. P-75, which was proved by PW-20) was caused by a copper jacketed bullet. Ex. P120, which was exhibited by the IO (PW-31), also listed *inter alia*, several articles such as Article A-5 (containing two fired empty shells of 7.65 mm calibre cartridge which were marked as EC-l & EC-2); Article A-6 (containing live 7.65 mm calibre pistol cartridge which was marked as LR-l); Article A-10 (containing blood-stained Vicks bottle); Article B-5 (containing three small pieces of skin jointly marked SK-l); Article B-6 (containing one piece of bandage cloth with substance thereon); Article F-1 (a country made pistol A-1); Article F-6, (containing one right leg shoe) and Article F-7 (a bullet marked as EB-1). The Ballistics Report, dated 14.07.2011, stated that PW-16 Bhim Bahadur, ballistics expert test fired from the pistol received from the MIG Police in a sealed packet. The ballistic report stated *inter alia*, that

> *"These are empty shells of used cartridge of 7.65 mm caliber pistol and on whose head stamp "KF" is marked. They have mark of firing pin/ breach face. On comparison through microscope both are found alike as well as like test fire cartridge TC-Al. The photo-micrograph has been taken for alike situation of Ex. ECl &TC-Al wherein the points of similarity have been marked."*

PW-16 who prepared the report, stated in his deposition that he:

> *"..had checked operating firing pin, magazine catch and these were found in serviceable condition. fire opened by, this country-made pistol could cause loss of life for the people."*

126. The IO deposed that all seized articles were sent for chemical and ballistic examination on 13.07.2011 by letter Ex. P115, to which the acknowledgement receipt was Ex. P116 to P118. The ballistic expert PW-16 was not cross examined. There is nothing on record that discredits the ballistics

examination or conclusions drawn by the expert PW-16, and this circumstance is therefore, proved.

XI. *DNA Evidence and the DNA expert's report*

127. A sample of blood found on the floor of the incident where the body of deceased Megha was lying, was collected on a cotton swab, marked as A-1 and put in a paper envelope. Similarly, a sample of blood found near deceased Rohini, was marked as A-2 and sample of blood near deceased Ashlesha, was marked as A-3. A sample of plain cotton was also placed in a paper envelope and marked as A-4, as per seizure memo (Ex. P27) prepared by the IO at the crime scene. The seizure of these samples/articles (among others) from the crime scene is corroborated by the testimony of PW-5 and PW-9 who are also witnesses to Ex. P27. PW-17 Satyanarayan Patel (crime scene photographer) had photographed the crime scene (Ex. P61 to Ex. P65). These photos show blood stains as well as the position, and direction of the bodies. The clothes (B1, C1, D1), vaginal swabs (B2, C2, D2) and pubic hairs (B3, C3, D3) were also taken from each of the deceased - Megha, Rohini and Ashlesha, respectively.

128. The clothes from which DNA material was obtained from the accused, were recovered pursuant to disclosure statements (Ex. P28, Ex. P31, and Ex. P34) made on 23.06.2011. Seizures of the relevant clothing articles (Ex. P29, Ex. P32, and Ex. P35) were drawn in the presence of PW-7 Sandeep Narulkar and Prakash Ichke (who was not examined by the prosecution), which as discussed at length earlier - throws some doubt on the recoveries made on 23.06.2011. In addition to their clothes, the prosecution submitted that DNA material was also extracted from the knife seized from Manoj on 22.06.2011 (Ex. P14), and the iron knife from Rahul on 23.06.2011 (Ex. P29).

129. The deposition of PW-35 Dr. Pankaj Srivastava, Scientific Officer, DNA fingerprint unit FSL Sagar, read with the DNA Report dated 10.08.2011 (Ex. P122) prepared by him, provide details of the DNA analysis. This witness stated

that the department received 19 exhibits concerning this case on 14.07.2011, in a sealed condition, which as per his cross, he examined on 18.07.2011. The expert's report reveals that DNA was extracted through the Automated DNA Extraction System 12 GC and Organic extraction. 16 desired genetic markers were taken from DNA to be tested by Amplification Multiple PCR Technique. Thus, genotyping profile was obtained along with Automated DNA sequencer of amplified DNA, AmfF/STR Identifier kit, AmpF/STR Y Filer kit. The analysis of the results was done by gene mapping software v3.5. PW-35 clarified that 'physical substance' mentioned in the report is meant to be blood.

130. All of the articles obtained in connection to Megha (cotton swab of blood near her body A1, clothes B1, vaginal smear slide B2, bullet seized from her body B4) were compared and uniform female DNA profile was found. Similarly, a uniform female DNA profile was found in the case of articles in connection to Rohini (A2, C1, C2) and Ashlesha (A3, D1, D3). These DNA profiles were then compared with the DNA material extracted from the clothes of the three accused, and the two knives recovered from Rahul and Manoj, which form a part of the DNA report. The conclusions of the DNA matches and consequent opinion of PW-35 in the report, are summarised in the below table:

Victim		**Articles of accused**
Megha	A1, B1, B2 and B4	Clothes (Ex. F4) and knife (Ex. F5) recovered from Rahul
		Clothes (Ex. H2) belonging to Neha
		Bullet (Ex. B4) recovered from body of deceased
Ashlesha	A3, D1, D2	Clothes (Ex. G3) and knife (Ex. G1) recovered from Manoj

131. DNA material found on the bloodstained bedsheet seized from the scene of the crime (Ex. A9) indicated presence of mixed DNA profile of the deceased, i.e. DNA material of more than one individual. There is no mention of DNA

material on the articles matching Rohini's DNA profile. As is evident from the above table, the DNA material which the prosecution relies on, is that of the *victims* which according to the prosecution, was found on articles recovered from the possession of the accused. It is not a case of having found DNA material of the accused, at the crime scene or on the bodies of the deceased. Hence, the fingernail clippings (Ex. P18, P19 and P20) taken from the accused at the time of arrest, seem to have not been considered/used.

132. During cross-examination what was put to PW-35, was whether: (a) the time period between seizure/incident and examination would have any bearing on the DNA analysis, (b) there was a cut mark in Manoj's clothes (G3), (c) the articles were in sealed condition, (d) the clothes had to be kept in a particular condition, and if blood could mix when clothes kept together - the answers to which are satisfactory. However, the typographical error of mentioning ID 3074 as ID 3078 raises concern and was pressed upon by counsel for the appellants.

133. Before this court, the appellants have raised concerns regarding the unexplained delay in sending the articles seized on 23.06.2011 only 20 days later on 13.07.2011 (Ex. P115) and the condition in which they were preserved, the lack of statistical analysis, and that the observation sheet on which PW-35 deposed to have made notings on, was not placed on the record. Serologist Reports prepared by Dr. M.P. Singh (Ex. P123 and P124) are also on the record which reveal that blood was present on one bullet (B4), but blood quantity was not enough to run tests. This naturally raises a question on whether it was possible to extract DNA, at all. The other articles mentioned in the serologist's report were A10 (Vicks bottle), F2 (Rahul's left shoe), F3 (Rahul's nails), F6 (Rahul's right shoe), F7 (bullet recovered from Rahul's right foot), G2 (Manoj's nails), G4 (Manoj's shoes), H1 (Neha's nails) and H3 (Neha's sandals). However, the blood stains were too disintegrated or the quantity of blood on the articles, was not sufficient to run classification tests.

134. During the hearing, an article published by the Central Forensic Science Laboratory, Kolkata[40] was relied upon. The relevant extracts of the article are reproduced below:

> *"Deoxyribonucleic acid (DNA} is genetic material present in the nuclei of cells of living organisms. An average human body is composed of about 100 trillion of cells. DNA is present in the nucleus of cell as double helix, supercoiled to form chromosomes along with Intercalated proteins. Twenty- three pairs of chromosomes present In each nucleated cells and an individual Inherits 23 chromosomes from mother and 23 from father transmitted through the ova and sperm respectively. At the time of each cell division, chromosomes replicate and one set goes to each daughter cell. All Information about Internal organisation, physical characteristics, and physiological functions of the body is encoded in DNA molecules in a language (sequence) of alphabets of four nucleotides or bases: Adenine (A), Guanine (G}, Thymine (T} and Cytosine (C) along with sugar- phosphate backbone. A human haploid cell contains 3 billion bases approx. All cells of the body have exactly same DNA but it varies from individual to Individual in the sequence of nucleotides. Mitochondrial DNA (mtDNA} found in large number of copies in the mitochondria is circular, double stranded, 16,569 base pair in length and shows maternal inheritance. It is particularly useful in the study of people related through the maternal line. Also being in large number of copies than nuclear DNA, it can be used in the analysis of degraded samples. Similarly, the Y chromosome shows paternal inheritance and is employed to trace the male lineage and resolve DNA from males in sexual assault mixtures.*
> *Only 0.1 % of DNA (about 3 million bases} differs from one person to another. Forensic DNA Scientists analyse only few variable regions to generate a DNA profile of an individual to compare with biological clue materials or control samples.*
>
> ……
>
> ***DNA Profiling Methodology***
>
> *DNA profile is generated from the body fluids, stains, and other biological specimen recovered from evidence and the results are compared with the results obtained from reference samples. Thus, a link among victim(s) and/or suspect(s) with one another or with crime scene can be established. DNA Profiling Is a complex process of analyses of some highly variable regions of DNA. The variable areas of DNA are termed Genetic Markers. The current genetic markers of choice for forensic purposes are Short Tandem Repeats (STRs). Analysis of a set of 15 STRs employing Automated DNA Sequencer gives a DNA Profile unique to an Individual (except monozygotic twin). Similarly, STRs present on Y chromosome (Y- STR) can also be used in sexual assault cases or determining paternal lineage. In cases of sexual assaults, Y-STRs are helpful in detection of male profile even in the presence of high level of female portion or in case of azoo11permic or vasectomized" male. Cases In which DNA had undergone*

40 DNA profiling in Justice Delivery System, Central Forensic Science Laboratory, Directorate of Forensic Science, Kolkata (2007).

environmental stress and biochemical degradation, min lSTRs can be used for over routine STR because of shorter amplicon size.

DNA Profiling is a complicated process and each sequential step involved in generating a profile can vary depending on the facilities available In the laboratory. The analysis principles, however, remain similar, which include:
1. isolation, purification & quantitation of DNA
2. amplification of selected genetic markers
3. visualising the fragments and genotyping
4. statistical analysis & interpretation.
In mtDNA analysis, variations in Hypervariable Region I & II (HVR I & II) are detected by sequencing and comparing results with control samples:….

Statistical Analysis
Atypical DNA case involves comparison of evidence samples, such as semen from a rape, and known or reference samples, such as a blood sample from a suspect. Generally, there are three possible outcomes of profile comparison:
1) Match: If the DNA profiles obtained from the two samples are indistinguishable, they are said to have matched.
2) Exclusion: If the comparison of profiles shows differences, it can only be explained by the two samples originating from different sources.
3) Inconclusive: The data does not support a conclusion Of the three possible outcomes, only the "match" between samples needs to be supported by statistical calculation. Statistics attempt to provide meaning to the match. The match statistics are usually provided as an estimate of the Random Match Probability (RMP) or in other words, the frequency of the particular DNA profile in a population.
In case of paternity/maternity testing, exclusion at more than two loci is considered exclusion. An allowance of 1 or 2 loci possible mutations should be taken Into consideration while reporting a match. Paternity of Maternity Indices and Likelihood Ratios are calculated further to support the match.

Collection and Preservation of Evidence
If DNA evidence is not properly documented, collected, packaged, and preserved, It will not meet the legal and scientific requirements for admissibility in. a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be Identified, preserved, packed and sent for DNA Profiling."

135. In an earlier judgment, *R v Dohoney & Adams*[41] the UK Court of Appeal laid down the following guidelines concerning the procedure for introducing DNA evidence in trials: (1) the scientist should adduce the evidence of the DNA

41 1997 (1) Crl App Rep 369

comparisons together with his calculations of the random occurrence ratio; (2) whenever such evidence is to be adduced, the Crown (prosecution) should serve upon the defence details as to how the calculations have been carried out, which are sufficient for the defence to scrutinise the basis of the calculations; (3) the Forensic Science Service should make available to a defence expert, if requested, the databases upon which the calculations have been based.

136. The Law Commission of India in its report[42], observed as follows:

> *"DNA evidence involves comparison between genetic material thought to come from the person whose identity is in issue and a sample of genetic material from a known person. If the samples do not 'match', then this will prove a lack of identity between the known person and the person from whom the unknown sample originated. If the samples match, that does not mean the identity is conclusively proved. Rather, an expert will be able to derive from a database of DNA samples, an approximate number reflecting how often a similar DNA "profile" or "fingerprint" is found. It may be, for example, that the relevant profile is found in 1 person in every 100,000: This is described as the 'random occurrence ratio' (Phipson 1999).*
>
> *Thus, DNA may be more useful for purposes of investigation but not for raising any presumption of identity in a court of law."*

137. In *Dharam Deo Yadav v. State of UP*[43] this court discussed the reliability of DNA evidence in a criminal trial, and held as follows:

> *"The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made-up of a double standard structure consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines…..DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones, etc. The question as to whether DNA tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the Court often accepts the views of the experts, especially when cases rest on circumstantial evidence. More than half a century, samples of human DNA began to be used in the criminal justice system. Of course, debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in Court. DNA profile, however, is consistently held to be valid and reliable, but of course, it depends on the quality control and quality assurance procedures in the laboratory."*

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42 185th Report, on *Review of the Indian Evidence Act*, 2003
43 (2015) 5 SCC 509

138. The US Supreme Court, in *District Attorney's Office for the Third Judicial District v. Osborne*,[44] dealt with a post-conviction claim to access evidence, at the behest of the convict, who wished to prove his innocence, through new DNA techniques. It was observed, in the context of the facts, that

> *"Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid-1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue. DNA testing has exonerated wrongly convicted people, and has confirmed the convictions of many others."*

139. Several decisions of this court - *Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh*[45], *Santosh Kumar Singh v. State Through CBI*[46], *Inspector of Police, Tamil Nadu v. John David*[47], *Krishan Kumar Malik v. State of Haryana*[48], *Surendra Koli v. State of Uttar Pradesh & Ors*[49], and *Sandeep v. State of Uttar Pradesh*[50], *Rajkumar v. State of Madhya Pradesh*[51] and *Mukesh & Ors. v. State for NCT of Delhi & Ors.*[52] have dealt with the increasing importance of DNA evidence. This court has also emphasized the need for assuring quality control, about the samples, as well as the technique for testing- in *Anil v. State of Maharashtra*[53]

> *"7. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with DNA profile of the suspect, it can generally be concluded that both samples have the same biological origin. DNA profile is valid and reliable,*

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44 557 U.S. 52 (2009)
45 (2009) 14 SCC 607
46 (2010) 9 SCC 747
47 (2011) 5 SCC 509
48 (2011) 7 SCC 130
49 (2011) 4 SCC 80
50 (2012) 6 SCC 107
51 (2014) 5 SCC 353
52 (2017) 6 SCC 1
53 (2014) 4 SCC 69

> *but variance in a particular result depends on the quality control and quality procedure in the laboratory."*

140. This court, in one of its recent decisions - *Pattu Rajan v. The State of Tamil Nadu*[54], considered the value and weight to be attached to a DNA report:

> *"33. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party."*

141. This court, therefore, has relied on DNA reports, in the past, where the guilt of an accused was sought to be established. Notably, the reliance, was to *corroborate*. This court highlighted the need to ensure quality in the testing and eliminate the possibility of contamination of evidence; it also held that being an opinion, the *probative value* of such evidence has to vary from case to case.

142. In the present case, what is apparent, is that PW-35 has virtually echoed the DNA analysis in his chief examination, and not chosen to elaborate on the random occurrence ratio, i.e., the probability of the accused's samples matching with those allegedly found at the crime scene. This court has already discussed whether the recoveries of 23.06.2011 pursuant to disclosures made that day can be accepted and held that they are suspect and need to be discarded. This leaves the report, to the extent it says that samples lifted from recoveries made at the crime scene matched what was seized on 22.06.2011 (knives, and other articles), to be inconclusive.

143. It is noteworthy that seizure Memo Ex-27, in terms of which Article A-9 (ID 3063) is said to have been seized, does <u>not record that as a matter of fact, a bed-sheet was seized.</u> If one keeps in mind that source H2 (ID 3078) in relation

54 (2019) 4 SCC 771

to Neha was seized on 23.04.2011, and from an open area, the likelihood of its contamination- even if *arguendo* the genuineness of its recovery might have been accepted- carried some degree of probability. For these reasons, it is held that the DNA report in the present case cannot have a clinching, or high degree of probative value.

XII. *Evidence relating to footprints*

144. The Inspection Report (Ex. P77) prepared by PW-21 Dr. Sudhir Sharma described the scene of the crime. It mentioned that three types of blooded partial shoe prints were found in the following areas: (a) near the table at the crime scene; (b) in the pool of blood near the body of Ashlesha; and (c) on the floor near the almirahs.

145. PW-21 did not, in his cross-examination remember the number of partial shoe prints found at the incident (which he later says were at 2-3 places), but states that there were three kinds of prints. He also mentioned that no dust was present, and therefore barefoot prints were not possible. In his chief examination, PW-21 mentioned that at his instruction, PW-17 (crime scene photographer) took scaled photographs of the blood-smeared partial shoe prints found at the place of the incident (which are Ex. P66 to Ex. P74). This is not mentioned in the chief examination of PW-17; who only later in his cross, states that he had taken 8x12 scaled photos of the footprints and locations with blood stains, which were Ex. P66 to Ex. P74.

146. As already elaborated earlier, Manoj's shoes were seized at his behest (Ex. P31, Ex. P32) and sandals from Neha based on her disclosure (Ex. P34, Ex. P35) on 23.06.2011. Rahul's right shoe was seized by Annapurna PS on 22.06.2011 which is corroborated by the testimony of PW-20 Harbhajan Singh (independent witness), who stated that Abhay Tiwari (not examined) had spotted the blood-stained shoe in his garden and reported it to the police, and

that both of them were witnesses to the seizure memo (Ex. P75). The left shoe was seized (Ex. P21) pursuant to disclosure made by Rahul to the IO.

147. In furtherance of Ex. P115 letter dated 13.07.2011 sent by the IO to the State Forensic Laboratory, Examination Report of shoe prints dated 13.09.2011 was prepared. This report stated that, the exhibits were received by the Ballistics Branch on 02.08.2011 in sealed condition. For comparative examination, sample prints of soles of shoes of Ex. F2, F6, and G4 and sandals of Ex. H3 were made (photographs 10, 11, 12, 13 and 14). The shoeprints found were merely mentioned together – it is unclear as to which *photograph* (#10, 11, etc.) is the sample of which *shoe* (F2, F5, etc.).

148. This court is of the opinion that much weight cannot be attached to the footprint evidence in this case. The report explicitly notes that shoeprints are incomplete and unclear, and that specific and clear opinion could not be given. Yet, the expert proceeded to give his opinion about the matching of the prints. In *State of Bihar v Kapil Singh*[55] this Court had held that evidence of an expert relating to presence of a footprint, at the best is of a weak nature. This view was also shared by *Mohd. Aman v. State of Rajasthan*[56] and *Balbir Singh v State of Punjab*[57]. The prosecution, in the opinion of this court, has not proved this circumstance.

Principles applicable to appreciation of evidence in cases involving circumstantial evidence

149. In one of its earlier decisions this court had in *Hanumant v. The State of Madhya Pradesh*[58] indicated that the correct approach of courts trying criminal cases involving circumstantial evidence should be that the circumstances alleged, be fully established; all the facts so established should be consistent only with hypothesis of the guilt of the accused; circumstances should be

55 1968 (3) SCR 310
56 (1997) 10 SCC 44
57 1996 (6) SCALE 72
58 AIR 1953 SC 343

conclusive and of such tendency that they should be such as to exclude every hypothesis but the one proposed to be proved. This view was followed later in *Tufail v. State of Uttar Pradesh*[59] and *Ram Gopal v. State of Maharashtra*[60]. All these and other decisions were revisited in the three-judge bench decision in *Sharad Birdi Chand Sarda v. State of Maharashtra*[61] and the court enunciated a set of principles that every court trying criminal cases entirely based on circumstantial evidence had to follow.

150. The conclusions recorded by this court in *Sarda* were listed in Para 152 (which were characterised in Para 153 as "five golden principles"). They are extracted below:

> *"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr v State of Maharashtra where the following observations were made:*
>
> *"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*
>
> *(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,*
>
> *(3) the circumstances should be of a conclusive nature and tendency.*
>
> *(4) they should exclude every possible hypothesis except the one to be proved, and*
>
> *(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*
>
> *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."*

151. These principles have stood the test of time, and the evidence in all criminal cases, have been evaluated in their light, throughout the country. In

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59 (1969) 3 SCC 198
60 AIR 1972 SC 656
61 (1984) 4 SCC 116

light of these binding principles this court would now examine whether the circumstances supported by evidence, i.e., those accepted by this court in the previous part of the judgement, was of such conclusion as to stand the test of the five golden principles enunciated in *Sarda* (supra).

Summation of proof of circumstances

152. The prosecution relied upon several circumstances which were accepted concurrently by the Courts below. These were the depositions of PW-10 the chance witness who claimed to have witnessed all three accused fleeing the spot around 5:45 or 6:00 PM on the day of the incident; the recovery of articles from the crime scene (fired cartridge, live bullet, sunglasses, black beads, etc.) and lifting of the fingerprints (testified by PW-24 and corroborated by witnesses PW-5 and PW-9); and seizure of stolen articles pursuant to disclosure by the accused. PW-1 who recorded his statement a day after the incident (on 21.06.2011), specifically reported the loss of jewellery items such as four pairs of bangles, *mangalsutra*, ATM cards, etc. These were later recovered at the direction of the accused, which the prosecution claimed to be a breakthrough.

153. It was found by the courts below that Neha was arrested in the morning of 22.06.2011 after she was found suspiciously loitering by PW-28. The arrest occurred after she was searched and later questioned. The arrest was witnessed PW-3 and PW-6 who also deposed to witnessing the police recording Neha's disclosure statement. Recoveries of valuables and articles, such as two pairs of golden bangles, part of a broken *mangalsutra*, other valuables and an ATM card, which belong to Megha were from her house. Neha's disclosure statement about the involvement of other accused (Rahul and Manoj) led to their arrest and disclosure statements on the same day – all of which was witnessed by PW-3 and PW-6. Again, gold jewellery items were recovered from Rahul's premises as also a country-made pistol, and subsequently, a knife. In addition, a photograph with him wearing sunglasses was seized from his house. Manoj was

likewise arrested and his disclosure statement led to the recovery of a knife, a pair of golden bangles, part of a broken *mangalsutra*, etc. Later during the same day on 22.06.2011, a right shoe was recovered by another police station (Annapurna PS). It was seized; which was witnessed by PW-20. At that time, its connection with the murders was unknown. The prosecution also relied on a disclosure statement said to have been recorded on 23.06.2011 leading to the recovery of clothes at the behest of Neha, Rahul and Manoj from various open sites. Further, at Neha's behest a Scooty with a service book was recovered and seized, and at Manoj's behest, a motorcycle reportedly stolen was found. These recoveries were witnessed by PW-7 an independent witness. The prosecution relied upon two sets of TIP proceedings, which sought to identify on the one hand, Manoj and Rahul, and on the other, Neha. It also relied upon the TIP proceedings in which PW-1 identified the stolen articles which he had reported loss of, on 21.06.2011 itself. The prosecution had relied upon other evidence such as the match of fingerprints, in terms of the expert's report (Ex. P84, by PW-24) upon the reports of the ballistic expert (PW-16), and of the DNA expert (PW-35). It also sought to rely upon the report of another expert who spoke about the probability of shoe print match.

154. In the preceding discussion of the evidence in the earlier part of this judgement, this court has held that though the prosecution version of how Neha was arrested had to be disbelieved, it did not taint her subsequent disclosure, which led to the seizure and recovery of stolen articles from her premises - four stolen pieces of jewellery, and an ATM card which belonged to Megha, the deceased (proved by PW-27, bank official). The previous discussion of the evidence relating to the other accused led this court to infer that the prosecution was able to prove the recovery of articles seized on 22.06.2011 from the premises of Rahul and Manoj i.e., golden bangles, parts of a broken *mangalsutra,* each from the houses of the accused, a country made pistol and a knife, from Rahul's house at his behest. This court also concluded that the TIP

proceedings conducted in respect of the stolen articles was validly proved by the prosecution. The report of the ballistic expert PW-16, has been held to have established that the seized bullets (from the crime scene), matched with the test fired bullet from the pistol seized from Rahul's house at his behest. The recovery of a right shoe with a bullet hole on 22.06.2011, likewise was proved by the prosecution. The other circumstance which the prosecution relied upon in this context, pointing to Rahul's involvement was his treatment by PW-32. Rahul had late in the evening of 19.06.2011, reported to PS Annapurna, that he was shot on the right foot, by some unknown assailants which was recorded by PW-29, who also identified him in the court. PW-29 further deposed that Rahul first went to a District hospital and was treated by PW-26, who then referred him to MY hospital. Later in the early hours of 20.06.2011 Rahul was operated upon by PW-32 who extracted the bullet, sealed it and kept it with the MLC cell. This bullet was seized by the police and sent to the ballistic expert (PW-24) who in his report supported the prosecution's version that the bullet was fired from the same weapon which had discharged the bullet that was extracted from the deceased Megha’s body.

155. This court has disbelieved the prosecution allegation with respect to the circumstances surrounding Neha's arrest, principally because of the evidence of DW-1. It is quite clear that DW-1 Deepika Shinde was involved to an extent during the initial stages of the investigation and according to the police records, was responsible for the breakthrough which led among others, to her out-of-turn promotion, swiftly. This court has also disbelieved the story of the prosecution with respect to the recoveries alleged to have been made on 23.06.2011, mainly on the ground that when according to the official version the accused were nabbed and had made the disclosure statements the previous day, nothing prevented the police from recording the entirety of it and proceeding to recover articles which were supposedly hidden in open spaces. Further, the court has not

accepted the prosecution's story with respect to the chance witnesses, PW-10 and his identification of the accused in TIP proceedings.

156. During the hearing, the appellants' counsel had urged that the findings of the trial court are unsustainable, because they overlooked several *lacunae* which cumulatively tended to undermine the prosecution's case. The omission to examine certain witnesses (such as PW-1's driver, Nandakumar; Abhay Tiwari, who along with PW-20 found the right shoe with a bullet hole; Amit Soni, who went to the TIP of articles, with some jewellery items; Prakash Ichke, who witnessed the recoveries and seizures on 23.06.2011, Constable Dinesh, who accompanied Rahul to MY hospital, etc.). It was also emphasized that the silence of certain witnesses (such as PW-4, in regard to whether she witnessed the arrest, and search of Neha; of PW-19, who was silent about receiving a report from PW-28 regarding Neha's suspicious activities in the morning of 22-06-2011; silence by prosecution witnesses about DW-1's role), too, cast grave doubts about the prosecution version. Furthermore, it was contended that the seizure, sealing, transmission of articles found at the crime scene and recovered from the accused's premises, as well as open areas, as well as their chain of custody was not proved.

157. This court has previously discussed the probative value of the evidence relied on by the prosecution, and rejected the way in which Neha was apprehended, the recoveries made on 23.06.2011, the TIP of the accused, the deposition of PW-10 and of PW-8, and the DNA and shoeprint analysis. The first question is whether having regard to the rejection of some of the prosecution evidence, the case against the accused, as a whole, stands disproved. This aspect has been considered in earlier decisions of this court where defects in investigation, or lapses in the recollection during testimonies of witnesses, were involved. In *State of U.P. v. Anil Singh*[62], this court observed as follows:

62 (1988) Supp SCC 686

> *"17. It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."*

In *C. Muniappan v. State of Tamil Nadu*[63] it was held that:

> *"The defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth.*

A similar approach was adopted in *Surajit Sarkar v. State of West Bengal* [64] and *Shanker & Ors. v. State of Madhya Pradesh*[65]. In *Harijana Thirupala and Ors. v. Public Prosecutor, High Court of A.P., Hyderabad*[66] this court said that:

> *"…The case of the prosecution must be judged as a whole having regard to the totality of the evidence.*
>
> *In appreciating the evidence, the approach of the court must be integrated not truncated or isolated. In other words, the impact of evidence in totality on the prosecution case or innocence of Accused has to be kept in mind in coming the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses."*

158. This court has further emphasized that if discrepancies in the depositions are minor, or that witness contradict themselves during their testimonies (as opposed to their previous police statements) what is important is the nature of contradictions. In *Rammi @ Rameshwar v. State of Madhya Pradesh*[67], this Court held that:

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63 (2010) 9 SCC 567
64 (2013) 2 SCC 146
65 (2018) 15 SCC 725
66 (2002) 6 SCC 470
67 (1999) 8 SCC 649

> *"24….Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."*

In *Appabhai and Anr. v. State of Gujarat*[68], it was ruled that *"The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded"*. In a similar vein, it was observed, in *Vinod Kumar v. State of Haryana*[69] that

> *"Only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that it would be justified in jettisoning his evidence."*

159. The omission of some of the prosecution witnesses to mention a particular fact, or corroborate something, which is deposed to by other witnesses, therefore, does not *ipso facto* favour an accused. What is important, however, is whether the omission to depose about a fact is so fundamental that the prosecution version becomes shaky and incredulous. In the present case, the omission to depose about certain facts, by PW-4, or PW-19, or any other witness cannot inure to the accused's benefit. Each of the facts they omitted, was supported by one or more witnesses. Likewise, the failure to examine certain persons, like Anil Soni, Prakash Ichke, Abhay Tiwari, or Nandakumar, cannot inure to the accused's benefit. Anil Soni was present during the TIP of seized articles, when other similar articles brought by him, for comparison and identification by PW-1. The latter witness was able to identify the articles which had been seized from the accused; this was deposed to by PW-12, whose testimony cannot be doubted. The failure to examine Anil Soni therefore, was a lapse, but not a fatal one, as far as the TIP itself went. Likewise, the failure to examine Prakash Ichke is of no consequence, because the recoveries made on

68 1988 Supp (1) SCC 241
69 (2015) 3 SCC 138

23.06.2011 have not been accepted. The omission to examine Nandakumar is also inconsequential, given the sequence of reporting of the crime, and the rapidity of the events which developed after it. No doubt, Abhay Tiwari noticed the right shoe with a bullet hole, first; however, PW-20 was also with him; he deposed to the fact of its discovery and seizure. Similarly, the failure to examine constable Dinesh is also not fatal, given the testimony of PW-29 and PW-30.

160. In *Shivaji Sahebrao Bobade v. State of Maharashtra*[70] , this court held that even where a case hangs on the evidence of one eye witness, it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration; it was observed that

> *"It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."*

Kartike Malhar v. State of Bihar[71] referred to previous decisions, and stated:

> *"On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelu Thevar case and, therefore, conviction can be recorded on the basis of the statement of a single eye witness provided his credibility is not shaken by any adverse circumstance appearing on the record against him and the court, at the same time, is convinced that he is a truthful witness. "*

161. Therefore, unless it is shown that the omission to examine a witness, who had previously participated during the investigation and whose statement was recorded by the police, undermines the prosecution case, or impacts on it significantly, the foundation of the fact or facts which are sought to be proved, remains unshaken as long as that fact is deposed to or spoken about by other witnesses, whose testimonies are to be seen in their own terms. Therefore, the omission to examine the individuals left out, but who the prosecution claimed, had participated during the investigation, did not affect its case, as far as the circumstances held to have been established by it, are concerned. Having dealt with contentions of the accused, and also discussed circumstances that could be

70 (1973) 2 SCC 793
71 (1996) 1 SCC 614

established (and what was not established) this court proceeds to summarize its findings.

162. As against Neha, this court has held that the circumstances proved are, *firstly*, recovery of articles including two golden bangles, a broken *mangalsutra*, 3 *guriyas*, a gold pendant, an ATM Card which belonged to Megha on 22.06.2011. The loss of these articles was reported by PW-1, on 21.06.2011, i.e. one day before Neha's arrest. The *second* circumstance proved by the prosecution is the TIP of these articles by PW-1 who was able to correctly identify them (as also corroborated by PW-12 during the trial). Linked with this circumstance is the deposition of PW-27, a Bank of India, Ujjain official who deposed to issuing a letter to the SHO, (Ex. P98), containing the ATM card numbers. The ATM card (5264959108034023) which belonged to Megha, recovered on 22.06.2011 pursuant to Neha's disclosure statement, from her house, was issued by that bank. The *third* circumstance proved by the prosecution against Neha is her fingerprint. PW-24 KK Dwivedi, the fingerprint expert, deposed to searching the crime scene for possibility of lifting impressions of fingerprints. A set of five fingerprints (i.e. Ex P80 chance fingerprints) were lifted by him which was witnessed by two witnesses (PW-5 and PW-9) who corroborated the fact. This court has held, previously that the possibility of others' presence at the crime scene, and its contamination could be ruled out, because of the deposition of these two witnesses, as well as other depositions. PW-17 obtained the fingerprint samples of Neha (Ex. P43), which he deposed to during the trial. The deficiencies alleged by the appellants, in the opinion of this court, about the procedural lapses in the collection of such evidence, are not convincing. The evidence of PW-24, as well as his report (Ex. P84) prove that a chance fingerprint (sample E, collected from the crime scene) matched with the sample obtained from her, by PW-17 during the investigation. The *fourth* circumstance, against Neha, which was established during the trial - and a vital one, is her knowledge of the crime. Her disclosure statement, led to

arrests of Rahul and Manoj, and recovery of stolen and other articles from their possession. The circumstances surrounding the manner of Neha's apprehension have been disbelieved by this court, as well as the testimony of PW-10 and the TIP proceedings, during which he identified her.

163. As against Rahul, this court has held that *firstly*, the circumstances relating to his arrest (witnessed by PW-3 and PW-6), on 22.06.2011 was proved by the prosecution. The *second* circumstance proved is that his disclosure statement led to recovery and seizure of stolen articles and other articles connected with the crime (Ex. P14), including two bent golden bangles, part of broken *mangalsutra*, a country made pistol, a knife measuring 35.5 cm, and a photograph showing Rahul wearing black diamond-like beaded bracelet. The *third* circumstance is that, like with Neha, PW-1 identified the gold jewellery recovered from Rahul's possession, during the TIP (further corroborated by PW-12). The *fourth* circumstance proved is that PW-24 the fingerprint expert, deposed that he found that prints A and B lifted from the crime scene (as corroborated by PW-5 and PW-9) matched with the index and middle finger prints respectively of Rahul's right hand, in the sample (Ex. P41) collected from him by PW-17. The *fifth* circumstance proved during the trial is that Rahul had reported late in the evening of 19.06.2011, that he was shot on the right foot, by unknown persons. This was recorded in the form of a *dehatinalisi* against unknown persons; later an FIR (Ex. P107) was registered by PW-30 for offences punishable under Sections 294, 307 and 34, IPC. Rahul was initially taken to the District hospital (proved by the treatment card Ex. P97 dated 19.06.2011). Rahul was however, referred to MY hospital, and examined by PW-32, who operated upon him. Ex. P113 is the discharge card of MY hospital signed by PW-32 (who also deposed about it) on 20.06.2011. PW-29 who recorded the initial report *dehatinalisi*, also identified Rahul as the boy who had reported the incident. The bullet extracted from his foot was deposited (under memo Ex. P113) in the medico legal cell of the hospital, and later seized (under memo Ex.

P108) on 23.06.2011. The FIR relating to this case was later closed. The other fact proved is the seizure of a right shoe (Ex. P75) under jurisdiction of Annapurna PS (proved by PW-20), which the trial court observed had a bullet hole at the top. The *sixth* circumstance proved against Rahul, which is material, is the ballistic report which stated that the two bullets (found at the crime scene) were compatible to the certified bullet of 7.65 mm calibre cartridge; Bullet TB-A1 was found similar. Three pieces of skin were found copper positive. Importantly, according to the report, two bullets, EB2 and EB1 (recovered from the body of Megha, the deceased, and Rahul's right foot respectively) were fired from pistol Ex-A1, seized from Rahul's house. The report also stated that the gun-shot fired at the seized right shoe (mentioned above) was caused by a copper jacketed bullet. All this was proved by the ballistics report (Ex. P120) that had analysed each of these items. The report also revealed that the ballistics expert (PW-16) had test fired from the pistol sent to FSL, and had found that the pistol had signs that the two spent cartridges, were fired from it.

164. As against Manoj, this court has held several circumstances to have been proved. The *first* circumstance proved against him, is his arrest and subsequent disclosure statement, at 10:05 AM on 22.06.2011 (proved by PW-3 and PW-6). The *second* circumstance is the recovery and seizure of articles, at Manoj's behest, and from his possession, including - two golden bangles, portion of a broken *mangalsutra*, a knife and a photograph with Manoj in sunglasses (Ex. P17, also proved by same witnesses). The *third* circumstance proved against Manoj is that PW-1 identified the golden jewellery recovered from his possession, during the TIP (corroborated by PW-12).

165. This court is of the opinion that all the circumstances and the link connecting them, was sufficiently established by the prosecution and proved beyond reasonable doubt. Similarly, every hypothesis suggesting the innocence

of the appellants is ruled out by such evidence, and the irresistible inference which follows, is their guilt.

166. In the opinion of this court, the proof of the circumstances against the appellants clearly points to their guilt, and involvement in the crime. It appears that the appellants had informed themselves about the deceased and their movement. Perhaps they kept a watch over the area. Their common intention clearly was to rob the deceased, who had newly shifted to Indore and into the locality, on 19.06.2011. Though the exact time of occurrence is unknown, the post-mortem report reflected the duration of death within 12 to 36 hours from the time procedure started, which was after 11 AM on 20.06.2011. It is reasonable to infer, therefore, that death occurred sometime during the day, on 19.06.2011. Though the evidence of PW-10 has been disbelieved, the evidence of PW-5, PW-9 and PW-2, shows that the crime was noticed in the evening of 19.06.2011 when the bodies were discovered, and the police reached the scene.

167. The nature and description of the injuries on the deceased show that they had apparently put up a fight- which perhaps the appellants had not expected. The intention to rob the deceased, and coerce them into handing over their valuables, soon turned violent, due to the unexpected fight put up against the accused. There are several sharp-edged injuries, and one bullet injury which fatally wounded Megha. As a result, it is evident that to subdue the three deceased women, the accused resorted to frenzied knife attacks. The persistent resistance given by the deceased, coupled with the nature of injuries with sharp weapons (the two knives) were fatal to both Rohini and Ashlesha. The fact that the accused had to repeatedly stab them, reveals that the said appellants were not familiar with wielding such a weapon. Weapons (2 knives and 1 pistol) have specifically been recovered from the possession of Manoj and Rahul, and in these circumstances, their conviction for the offences with which they were charged, is justified.

168. Information as to how these attacks occurred within the house of the deceased and the distinct roles played by the accused, are in the special knowledge of only the accused; but no such information was forthcoming through the course of the trial or appellate stage. This court[72] has held that common intention requires prior meeting of mind, which can also be developed in the spur of the moment, provided there is premeditated concert. The circumstances reflect that there was a clear common intention among the three accused, to rob the house, and upon facing resistance - to complete the job and leave undetected, by all means necessary. While no weapon has been recovered from Neha, it is clear that she was involved in the offences, and was present at the scene of the crime. This is evidenced by *firstly*, the fingerprint expert's testimony and report, which clearly reflects that her fingerprint was lifted from the crime scene; *secondly,* the recovery of stolen articles (gold jewellery, Megha's ATM card, etc.) from her possession; and *thirdly,* the fact that Manoj and Rahul are only arrested pursuant to her disclosure of their participation - all of which, cumulatively, clearly establish her involvement. The lack of an overt or specific act of violence attributable to Neha does not exonerate her, given that the prosecution has been able to prove her presence at the crime scene and participation in the commission of the offences, and that there was common object.

169. For the above reasons, all three accused are held guilty of the offences under Section 397/34, 449/34 and 302/34 IPC. Additionally, Manoj and Rahul's conviction under Section 25(1-B)(B) of the Arms Act, and Rahul's conviction under Section 27 of the Arms Act, is upheld.

170. Before proceeding to consideration of the question of sentence, this court finds it necessary to briefly highlight the role of the public prosecutor and trial court in a criminal trial, so as to safeguard the rights of the accused. The concealment of DW-1's role in this case's investigation (her analyzing of call

72 *Ramashish Yadav v. State of Bihar* (1999) 8 SCC 555

detail records of the deceased and in connection to Neha – which was not produced in trial; tip-off allegedly received regarding Neha's whereabouts and what she would be wearing; participating in Neha's arrest, and subsequent involvement on 23.06.2011 in recoveries of articles) points to concerning gaps in the manner of investigation carried out initially, or at the very least, an untruthful recollection and presentation of it, for the purposes of trial. As elaborated earlier, these facts prompted this court to draw adverse inferences against the prosecution's version of Neha's arrest. Other circumstances have been proved sufficiently to conclude their guilt and result in conviction. However, it is appropriate to also point out that concealment of DW-1's role and failure to include the call detail records, could have severely prejudiced the accused, had these other circumstances not been made out. Therefore, at this juncture, it is pertinent to note and reiterate the role of the public prosecutor, and trial court, in arriving at the truth by way of *fair disclosure* and *scrutiny by inquiry*, respectively.

171. A public prosecutor (appointed under Section 24 CrPC) occupies a statutory office of high regard. Rather than a part of the investigating agency, they are instead, an independent statutory authority[73] who serve as officers to the court[74]. The role of the public prosecutor is intrinsically dedicated to conducting a fair trial, and not for a "thirst to reach the case in conviction". This court in *Shiv Kumar v. Hukam Chand*[75] further held that

> *"….if an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the force and make it available to the accused…".*

In *Siddharth Vasisht @ Manu Sharma v. State of NCT Delhi*[76] (hereafter *'Manu Sharma')* it was concluded that

73 *Hitendra Vishnu Thakur v. State of Maharashtra* (1994) 4 SCC 602
74 Deepak Aggarwal v. Keshav Kaushik, (2013) 5 SCC 277
75 (1999) 7 SCC 467
76 (2010) 6 SCC 1

> *"187. Therefore, a Public Prosecutor has wider set of duties than to merely ensure that the accused is punished, the duties of ensuring fair play in the proceedings, all relevant facts are brought before the court in order for the determination of truth and justice for all the parties including the victims. It must be noted that these duties do not allow the Prosecutor to be lax in any of his duties as against the accused."*

172. In *Manu Sharma*, the appellants in question had argued that the right to fair trial included a wide duty of disclosure on the public prosecutor, such that non-disclosure of any evidence – whether or not relied upon by the prosecution – must be made available to the defence. This court considered Section 207 and 208 CrPC, Rule 16[77] of the Bar Council of India Rules (which is limited to evidence on which prosecutor proposes to rely on), and English law. The common law position culled out was that subject to exceptions like sensitive information and public interest immunity, the prosecution should disclose any material which might be exculpatory to the defense. Such a position, however, was not accepted by this court, in its totality. It was held that such obligations are on a different footing in India, given the fundamental canons of our criminal jurisprudence founded on Articles 20 and 21 of the Constitution, which require not just the investigating agency, but also courts in their own independent field, to ensure that investigation is fair and does not hamper the individual's freedom, except in accordance with law, i.e., ensure adherence to the rule of law. Relevant extracts that merit repetition:

> "***199.*** *It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law dehors his position and influence in the society.*
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77 Rule 16 of the Chapter II, Part VI of the Bar Council of India Rules under the Advocates Act, 1961: *"16. An advocate appearing for the prosecution in a criminal trial shall so conduct the prosecution that it does not lead to conviction of the innocent. The suppression of material capable of establishing the innocence of the accused shall be scrupulously avoided."*

> **201.** *Historically but consistently the view of this Court has been that an investigation must be fair and effective, must proceed in proper direction in consonance with the ingredients of the offence and not in haphazard manner. In some cases besides investigation being effective the accused may have to prove miscarriage of justice but once it is shown the accused would be entitled to definite benefit in accordance with law. The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of the police to make investigation. These well-established principles have been stated by this Court in Sasi Thomas* v. *State* [(2006) 12 SCC 421 : (2007) 2 SCC (Cri) 72] , *State (Inspector of Police)* v. *Surya Sankaram Karri* [(2006) 7 SCC 172 : (2006) 3 SCC (Cri) 225] and *T.T. Antony* v. *State of Kerala* [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] .
>
> **202.** *In Nirmal Singh Kahlon v. State of Punjab* [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523*] this Court specifically stated that a concept of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India. We have referred to this concept of judicious and fair investigation as the right of the accused to fair defence emerges from this concept itself. The accused is not subjected to harassment, his right to defence is not unduly hampered and what he is entitled to receive in accordance with law is not denied to him contrary to law*."

173. The scheme of the CrPC under Chapter XII (information to police and powers to investigate) is clear – the police have the power to investigate freely and fairly; in the course of which, it is mandatory to maintain a diary where the day-to-day proceedings are to be recorded with specific mention of time of events, places visited, departure and reporting back, statements recorded, etc. While the criminal court is empowered to summon these diaries under Section 172(2) for the purpose of inquiry or trial (and not as evidence), Section 173(3) makes it clear that the accused cannot claim any *right* to peruse them, unless the police themselves, rely on it (to refresh their memory) or if the court uses it for contradicting the testimony of the police officers.[78]

174. In *Manu Sharma*, in the context of policy diaries, this court noted that "*the purpose and the object seems to be quite clear that there should be fairness in investigation, transparency and a record should be maintained to ensure a proper investigation*". This object is rendered entirely meaningless if the police fail to maintain the police diary accurately. Failure to meticulously note down the steps taken during investigation, and the resulting lack of transparency,

78 *Mukund Lal v. Union of India* 1989 Supp (1) SCC 622, *Malkiat Singh v. State of Punjab* (1991) 4 SCC 341.

undermines the accused's right to fair investigation; it is up to the trial court that must take an active role in scrutinizing the record extensively, rather than accept the prosecution side willingly, so as to bare such hidden or concealed actions taken during the course of investigation.[79]

175. In the present case, the trial court ought to have inquired more deeply into the role of DW-1, given that by her own deposition she had admitted to analyzing call detail records and involvement in Neha's arrest – all of which had been suppressed by the prosecution side, for reasons best known to them. In this context, a reading of Section 91 and 243 CrPC as done in *Manu Sharma*, is important to refer to:

> *"217. ..Section 91 empowers the court to summon production of any document or thing which the court considers necessary or desirable for the purposes of any investigation, inquiry, trial or another proceeding under the provisions of the Code. Where Section 91 read with Section 243 says that if the accused is called upon to enter his defence and produce his evidence there he has also been given the right to apply to the court for issuance of process for compelling the attendance of any witness for the purpose of examination, cross-examination or the production of any document or other thing for which the court has to pass a reasoned order."*

176. The court went on to elaborate on the *due process* protection afforded to the accused, and its effect on fair disclosure responsibilities of the public prosecutor, as follows:

> *"218. The liberty of an accused cannot be interfered with except under due process of law. The expression "due process of law" shall deem to include fairness in trial. The court (sic Code) gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. <u>This constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.</u>*

79 Role of the courts in a criminal trial has been discussed in *Zahira Habibulla H.Shiek v. State of Gujarat* (2004) 4 SCC 158.

219. The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as aforereferred to. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain. As already noticed the provisions of Section 207 have a material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression "documents on which the prosecution relies" are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

220. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely.

221. It will be difficult for the Court to say that the accused has no right to claim copies of the documents or request the Court for production of a document which is part of the general diary subject to satisfying the basic ingredients of law stated therein. A document which has been obtained bona fide and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially.

> *222. The concept of disclosure and duties of the Prosecutor under the English system cannot, in our opinion, be made applicable to the Indian criminal jurisprudence stricto sensu at this stage. However, we are of the considered view that the doctrine of disclosure would have to be given somewhat expanded application. As far as the present case is concerned, we have already noticed that no prejudice had been caused to the right of the accused to fair trial and non-furnishing of the copy of one of the ballistic reports had not hampered the ends of justice. Some shadow of doubt upon veracity of the document had also been created by the prosecution and the prosecution opted not to rely upon this document. In these circumstances, the right of the accused to disclosure has not received any setback in the facts and circumstances of the case. The accused even did not raise this issue seriously before the trial court.*
>
> (*emphasis supplied)*

177. In this manner, the public prosecutor, and then the trial court's scrutiny, both play an essential role in safeguarding the accused's right to fair investigation, when faced with the might of the state's police machinery.

178. This view was endorsed in a recent three judge decision of this court in *Criminal trials guidelines regarding Inadequacies and Deficiencies, in re v. State of Andhra Pradesh*[80]. This court has highlighted the inadequacy mentioned above, which would impede a fair trial, and *inter alia*, required the framing of rules by all states and High Courts, in this regard, compelling disclosure of a list containing mention of all materials seized and taken in, during investigation- to the accused. The relevant draft guideline, approved by this court, for adoption by all states is as follows:

> *"4. SUPPLY OF DOCUMENTS UNDER SECTIONS 173, 207 AND 208 CR.PC*
>
> *Every Accused shall be supplied with statements of witness recorded under Sections 161 and 164 Cr.PC and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer (I.O) in accordance with Sections 207 and 208, Cr. PC.*
>
> *Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer."*

179. In view of the above discussion, this court holds that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, comply

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80 (2021) 10 SCC 598

with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules.

On Sentence

180. The hearing of this case was adjourned for sentencing on a subsequent date, before which the learned counsels submitted material regarding the lives of the accused – both before the incident and post-conviction by the trial court, jail reports and other material called for by this court were received from the State, and written submissions were filed by both sides.

181. In the course of arguments, the learned AAG maintained that there were no mitigating circumstances and the cruelty evident from the nature of the crime, warrants nothing less than the capital punishment, which according to it was correctly imposed, concurrently. It was submitted that it is in cases like the present one, where the "rarest of rare" doctrine needs to be invoked as a deterrent.

182. On the other hand the counsels for the accused laid emphasis on the fact that neither of the courts below had even considered the possibility of reform of the accused who were all of young age and barring Manoj (who had been involved in a petty offence in the past) the others did not have any criminal antecedents. Counsel also argued that an overall look at the circumstances, at best, could lead the court to conclude that the extensive injuries inflicted upon the deceased were in all probability on account of the plans of the accused going awry, upon their encountering the victims' resistance. It was submitted besides that the potential of each convict to be reformed – both having regard to their previous backgrounds, as well as conduct in jail during pendency of trial and confirmation, was not considered. This amounted to an infraction of the rule in

Bachan Singh v. State of Punjab[81]. Counsels relied on numerous judgments relating to the importance of considering mitigating circumstances, the state's role in demonstrating the accused is beyond reformation, mitigating circumstances such as age and socio-economic background, pre-sentence hearing – its scope and the court's obligation, etc.

183. Capital punishment is prescribed in numerous IPC offences, including murder, kidnapping for ransom, rape and injury causing death or leaving a woman in a vegetative state, rape or gang rape of a child below 12 years old, dacoity with murder, among other offences. In *Bachan Singh v. State of Punjab*[82] (hereafter, '*Bachan Singh')*, this court had upheld the imposition of death penalty as an alternate punishment under Section 302 IPC on the strength of the 35th Report of the Law Commission of India (1967), the judgment in *Jagmohan Singh v. State of Uttar Pradesh*[83] (which had also noted that the 35th Report advocated for retention) and in several subsequent cases decided by this court, in which the death penalty was recognised to be a *deterrent*. It laid emphasis on the then recently added S. 253(2) and 354(3) CrPC which provide for bifurcated pre-sentence hearing and sentencing procedure on conviction of capital offences, to conclude that this form of punishment continued to have legislative backing and thereby, represented the will of the people.

184. It is undeniable that there have been shifts in how punishment in capital offences are dealt with. This is apparent when developments are looked at holistically, or at a macro level: the amendments to the CrPC by Parliament, the 35th and 262nd Law Commission Reports which stand over 30 years apart, and the precedents of this court, across the decades. Initially, the law imposed a requirement of written reasons for <u>not</u> imposing death penalty, which was removed in 1955. In 1973, through further amendment to the CrPC and insertion of Section 354(3) - life imprisonment became the norm and imposition

81 (1980) 2 SCC 684
82 (1980) 2 SCC 684
83 (1973) 1 SCC 20

of death penalty required 'special reasons'; and through Section 253(2) – sentencing required separate consideration from the question of conviction. In both phases, i.e., post-1955 and post-1973, capital punishment was upheld to be constitutional by 5-judge benches of this court in *Jagmohan Singh* and *Bachan Singh*, respectively.

185. The 262nd Law Commission Report on Death Penalty (2015) (hereafter, '262nd Report'), is a result of this court's references in primarily two cases. Firstly, in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*[84] (hereafter '*Santosh Bariyar'*) where, after taking note of the UN General Assembly Resolution 62/149[85] it was pointed out that credible research was required to shape an informed discussion and debate, on the contentious issue of death sentence. Secondly, the judgment in *Shankar Kisanrao Khade v. State of Maharashtra*[86] tasked the Law Commission to resolve the issue of whether death penalty is a deterrent punishment, is retributive justice, or serves an incapacitative goal; and to study the difference in approach adopted by the judiciary (rarest of rare) and the executive (what was termed as *unknown*) while granting commutation. In attempting to fulfil this mandate, the Commission discerned an urgent need for re-examination of its own earlier recommendations on the death penalty (in its 35th Report, 1967), given the drastic change in social, economic, and cultural contexts of the country since the 35th Report, and arbitrariness which has remained a major concern in the adjudication of death penalty cases since *Bachan Singh* laid down the foundational principle of 'rarest of rare'.

186. Reflective of changed circumstances and evolving discourse, the report marks a shift in the approach towards the death penalty in India, going so far as to recommend abolition in all offences, except those relating to terrorism. A large part of the report focusses on courts' discretion and judicial reasoning

84 (2009) 6 SCC 498 (para 112).
85 Adopted on 18.12.2007.
86 (2013) 5 SCC 546 (para 148-149).

when it comes to sentencing. It concludes that death penalty sentencing in India has been based on an *arbitrary* application of the *Bachan Singh* principle, and has become judge-centric, based on the personal predilection of judges – a concern which was alluded to even by this court in *Swamy Shraddananda (2) @ Mural Manohar Mishra v. State of Karnataka*[87] and analysed extensively again in *Santosh Bariyar,* followed by *Sangeet & Anr. v. State of Haryana*[88]*, Mohd. Farooq Abdul Gafur & Anr. v. State of Maharashtra*[89]*,* and more recently in *Chhannu Lal Verma v. State of Chattisgarh*[90] (hereafter '*Chhannu Lal Verma'*).

The death penalty framework and how to apply it for 'principled sentencing'

187. This court in *Bachan Singh* while upholding the constitutionality of capital punishment, categorically ruled that the new CrPC of 1973 marked a shift as it bifurcated the criminal trial to include a pre-sentence hearing (under S. 235(2)), and further mandated the sentencing court to outline the "special reasons" (under S. 354(3)) or absence of them, by considering circumstances both of the crime and the criminal. The court also noted that while broad guidelines or indicators may be given, they cannot be put into water-tight compartments that curb discretion of any judge to do justice in a given individual case:

> *"**163.** ….Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Section 354(3), a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302 of the Penal Code, the court should not confine its consideration "principally" or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal.*
>
> ***

87 (2008) 13 SCC 767
88 (2013) 2 SCC 452
89 (2010) 14 SCC 641
90 (2019) 12 SCC 438

> ***201.*** *…As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because "style is the man". In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist."*

The court also accepted a list of helpful factors of aggravating and mitigating circumstances.[91] However, cautioning the court from treating them to be exhaustive, the court further clarified that they were merely *indicative* and that the mitigating circumstances had to be read in a "liberal and expansive" manner, accounting for the dignity of human life:

> *"209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency — a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."*

188. In *Macchi Singh*, this court extrapolated the principles from *Bachhan Singh*, and merit repetition:

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91 *Bachan Singh* (para 202 and 206).

> *"**38.** In this background the guidelines indicated in Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] :*
>
> *"(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.*
>
> ***39.** In order to apply these guidelines inter alia the following questions may be asked and answered:*
>
> *(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?*
>
> *(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?*
>
> ***40.** If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."*

189. In *Machhi Singh*[92], this court also attempted to categorise cases under broadly five heads (i.e., manner of commission of murder, motive, anti-social or socially abhorrent nature of the crime, magnitude of crime, and personality of victim), by strongly analysing the aggravating circumstances of the crime. A formalistic reliance on these categories however, has the potential of leading any court awry as it has the unintended effect of drawing attention away from the criminal, and focussing disproportionately on the crime – the dangers of this

92 *Machhi Singh* (para 32-37).

standardisation was also noted by this court in *Swamy Shraddananda (2)*[93], *Sangeet*[94] and more recently in Justice Sanjiv Khanna's dissenting opinion in *Manoharan v. State by Inspector of Police*[95].

190. This court in *Bachan Singh* had warned against categorising cases.[96] Rejecting the contention that standards and guidelines should be laid down, it was noted in *Bachan Singh* that degree of culpability cannot be measured, and aggravating and mitigating circumstances could not be rigidly enumerated so as to exclude "*all free play of discretion*". Reiterating that criminal cases cannot be categorised as there were infinite, unpredictable and unforeseen variations, it was held that by such categorization, the sentencing process would cease to be judicial, and such standardisation or sentencing discretion is beyond the court's function. Therefore, it would be befitting if reliance were placed not solely on those five categories of crimes (which lays undue emphasis on aggravating circumstances) enumerated in *Machhi Singh*, and instead on the two question-test, and the four guiding principles of *Bachan Singh* that were succinctly culled out in *Machhi Singh*.

191. The decades that followed, has witnessed a line of judgments in which this court has continually taken judicial notice of the incongruence in application of the 'rarest of rare' test enunciated in *Bachan Singh*, and therefore, tried to restrict imposition of the death penalty, in an attempt to strengthen a *principled* application of the same.

192. This aspect was dealt with extensively in *Santosh Bariyar* where the court articulated the test to be a two-step process to determine whether a case deserves the death sentence – firstly, that the case belongs to the 'rarest of rare' category, and secondly, that the option of life imprisonment would simply not suffice. For the first step, the aggravating and mitigating circumstances would

93 *Swamy Shraddananda (2) @ Mural Manohar Mishra v. State of Karnataka* (2008) 13 SCC 767
94 *Sangeet & Anr. v. State of Haryana* (2013) 2 SCC 452
95 *Manoharan v. State by Inspector of Police, Variety Hall Police Station,* (2019) 7 SCC 716
96 para 169-175, 192-195.

have to be identified and considered equally. For the second test, the court had to consider whether the alternative of life imprisonment was unquestionable foreclosed as the sentencing aim of reformation was unachievable, for which the State must provide material.

193. About four years later, in *Sangeet*[97], this court lamented the continuing lack of attention given to circumstances of the criminal, reiterated that balancing of aggravating-mitigating circumstances and failure to apply the *Bachan Singh* sentencing framework uniformly, was leading to judge-centric and inconsistent jurisprudence in death penalty matters.

194. In *Shankar Kisanrao Khade*[98] this court developed yet another framework of the 'crime test', criminal test' and 'rarest of rare test' (which, was held to be distinct from the 'balance test' that was discouraged in *Santosh Bariyar* and subsequently, in *Sangeet* as well):

> *"**52**. …. In my considered view, the tests that we have to apply, while awarding death sentence are "crime test", "criminal test" and the "R-R test" and not the "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is, 100% and "criminal test" 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the "criminal test" may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is, the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the rarest of the rare case test (R-R test). R-R test depends upon the perception of the society that is "society-centric" and not "Judge-centric", that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the Judges."*

195. Recently, while considering a review petition, this court in *Rajendra Pralhadrao Wasnik v. State of Maharashtra*[99] held that *Bachan Singh* had intended the test to be 'probability' and not improbability, possibility or

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97 *Sangeet & Anr. v. State of Haryana* (2013) 2 SCC 452
98 *Shankar Kisanrao Khade v. State of Maharashtra* (2013) 5 SCC 546
99 (2019) 12 SCC 460

impossibility of reformation and rehabilitation as a mandate of Section 354(4) CrPC.[100] The court analysed numerous earlier precedents, noting that evidence by the state on this has been sparse and limited, but was essential for the courts to measure the probability of reform, rehabilitation and reintegration. The court located this requirement in the right of the accused, who regardless of being ruthless, was entitled to a life of dignity, notwithstanding his crime.[101] While this process is not easy, it was noted that the neither is the process of rehabilitation since it involves reintegration into society. When this is found to be not possible in certain cases, a longer duration of imprisonment was instead permissible.

Uneven application of this framework and (in)consistency in sentencing

196. An overall analysis of capital punishment cases decided by this court will perhaps reflect that that there is in fact, no pattern. While there are real and valid concerns in the non-uniform application of the *Bachan Singh* framework, discretion in sentencing, in itself – is not worrisome, and the concern needs to be dispelled. While generally judges may look to precedents for the comfort of numbers, that process only gives an indication of how similar instances have been dealt with and has a *limited* role when it comes to sentencing. The discretion afforded to the court in sentencing, is not for it to be judge-centric or result in disparate rulings, but in fact to enable the court with the *flexibility* of considering the case-specific factors relating to the crime and criminal, without falling into pre-determined patterns. Sentencing is not a mathematical equation and ought not be seen as one. This has been recognized in numerous cases starting from *Bachan Singh* itself. In *Santosh Bariyar***,** analyzing the equality principle, due process and proportionality requirement in capital sentencing, it was held that rather than applying strict classification of the type of offences that warrant death sentence, the court must focus on *equally* considering the

100 *Ibid* (para 45)
101 *Ibid* (para 47)

aggravating and mitigating circumstances (in which commonality is to be drawn *across* cases), and arrive at individualized sentencing outcomes on a case-to-case basis.[102] It was noted:

> *"**132**. ….The imprecision of the identification of aggravating and mitigating circumstances has to be minimised. It is to be noted that the mandate of equality clause applies to the sentencing process rather than the outcome. The comparative review must be undertaken not to channel the sentencing discretion available to the courts but to bring in consistency in identification of various relevant circumstances. The aggravating and mitigating circumstances have to be separately identified under a rigorous measure.*
>
> ***133.** Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] when mandates principled precedent-based sentencing, compels careful scrutiny of mitigating circumstances and aggravating circumstances and then factoring in a process by which aggravating and mitigating circumstances appearing from the pool of comparable cases can be compared. The weight which is accorded by the court to particular aggravating and mitigating circumstances may vary from case to case in the name of individualised sentencing, but at the same time reasons for apportionment of weights shall be forthcoming. Such a comparison may point out excessiveness as also will help repel arbitrariness objections in future. A sentencing hearing, comparative review of cases and similarly aggravating and mitigating circumstances analysis can only be given a go-by if the sentencing court opts for life imprisonment."*
>
> *(emphasis supplied)*

197. The strength of 'precedent' and 'consistency' is perhaps, therefore, lowest when it comes to matters of sentencing, as long as it is within the confines of legality and resulting in 'principled sentencing'. In other words, the judicial incongruence when it relates to sentencing, would in fact be a positive indicator, rather than a negative one, provided it is still within the well-defined contours of 'principled' sentencing. For sentencing in capital offences, discretion to arrive at individualised sentences is encouraged, but must be constrained by the 'rarest of rare' principle, wherein the court considers aggravating circumstances of the crime, and mitigating circumstances of the criminal (a 'liberal and expansive' construction of the latter), which in turn must inform their consideration of whether the option of life imprisonment is unquestionably foreclosed owing to an impossibility[103] to reform.

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102 *Santosh Bariyar* (para 172)

103 held to be 'probability' and not 'impossibility' in *Rajendra Pralhadrao Wasnik v. State of Maharashtra*, (2019) 12 SCC 460.

198. Deviation from this principle, i.e., *unguided* discretion on the other hand, would quite obviously lead to bad law. For instance, *Ravji v. State of Haryana*[104] *(*hereafter *'Ravji')*, in complete contravention of this court's earlier constitution bench decision of *Bachan Singh* (which focussed on both the crime, and criminal), held that *"… it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial*". A line of cases[105], further relied on this (in this court's considered opinion, incorrect) decision in *Ravji* case, and concluded that the nature and gravity of the crime (i.e., its brutality or heinousness), were sufficient to impose capital punishment, without considering mitigating circumstances of the criminal. Subsequently, the decision in *Ravji* was -quite correctly- declared to be *per incuriam* by another bench of this court in *Santosh Bariyar*, for non-consideration of circumstances of the criminal. Other cases that have focussed on brutality of the crime, as negating or washing away the need to consider mitigating circumstances, similarly serve as bad precedent.

199. This court in *Rajesh Kumar v. State*[106] again reiterated that brutality in itself, was not enough to impose death sentence – the accused was convicted for murder of two children who offered no provocation or resistance to the brutal and inhuman fashion in which the accused committed the crime, however, it was held that due consideration to the mitigating circumstances of the criminal still had to be given. Evidence had to be placed on record by the State, demonstrating that he was beyond reform or rehabilitation, the absence of which was a mitigating circumstance in itself. The High Court had merely noted that he was a first-time offender and had a family to take care of – which this court noted was a very narrow and myopic view on the mitigating circumstances.

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104 (1996) SCC 2 175.
105 *Surja Ram v. State of Rajasthan* (1996) 6 SCC 271; *Dayanidhi Bisoi v. State of Orissa* (2003) 9 SCC 310; *Mohan Anna Chavan v. State of Maharashtra*, (2008) 7 SCC 561; *Bantu v. State of Uttar Pradesh*, (2008) 11 SCC 113; *Shivaji v. State of Maharashtra*, (2008) 15 SCC 268; *State of Uttar Pradesh v. Sattan @ Satyendra and Ors.* (2009) 4 SCC 736; etc.
106 *Rajesh Kumar v. State*, (2011) 13 SCC 706 (para 74)

200. Therefore, 'individualised, principled sentencing' – based on both the crime and criminal, with consideration of whether reform or rehabilitation is achievable (held to be '*probable'* in *Rajendra Pralhadrao Wasnik),* and consequently whether the option of life imprisonment is unquestionably foreclosed – should be the only factor of 'commonality' that must be discernible from decisions relating to capital offences. With the creation of a new sentencing threshold in *Swamy Shraddananda (2)*[107], and later affirmed by a constitution bench in *Union of India v. V Sriharan*[108], of life imprisonment without statutory remission (i.e., Article 72 and 161 of the Constitution are still applicable), yet another option exists, before imposition of death sentence. However, serious concern has been raised against this concept, as it was upheld by a narrow majority, and is left to be considered at an appropriate time.

Theories of punishment

201. The 262nd Report, speaks extensively to the penological justification of the death penalty. It finds that there is inconclusive evidence that this form of punishment has more of a deterrent effect, in comparison to life imprisonment. Dismissing the retributive theory of punishment on the ground that it suffers from lack of guidance on quantifying the punishment that would be appropriate to impose, it categorically states that:

> "*Capital punishment fails to achieve any constitutionally valid penological goals….In focusing on death penalty as the ultimate measure of justice to victims, the restorative and rehabilitative aspects of justice are lost sight of. Reliance on the death penalty diverts attention from other problems ailing the criminal justice system such as poor investigation, crime prevention and rights of victims of crime.*"

202. While the 262nd Report recommends abolition of the death penalty on this ground, in addition to sentencing having become judge-centric or arbitrary, it has not prompted Parliamentary intervention. Whether the death penalty deserves a relook (as recommended by J. Kurian Joseph (dissenting) in

107 *Swamy Shraddananda (2) v. State of Karnataka* (2008) 13 SCC 767
108 (2016) 7 SCC 1

Chhannu Lal Verma), in light of the 262nd Law Commission Report, evolving jurisprudence, public discourse and international standards of human rights, is outside the purview of this court's jurisdiction given the constitutional bench decision in *Bachan Singh,* and a question best left for the legislature to critically consider. In this backdrop, what this court can do, is try and bolster the existing sentencing framework. This is possible only by giving true meaning to the existing guidelines (without falling into the trap of 'categorising' crimes that *automatically* warrant death penalty). To do so, this court finds it necessary to lay out certain practical guidelines (elaborated below) that can facilitate consideration of mitigating circumstances as recognised in *Bachan Singh*, and consequently ensure uniform application of this framework.

203. The 262nd Report recognised the paradigm shift, in policy and discourse, towards a reformative and rehabilitative response to crime, and the development of jurisprudence such that adjudging a case to be 'rarest of rare' was not sufficient, and special emphasis had to be placed in considering whether the offender is amenable to reform. Implicit in this shift is the understanding that the criminal is not a product of only their own decisions, but also a product of the state and society's failing, which is what entitles the accused to a chance of reformation. Thus, making life imprisonment the norm, and death penalty the exception. In, *Lehna v. State of Haryana*[109] while deciding whether the facts in that case were appropriate for death penalty, traced this shift in approach:

> *"14. ..Section 302 IPC prescribes death or life imprisonment as the penalty for murder. While doing so, the Code instructs the court as to its application. The changes which the Code has undergone in the last three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. It is not difficult to discern that in the Code, there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3). There is another provision in the Code which also uses the significant expression "special reason". It is Section 361. Section 360 of the 1973 Code re-enacts, in substance, Section 562 of the Criminal Procedure Code, 1898 (in short "the old Code"). Section 361 which is a new provision in the Code makes it mandatory for the court to record "special reasons" for not applying the provisions of Section 360. Section 361 thus*

109 (2002) 3 SCC 76

> *casts a duty upon the court to apply the provisions of Section 360 wherever it is possible to do so and to state "special reasons" if it does not do so. In the context of Section 360, the "special reasons" contemplated by Section 361 must be such as to compel the court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. Section 361 and Section 354(3) have both entered the statute-book at the same time and they are part of the emerging picture of acceptance by the legislature of the new trends in criminology. It would not, therefore, be wrong to assume that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. Criminal justice deals with complex human problems and diverse human beings. A Judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed.*
>
> *(emphasis supplied)*

204. Mitigating factors in general, rather than excuse or validate the crime committed, seek to explain the surrounding circumstances of the criminal to enable the judge to decide between the death penalty or life imprisonment. An illustrative list of indicators first recognised in *Bachan Singh*[110] itself:

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

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110 Para 206

These are hardly exhaustive; subsequently, this court in several judgments has recognised, and considered commutation to life imprisonment, on grounds such as young age[111], socio-economic conditions[112], mental illness[113], criminal antecedents[114], as relevant indicators on the questions of sentence. Many of these factors reflect demonstrable ability or merely the *possibility* even, of the accused to reform (i.e. (3) and (4) of the *Bachan Singh* list), which make them important indicators when it comes to sentencing.

Pre-sentence hearing – opportunity and obligation to provide material on the accused

205. This court in *Bachan Singh* held that the introduction of pre-sentencing hearing to the accused in 1973 through Section 235(2) CrPC altered the *Jagmohan Singh* principle that the court is *primarily* concerned with the circumstances connected with crime. Therefore, now due consideration has to be given to the circumstances of the *criminal* as well, when adjudicating whether the case falls within 'rarest of rare' and if the option of life imprisonment as an alternative, is unquestionably foreclosed. In *Bachan Singh*, this court categorically stated that, "*the probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to the society*", is a relevant circumstance, that must be given great weight in the determination of sentence. The sentencing hearing contemplated under Section 235(2), is not confined merely to oral hearing but intended to afford a real opportunity to the prosecution as well as the accused, to place on record facts and material relating to various factors on the question of sentence and if interested by either side, to have evidence adduced to show mitigating

111 *Mahesh Dhanaji Shinde v. State of Maharashtra* (2014) 4 SCC 292, *Gurvail Singh v. State of Punjab* (2013) 2 SCC 713, etc.
112 *Mulla & Anr. v. State of U.P.* (2010) 3 SCC 508; *Kamleshwar Paswan* v. *UT Chandigarh* (2011) 11 SCC 564; *Sunil Gaikwad* v. *State of Maharashtra* (2014) 1 SCC 129.
113 *Shatrughan Chauhan v. Union of India* (2014) 3 SCC 1
114 *Dilip Premnarayan Tiwari* v. *State of Maharashtra*, (2010) 1 SCC 775

circumstances to impose a lesser sentence or aggravating grounds to impose death penalty.[115]

206. In the absence of an individual's capacity to effectively bring forth mitigating factors, this court in *Bachan Singh* placed the burden of eliciting mitigating circumstances on the court, which has to consider them liberally and expansively, whereas the responsibility of providing material to show that the accused is beyond the scope of reform or rehabilitation, thereby unquestionably foreclosing the option of life imprisonment and making it is a fit case for imposition of death penalty, is one which falls squarely on the State. This has been reiterated and further spelt out by this court in *Santosh Bariyar, Rajesh Kumar, Chhannu Lal Verma*, and other decisions[116]. In *Santosh Bariyar*, making observations on nature of information to be collected at the pre-sentencing stage, this court further observed that

> ***"56.*** *At this stage, Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] informs the content of the sentencing hearing. The court must play a proactive role to record all relevant information at this stage. Some of the information relating to crime can be culled out from the phase prior to sentencing hearing. This information would include aspects relating to the nature, motive and impact of crime, culpability of convict, etc. Quality of evidence adduced is also a relevant factor. For instance, extent of reliance on circumstantial evidence or child witness plays an important role in the sentencing analysis. But what is sorely lacking, in most capital sentencing cases, is information relating to characteristics and socio-economic background of the offender. This issue was also raised in the 48th Report of the Law Commission."*
>
> (*emphasis supplied)*

207. The state's duty is heightened in importance even more so, in the Indian context where a majority of the accused have a poor or rudimentary level of legal representation. The importance of collecting socio-economic factors in the context of our criminal justice system was critically noted by the 262nd Report as follows:

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115 *Malkiat Singh and Ors. v. State of Punjab* (1991) 4 SCC 341.

116 Muniappan v. State of T.N. (1981) 3 SCC 11; Anil @ Anthony Arikswamy Joseph v. State of Maharashtra, (2014) 4 SCC 69, etc.

> *"7.1.6 Numerous committee reports as well as judgments of the Supreme Court have recognised that the administration of criminal justice in the country is in deep crisis. Lack of resources, outdated modes of investigation, over-stretched police force, ineffective prosecution, and poor legal aid are some of the problems besetting the system. Death penalty operates within this context and therefore suffers from the same structural and systemic impediments. The administration of capital punishment thus remains fallible and vulnerable to misapplication. The vagaries of the system also operate disproportionately against the socially and economically marginalised who may lack the resources to effectively advocate their rights within an adversarial criminal justice system."*

208. However, despite over four decades since *Bachan Singh* there has been little to no policy-driven change, towards formulating a scheme or system that elaborates how mitigating circumstances are to be collected, for the court's consideration. Scarce information about the accused at the time of sentencing, severely disadvantages the process of considering mitigating circumstances. It is clarified that mere mention of these circumstances by counsel, serve no purpose – rather, they must be connected to the possibility of reformation and assist principled judicial reasoning (as required under S. 235(2) CrPC). Constrained by this lack of assistance, this court (as mentioned above) in *Rajesh Kumar* has even gone so far as to hold that the very fact that the state had not given any evidence to show that the convict was beyond reform and rehabilitation was a mitigating circumstance, in itself.

209. The lack of forthcoming information has led to attempts by the courts, to look backwards – sometimes many years after the crime has been committed – to evaluate on the one hand, circumstances that could not have been paused in time, and on the other those which can be captured, but for which there exists no frame of reference from the past, for comparison. This inconsistency in some courts calling for reports, while others fail to – further contributes to our patchwork jurisprudence on capital sentencing, and in turn undermines the equality principle and due process protection that *Santosh Bariyar* recognises as existing, in favour of death row convicts.

210. The move to call for a Probation Officer's Report[117] (as done by this court even in this case), is in fact a desperate attempt by the courts at the appellate stage, to obtain information on the accused – at present. Good conduct of the accused at the post-conviction stage in prison (through a jail report), and psychiatric evaluation to evaluate possibility of reform (*albeit* at the appellate sentencing stage), were considered recently in *Chhannu Lal Verma* as necessary indicators for considering mitigating circumstances:

> *"**15.** …Since the appellant has been in jail, we wanted to know whether there was any attempt on his part for reformation. The Superintendent of the jail has given a certificate that his conduct in jail has been good. Thus, there is a clear indication that despite having lost all hope, yet no frustration has set on the appellant. On the contrary, there was a conscious effort on his part to lead a good life for the remaining period. A convict is sent to jail with the hope and expectation that he would make amends and get reformed. That there is such a positive change on a death row convict, in our view, should also weigh with the Court while taking a decision as to whether the alternative option is unquestionably foreclosed. As held by the Constitution Bench in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] it was the duty of the State to prove by evidence that the convict cannot be reformed or rehabilitated. That information not having been furnished by the State at the relevant time, the information now furnished by the State becomes all the more relevant. The standard set by the "rarest of rare" test in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] is a high standard. The conduct of the convict in prison cannot be lost sight of. The fact that the prisoner has displayed good behaviour in prison certainly goes on to show that he is not beyond reform.*
>
> ***16.** In the matter of probability and possibility of reform of a criminal, we do not find that a proper psychological/psychiatric evaluation is done. Without the assistance of such a psychological/psychiatric assessment and evaluation it would not be proper to hold that there is no possibility or probability of reform. The State has to bear in mind this important aspect while proving by evidence that the convict cannot be reformed or rehabilitated"*
>
> *(emphasis supplied)*

211. However, this too, is too little, too late and only offers a peek into the circumstances of the accused *after* conviction. The unfortunate reality is that in the absence of well-documented mitigating circumstances at the trial level, the aggravating circumstances seem far more compelling, or overwhelming, rendering the sentencing court prone to imposing the death penalty, on the basis of an incomplete, and hence, incorrect application of the *Bachan Singh* test.

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117 Birju v. State of M.P., (2014) 3 SCC 421; Anil @ Anthony Arikswamy Joseph v. State Of Maharashtra, (2014) 4 SCC 69; Bharat Singh vs. State (NCT of Delhi), Order dated 17.04.2014, DSR No. 1/2014.

212. The goal of reformation is ideal, and what society must strive towards – there are many references to it peppered in this court's jurisprudence across the decades – but what is lacking is a concrete framework that can measure and evaluate it. Unfortunately, this is mirrored by the failure to implement prison reforms of a meaningful kind, which has left the process of incarceration and prisons in general, to be a space of limited potential for systemic reformation. The goal of reformative punishment requires systems that actively enable reformation and rehabilitation, as a result of nuanced policy making. As a small step to correct these skewed results and facilitate better evaluation of whether there is a possibility for the accused to be reformed (beyond vague references to conduct, family background, etc.), this court deems it necessary to frame practical guidelines for the courts to adopt and implement, till the legislature and executive, formulate a coherent framework through legislation. These guidelines may also offer guidance or ideas, that such a legislative framework could benefit from, to systematically collect and evaluate information on mitigating circumstances.

Practical guidelines to collect mitigating circumstances

213. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.

214. To do this, the trial court must elicit information from the accused and the state, both. The state, must - for an offence carrying capital punishment - at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and

(7) spelled out in *Bachan Singh*. Even for the other factors of (3) and (4) - an onus placed squarely on the state – conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison, i.e., to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

215. Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

a) Age
b) Early family background (siblings, protection of parents, any history of violence or neglect)
c) Present family background (surviving family members, whether married, has children, etc.)
d) Type and level of education
e) Socio-economic background (including conditions of poverty or deprivation, if any)
f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)
g) Income and the kind of employment (whether none, or temporary or permanent etc);
h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any) etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

216. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e., probation and welfare officer, superintendent of jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be – a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for an more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post-conviction mental illness, if any.

217. It is pertinent to point out that this court, in *Anil v. State of Maharashtra*[118] has in fact directed criminal courts, to call for additional material:

> *"Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case."*
>
> *(emphasis supplied)*

We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence.

Sentencing of present accused

218. This court is of the opinion, that there can no doubt that the crime committed by the three accused was brutal, and grotesque. The three defenceless victims were women of different age groups (22, 46, 76 years) who

118 (2014) 4 SCC 69

were caught off-guard and severely physically assaulted, resulting in their death, in the safety and comfort of their own home. To have killed three generations of women from the family of PW-1, is without a doubt, grotesque. The manner of the offence was also vicious and pitiless – Ashlesha and Rohini, were stabbed repeatedly to their death, while Megha was shot point blank in the face. The post-mortem (Ex. P44) reflects that the stab wounds were extensive – ranging across the bodies of the victim. The extensive bleeding at the crime scene further reflects cruel and inhumane manner of attack, against the three women. The crime in itself, could no doubt be characterised as "*extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community*"[119] as defined in *Machhi Singh.* These are the aggravating circumstances.

219. On an application of the *Bachan Singh* test (as clarified and explained, in numerous decisions elaborated above), however, the mitigating circumstances need to be considered (and that too, liberally and expansively). Prior to the hearing on sentencing before this court, a direction was issued the State to (on the basis of personal interviews and prison records) file for each of the accused – a Psychological Evaluation Report, a Probation Officer's Report, and Prison Report including material on their conduct and work done. Furthermore, each of the accused has placed material on record before this court, to demonstrate circumstances of the criminal. Given that in this case there are three accused – this court cannot baldly consider their circumstances collectively, and instead find that an individualised approach is necessary.

(i) *Manoj*

220. The material states that Manoj's conduct appears to be disciplined, correctional in nature and overall satisfactory, barring one physical altercation during an earlier confinement period. He has a wife and two young children

119 *Macchi Singh* (para 32)

with whom he has repaired relations and is regularly in touch with. He makes special effort to be a part of his growing children's lives, demonstrating strong continued family ties. While in prison, owing to his interest in cricket, he has also taken up the responsibility of being the Captain of the Jail Block team. The probation officer concludes that he seems remorseful, and keen to reintegrate into society with his family.

(ii) *Rahul*

221. The report received from the Superintendent of Jail indicates that he too was involved in an altercation with another inmate in his previous confinement period, but his overall conduct appears to be normal, and correctional in nature. He has been voluntarily working as a health worker (based on his request) since 05.01.2021 wherein he helps transports sick inmates to the Jail Hospital. While in prison, he has completed 12th standard education, and proceeded to pursue B. Com from IGNOU, New Delhi (in his final year). He actively participates in cultural and spiritual programmes conducted in the prison. His family consists of his ailing father, mother, and three married sisters. He expressed concern for his old parents and wished to help them financially by rejoining society.

(iii) *Neha*

222. Her prison record reflects that she had, on a few occasions, got into fights and exchanged abuses with the other female inmates, and lady guard officers in the jail. After counselling, however, her conduct has improved and was found to be disciplined and corrective in nature. While in prison, she actively participates in cultural programmes, has undergone training for embroidery, knitting and lamination. In 2017, she received a national award for *Jardosi* work in Indore District Court and has received numerous other accolades for her participation in activities. In prison, she teaches children of other female inmates. Before detention, she was pursuing her B. Com degree, which she completed in prison.

Her family consists of her parents and two married brothers (of which one, is paralysed), who she is regularly in touch with.

Conclusion on sentence of the three accused

223. It is unfortunate to note that both the trial Court, and High Court, failed to provide an effective sentencing hearing to the accused, at the relevant stage, which is a right under Section 235(2) CrPC recognised by this court in several cases.[120] In fact, it was argued by the accused that the trial court in contravention of this court's judgments[121], had proceeded to hear on sentencing almost immediately, depriving the accused of the opportunity to put forth their case for a less stringent sentence. The trial court order on sentencing, records in passing - the plea of 'young age' and 'socio-economic factors' as mitigating circumstances, but reflects, at best, a mechanical consideration of the same. Swayed by the brutality of the crime and "shock of the collective and judicial conscience", the High Court affirmed imposition of the death penalty solely on the basis of the aggravating circumstances of the crime, with negligible consideration of mitigating circumstances of the criminal. This is in direct contravention of *Bachan Singh*.

224. The crime that the appellants have been held guilty of, is heinous; its execution was vicious and cruel, by any stretch of imagination. The deception practised by the appellants, in entering the flat, and, when encountering resistance, attacking the three women, was calculated and ruthless. The repeated stabbings of two of the deceased, almost in a frenzy, on the one hand, and the defenceless state of the victims, on the other, highlights that the accused were willing to go ahead with their plans (of robbing) after eliminating the women of

120 *Bachan Singh* (para 152), *Md. Mannan @ Abdul Mannam v. State of Bihar* (2019) 16 SCC 584 (para 39), *Allaudin Mian v. State of Bihar* (1989) 3 SCC 5 (para 10), *Rameshbhai Chandubhai Rathod v. State of Gujarat* (2009) 5 SCC 740 (para 106), *Rajesh Kumar v. State (NCT of Delhi)* (2011) 13 SCC 706 (para 52), *Mukesh vv. State (NCT of Delhi)* (2017) 3 SCC 717 (para 9), *Chhannulal Verma v. State of Chhattisgarh* (2019) 12 SCC 438 (para 17).

121 *Santa Singh v. State of Punjab* (1967) 4 SCC 190 (para 3, 4, 5, 7); *Allaudin Mian v. State of Bihar* (1989) 3 SCC 5 (para 10); *Rajesh Kumar v. State* (2011) 13 SCC 706 (para 52); *Ajay Pandit @ Jagdish v. State of Maharashtra* (2012) 8 SCC 43 (para 38, 47).

three generations. No doubt, two of the victims appear to have put up resistance, if one looks at the stab wounds inflicted all over their bodies, including on their arms and faces. Yet, they were unarmed and weak.

225. At the same time, the young age of the accused at the time of the incident (35, 20, 22 respectively) and lack of criminal antecedents (except in the case of Manoj, who was allegedly involved in a case of petty theft) cannot be lost sight of. Further, the prosecution case is silent on any real motive that may have instigated or moved the three accused to have pre-planned for the commission of murder – other than robbery, itself. This coupled with the fact that Rahul was shot in his leg during the commission of the crime, indicates that perhaps it is reasonable to assume that they were amateurs in a robbing-gone-wrong situation, who were not intent on taking the lives of these three women. One can surmise that having ventured to rob, perhaps they did not contemplate the kind of resistance that was put up by the victims, which led them to act the way they did, to continue with their plan, and ensure that the victims did not survive to tell the tale.

226. The reports received from the Superintendent of Jail reflect that each of the three accused, have a record of overall good conduct in prison and display inclination to reform. It is evident that they have already, while in prison, taken steps towards bettering their lives and of those around them, which coupled with their young age[122] unequivocally demonstrates that there is in fact, a *probability* of reform. On consideration of all the circumstances overall, we find that the option of life imprisonment is certainly not foreclosed.

227. While there is no doubt that this case captured the attention and indignation of the society in Indore, and perhaps the state of Madhya Pradesh,

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122 *Gurvail Singh & Anr v. State of Punjab* (2013) 2 SCC 713 (para 13, 19); *Amit v. State of Uttar Pradesh* (2012) 4 SCC 107 (para 22); *Shyam Singh @ Bhima v. State of Maharashtra* (2017) 11 SCC 265 (para 8) and *Ramnaresh & Ors. v. State of Chhattisgarh* (2012) 4 SCC 257 (para 88).

as a cruel crime that raised alarm regarding safety within the community – it must be remembered

that public opinion has categorically been held to be neither an objective circumstance relating to crime, nor the criminal, and the courts must exercise judicial restraint and play a balancing role.[123]

228. In view of the totality of facts and circumstances, and for the above stated reasons, this court finds that imposition of death sentence would be unwarranted in the present case. It would be appropriate and in the overall interests of justice to commute the death sentence of all three accused, to life imprisonment for a minimum term of 25 years. The appeals are partly allowed in the above terms.

….....J
[UDAY UMESH LALIT]

.....J
[S. RAVINDRA BHAT]

.....J
[BELA. M. TRIVEDI]

New Delhi,
May 20, 2022.

123 *Chhannu Lal Verma* (para 25), *Santosh Bariyar* (para 80-89*), M.A Antony @ Antappan v. State of Kerala, (*2020) 17 SCC 751, *Bachan Singh* (para 126).