Dharmendrasinh @ Mansing Ratansinh vs State Of Gujarat on 17 April, 2002

Equivalent citations: AIR2002SC1937, 2002(2)ALT(CRI)36, 2002CRILJ2631, 2002(2)CRIMES294(SC), (2002)3GLR854, JT2002(4)SC239, 2002(3)SCALE690, (2002)4SCC679, [2002]3SCR193, 2002(2)UJ809(SC), AIR 2002 SUPREME COURT 1937, 2002 AIR SCW 1892, 2002 (5) SRJ 508, 2002 (3) SLT 306, 2002 (2) LRI 667, 2002 SCC(CRI) 859, 2002 (2) UJ (SC) 809, 2002 (3) SCALE 690, 2002 ALL MR(CRI) 2605, 2002 (4) SCC 679, (2002) 4 JT 239 (SC), (2002) 2 DMC 265, (2002) 1 MARRILJ 436, (2002) 2 ALLCRILR 628, (2002) 1 RECCRIR 544, (2002) 2 EASTCRIC 337, (2002) 3 GUJ LR 2702, (2002) 2 GUJ LH 566, (2002) 2 RAJ CRI C 588, (2002) 2 RECCRIR 691, (2002) 3 SCJ 435, (2002) 2 CURCRIR 144, (2002) 3 SUPREME 501, (2002) 3 SCALE 690, (2002) 2 UC 146, (2002) 3 GCD 2047 (SC), (2002) 44 ALLCRIC 1122, (2002) 2 CRIMES 294, (2002) SC CR R 824, (2002) 2 CHANDCRIC 1, 2002 (2) ANDHLT(CRI) 36 SC

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Bench: Doraiswamy Raju, Brijesh Kumar

JUDGMENT

Brijesh Kumar, J.

1. This appeal has been preferred by the appellant fromJail against the judgment and order dated 5th, 7th and 10th July,2001 passed by the Gujarat High Court upholding hisconviction under Section 302 I.P.C. and sentence of death asawarded by the Additional Sessions Judge Sabarkantha, atHimmatnagar. The reference for confirmation of the deathsentence was also accepted.

2. We have heard the Amicus curiae representing theappellant at length as well as the learned counsel representingthe State.

3. The facts of the case are in a narrow campass. Theappellant and PW-3 Ashaben, were married about 15 yearsbefore the incident. They had two sons, Jigarsinh and Virnalsinh aged about 12 and 7 years respectively. They wereresiding in Village Bhadresar along with the parents of theappellant. The brother of the appellant, namely Dashrathsinh was living separately. The prosecution case is that on24.8.1998 while the appellant, the complainant PW-3 Ashaben and their two sons were sleeping on cots inside thehouse, the appellant woke her up early in the morning. She milched the

cow and requested her husband to deliver themilk at the dairy. The appellant declined to do so upon whichshe tried to awake Jigarsinh for delivering the milk but theappellant asked her to go herself for the purpose. Sheaccordingly went to the dairy and reached back home at about7 a.m. She found her husband assaulting the sleeping boys,namely their sons. She raised alarm and rushed into the roomthereupon her husband left the house from the other door.Ratansih her father-in-law and Dasrathsinh her brother-in-law and other arrived. She told them about the incident.The two sons dies as a result of injury received by them.PW-4 Mangusinh Tetsinh, father of the complainant, PW-3 Ashaben on getting information of the incident throughSarpanch of his village went to Village Bhadresar, hisdaughter narrated the whole story to him. He brought her tohis village Mhudi from Bhadresar. According to him on theway they also went to the Police Station, Jadar. According toPW-3 her report was written and lodged at the Police Station.The PSI, Police Station, Jadar, Bhurjibhai, who has beenexamined as PW-8 stated about and lodging of the FIR andregistration of the case at the Police Station at 5 p.m. on24.8.1998. Thereafter PW-9 conducted the investigation intothe case interrogating the complainant and other witnesses atthe spot and taking into custody the other material exhibits and prepared their respective recovery memos including thatof the weapon Dharia. He also took into custody the plainand blood stained earth etc. Inquest reports were alsoprepared. He arrested the accused on 17.9.1998 at 11.15A.M. The post-mortem examination on the dead bodies ofthe two deceased was held by PW-1 Dr. Ganpatsinh Ambadan Charan, on 24.8.1998. He found there externalinjuries on the dead body of Jigarsinh, which consisted of onesharp cut wound on the left cervical region up to the middleline of neck and two other incised wounds. On internalexamination he found fracture of the jaws. So far Vimalsinh is concerned he was found to have one sharp cut wound onthe neck from left mandible to right car lobule. There wasfracture of occipital bone as well as that of 1st and 2ndcervical spine. The Doctor opined that the injuries were antemortemand they were caused by sharp edged weapon. Onlooking to the exhibit article No. 9, Dharia he stated that thesaid injuries could be caused by the said weapon. He alsosated that injuries were sufficient in the ordinary course ofnature to cause death. He denied the suggestion made in thecross-examination that the nature of the injuries indicatedcould be caused only by axe. He also denied the suggestionthat the injury Nos. 2 and 3 could not be caused by Dharia.PW-2, Nathosinh is a witness of recovery and the articles andmemos prepared there on. PW-3 is the complainant namely,the mother of the two deceased children and wife of theappellant. She has stated that the appellant right from thebeginning had suspicion about her character and in thatconnection he quite often quarreled with her. She however,denied a suggestion made on behalf of the defence in hercross-examination that the appellant used to tell her that thetwo songs Jigar and Vimal were not born of him. PW-4,Mangusinh Tetsinh, is father of the complainant. PW-5Dineshbhai Paragbhai, who was examined as witness to therecoveries of his clothes etc. made on the arrest of theaccused on 17.9.1998, PW-6, is yet an another witness inconnection with the same, PW-7 Dalpatsinh is a neighbour,who claims to have reached the house of the appellant on theshouts of PW-3, but had found no one else there. PW-8 Bhurjibhai Kavjibhai Damor was PSI and was posted at P.S.Jadar and had registered the case at the Police Station. PW-9 Babubhai Kodarbhai Patel is the Investigating Officer.

4. The Trial Court believed the testimony of PW-3 Ashaben, and accepting the prosecution case that the murdershave been committed by none else but the appellant convictedhim under Section 302 and awarded the capital punishment.The High Court also, after appraising the evidence

andconsidering the points raised by the appellant upheld thejudgment of the Trial Court as well as the conviction and thesentence awarded.

5. It is clear that the case rests on the only ocular testimony of PW-3 Ashaben the mother of the slain childrenand the wife of the appellant. The other prosecution witnessof fact regarding the alarm raised by Ashaben in the morningis PW-7 Dalpatsinh, but he has not stated about the presenceof the appellant at the spot at the time he reached there. Onthe other hand he has stated that he reached on the alarmraised by Ashaben whom he had seen returning from thedairy, no one else was present at her house. In connectionwith the evidence of this witness it has been held that he hasnot disclosed the full truth and had only tried to help hisneighbour namely the appellant. Apart from other evidenceadduced as indicated earlier, there are certain circumstancespointed to the fact that the offence was committed by thepresent appellant.

6. Learned counsel for the appellant has assailedjudgment and conviction broadly on the grounds that therewas discrepancy between the oral and the medical evidence.The next point, which has been urged with some vehemenceis that there being glaring contradiction in regard to lodgingof the FIR, the investigation made in the case cannot be reliedupon nor a case based on such an FIR could be believed. Healso submitted that the presence of the appellant at therelevant time is not established at the spot nor that of thecomplainant PW-3 Ashaben. Yet another submission is thatFIR was lodged according to the prosecution case itself afterarrival of the parents of the complaint and the complaintnot having happy relationship with the accused, falselyimplicated him in the case. Yet another ground raised is thatthe appellant suffered from mental disorder and insanity.Therefore, he could not be liable for the offence convictedfor.

7. Before dealing with each submission made we feel itappropriate to have an over view of the factual position of thecase.

8. According to the complainant as disclosed in the FIRitself besides in her statement in the Court, the appellant hadsuspicion about her character right from the beginning. Asuggestion made in the cross-examination though denied byher was that the accused used to tell her that two slainchildren were not born of him. In that background in thenight preceding the incident the appellant told that they wouldbe sleeping inside the house though usually they slept outsidein the open. In the early hours of the morning he woke up hiswife and after mulching of the cow told her to go to the dairyto deliver the milk. He had himself declined to go to thedairy when asked by the complainant and had also notallowed her to awake Jigarsinh to go to the dairy for thepurpose. According to the prosecution case after thecomplainant had left and he was alone was in the house, hecommitted the crime which was witnessed by PW-3 on herreturn from the dairy. According to the complainant sheraised alarm on seeing the appellant assaulting the children,upon which the appellant slipped away by the back doorleaving the weapon at the spot. It is also stated by her that onher shouts her father-in-law, brother-in-law and others alsoarrived. Out of these persons Dalpat Sinh has been examinedas PW-7. He is a neighbour of the appellant. Theprosecution case as disclosed by PW-3 Ashaben, thecomplainant, is corroborated by the witness to the extent thathe saw her returning from the dairy and that she raised alarmupon which he reached the spot and found that her two sonswere lying murdered but thereafter he adds that he had notfound anyone else at the spot

meaning thereby that he doesnot state about the presence of the appellant there at that pointof time.

9. So far PW-3 is concerned, it is her own case that theappellant had been quarreling with her quite often havingsuspicion on her character. The appellant also used to drinkand sometimes gave beating to her. Her father PW-4 Mangusinh Tetsinh stated that his daughter at times told thatthe appellant had been having quarrels with her but otherdetails were not brought to his notice. As observed by theHigh Court, and in our view, rightly, that the husband andwife had still been living together with the differenceswhatever were there in between them which had not grownto such proportion that she might have told about it to herfather or may not be prepared to live together. It also comesout from her statement that the appellant had been havinghis say in the matters at home and he woke her up anddesired her to go to the dairy to deliver the milk refusing to doso himself even though asked by her. He also did not allowto awake Jigarsinh for the purpose. That is to say she wasstill obeying the wishes of her husband in the householdchores and affairs. It has been observed in the judgment thatPW-7 while saying that on reaching at the spot, he found noone else there, he was not speaking the full truth. It ishowever, to the be noted that to a very great extent thestatement of PW-3, Ashaben stands supported by hisstatement. The circumstances which undisputedly flow fromthese facts are that after PW-3 Ashaben left for dairy therewas none else at the house except the appellant with twochildren asleep. On her return from the dairy she raisedalarm seeing the appellant assaulting the children upon whichthe accused slipped away. PW-7, who arrived at the spot, itwould not be surprising that he did not find accused presentat that time. In the background of whatever has beenindicated above it is clear that the relations between theappellant and PW-3 had not strained from her side at least tothe extent that PW-3 would falsely implicate her husband forthe murder of her two children leaving the real culprit whomay have murdered their two sons. She was still complyingwith whatever the appellant desired her to do. It is also to benoted that father of the appellant though resides in the samehouse and having arrived at the spot, did not proceed to lodgethe FIR. Brother of the appellant who also resides therethough separately, failed to inform the police even though hehad also arrived at the spot on the alarm raised by thecomplainant. The obvious reason appears to be that theymight not be ready to lodge report against the appellant, theown son and the brother. Not this alone, once the father andthe brother of the accused would find that the appellant wasbeing falsely roped in by his wife, there was no reason forthem not to come forward to inform the police about thecorrect position or to say that the crime was not committedby the appellant. They also did not appear in his defence inthe Court to say that it was a case of false implication of theappellant by none else but his daughter-in-law. Normally abrother or father will also not be a silent spectator to the falseimplication of his brother/son by his wife.

10. Now taking up the points as raised by the appellantregarding the medical evidence, we may at the outset indicatethat there is no force in it. Learned counsel for the appellanthas submitted that according to the statement of the doctorPW-1 Ganpat Sinh Ambadan Charan the injuries found on thedead not by a Dharia. On going through the statement of thedoctor we do not find that the submission made is supportedin any manner. The doctor has very clearly stated that all theinjuries found on the dead bodies were caused by some sharpedged weapon. He has categorically stated that those injuriescould be caused by Dharia which was exhibited in the Courtthough a suggestion was made and denied by the doctor thatsuch injuries could be caused only by an axe. In thisconnection the other related argument which has bene raisedis that in the FIR PW-3 had mentioned that the

appellant hadassaulted the children with an axe but later on changed herstatement in the Court saying that it was by mistake she hadmentioned 'axe' in the FIR but in fact it was Dharia. In ourview it is a very insignificant contradiction which may notlead to any worthwhile conclusion in view of the fact that itwas immaterial whether the weapon was an axe or a dhariaas both are sharp edged weapons and according to thestatement of the doctor the injuries as received by twochildren were caused by a sharp edged weapon. There wasthus no design or purpose in changing the statement ordeliberately giving out something wrong in the FirstInformation Report about the weapon used by the appellant tocause the injuries upon the deceased persons. The medicalevidence supports the prosecution case in all respects. Wetherefore find no force in this submission as well.

11. Learned counsel for the appellant then submitted thatpresence of the appellant at the relevant time at the spot isnot established and in this connection he has mainly reliedupon the statement of PW-7. We have already made ourobservations in that regard. We find that it has rightly beenfound by the courts below that PW-7 has not come out withfull truth, may be with a view to help out his neighbourotherwise to a great extent prosecution case finds supportsfrom his statement up to the stage, the PW-3 on returnfrom the dairy had raised an alarm. In this view of the matterthe presence of PW-3 can also not be doubted in respect ofwhich an effort was made to raise an argument in vain.

12. The next argument upon which much stress has beengiven by the learned counsel for the appellant is about thecontradiction relating to the lodging of the FIR. According tothe PW-3 she had gone to the police station where inquirieswere made from her by the police personnel and thereafterreport was lodged on 24.8.98 itself at 5.00 P.M. PW-9 alsostates that complaint was given by Ashaben on the basis ofwhich a case was registered at the police station. In the cross-examination,he has however stated that on his way back fromthe Court, he got a wireless message from the Control,regarding this incident thus he straightaway went to village Bhadresar from Himmatnagar. The report was written at thehouse of Ashaben who was present there. The report wasforwarded to the police station for registration of the case. Healso states the mother-in-law and father-in-law of thecomplainant were also present at the house. He inspected thespot and completed the other formalities of the investigation.He has also stated that two dead bodies were identified byPW-3 who had also shown him the place of occurrence.There is no doubt about the fact that there is definitely a contradiction about the lodging of the FIR but the effect ofsuch contradiction or discrepancy may have to be viewed inthe light of the facts and circumstances of each case. Theremay be cases where such a discrepancy may prove fatal tothe prosecution case whereas in other cases it may not havethe same effect. The High Court has considered this matter insome detail taking into account all the discrepancies in regardto this point and came to the conclusion that PW-9 theInvestigating Officer had come straight to the village Bhadresar while returning from the Court after obtaining theremand of accused persons in some other case and the FIRwas scribed there at the house of Ashaben which wasforwarded to the Police Station for its registration. It wasbeen observed that for an uneducated village person, it is notunlikely that one may make some embellishment in thestatement saying that the FIR was recorded at the policestation since normally it is recorded there. It has also beenobserved that the complainant Ashaben was present inVillage Bhadresar when the police reached there and that the Panchanmas etc. had also been prepared in her presence andthat she had also identified the bodies and pointed out theplace of occurrence to the Investigating Officer. As observeearlier the discrepancy in regard

to the lodging, of the FIR iscertainly there and the conduct of the Investigating Officer incarrying out the investigation of the case has also beencommented upon by the trial court but we are of the view that the consequences of such discrepancies or defective ordoubtful investigation is not necessarily only one leading todiscredit the main prosecution case if the prosecutionevidence inspires confidence and circumstances lead to sucha conclusion and the prosecution story rings true. No doubtthat in that event it would be necessary to evaluate as to whatextent such faulty investigation or discrepant statement oncertain facts relating thereto, shall cause damage to theprosecution case as a whole. In the judgment of the HighCourt a few decisions on the point with their relevantobservations made thereunder have been referred to which wemay to reproduce. They are as follows:

> "In State of Rajasthan versus Kishore[1996 SCC (Crl) 646] has pointed outthat mere fact that the investigatingofficer committed irregularity orillegality during the course ofinvestigation would not and does notcast doubt on the prosecution case nortrustworthy and reliable evidence can becast aside to record acquittal on thataccount. In that case piece of evidencewas not considered by the High Courtbut it fell it doubtful like DoubtingThomas with vacillating mind to acceptthe prosecution case for the reasonswhich the Apex Court pointed out wereinvalid reasons and has wrongly givenbenefit of doubt to the respondent.Suffice it to say that in the instant case,there is sufficient, reliable, trustworthyand acceptable evidence and thereforethe discrepancy pointed out is of noimportance and does not affect theprosecution case and therefore, not onlythe evidence was rightly accepted by thetrial court but the trial court onappreciation of evidence andcircumstance, made the order.
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> The Apex Court in the case ofKarnail Singh versus State of MadhyaPradesh has observedas under:
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> "In case of defectiveinvestigation, it would not be proper toacquit the accused if the case isotherwise established conclusivelybecause in that event, it wouldtantamount to the falling into the handsof an erring investigating officer."

In the case of Ram Bihari Yadav v.State of Bihar, , theApex Court observed in Para 13 asunder:

> "In such cases, the story of theprosecution will have to be examineddehors such omissions and contaminatedconduct of the officials otherwise themischief which was deliberately donewould be perpetuated and justice wouldbe denied to the complainant party andthis would obviously shake theconfidence of the people not merely inthe law-enforcing agency but also in theadministration of justice"

In the case of Paras Yadav v. Stateof Bihar the Courtheld as under:

> "It may be that such lapse iscommitted designedly or because ofnegligence. Hence, the prosecutionevidence is required to be examineddehors such omission to find out whetherthe said evidence is reliable or not"

13. The High Court has also referred to a decision reported in 2000 S.C.C. (Crl.) 522 Ambica Prasad and another v. State(Delhi Administration) in which this Court observed that faultyinvestigation or witnesses turning hostile may not ultimately affectthe merit of the case nor it could be a ground to disbelieve thestatement of the prosecution witnesses.

14. In our view the High Court taking into account theobservations made in the decision referred to above came to theconclusion that otherwise reliable statement of the witness PW-3 Ashaben could not be discarded or discredited even though therehad been any fault or negligence in conducting the investigation,that too by itself, be not sufficient to dislodge the prosecution caseas a whole. The chances of making some embellishment here andthere in the statement are not ruled out even in cases of otherwisetruthful and reliable witnesses. The concept of falsus in uno andfalsus in omnibus" has been discarded long ago. Therefore in suchcircumstances the Court may have to scrutinize the matter a bitmore closely and carefully to find out as to how far and to whatextent the prosecution story as a whole is demolished or it isrendered unreliable. For this purpose the statement of the witnesseswill have to be considered along with other corroborating evidenceand independent circumstances so as to come to a conclusion thatthe contradiction in the statement of a witness could be consideredas an embellishment by the witness under one or the other belief ornotion or it is of a nature that the whole statement of the witnessbecomes untrustworthy affecting the prosecution case as a whole.The same principle will apply to a faulty or tainted investigation.Other relevant facts and circumstances cannot be totally ignoredaltogether. While appreciating the matter one of the relevantconsideration would be that chances of false implication are totallyeliminated and the prosecution story as a whole rings true andinspire confidence. In such circumstances despite thecontradictions of the defective or tained investigation, a convictioncan safely be recorded.

15. We may next consider the argument made on behalf of theappellant that he was suffering from mental ailment and hadreceived medical treatment for the same. First of all a reference hasbeen made to the statement of PW-7 Danpatisnh had been sufferingfrom mental disease and had been admitted in the hospital of Dr.Navin Modi. He further stated that the appellant was like a madperson and did not have any sense. It was also stated by him thatthe husband and wife were not on good terms and quarrel used totake between them. Whenever he got ill, his father used to take himto the hospital. So far the nature of illness of the appellant isconcerned, PW-3 denied the suggestion that he was suffering fromany mental illness. She stated that he had been taking liquor. Shefurther goes on to say that he was admitted in HimmatnagarHospital but did not know if it was hospital of Dr. Navin Modi orsome other hospital. We do not think that on the basis of thestatement of these witnesses, any conclusion can be drawn that theappellant was suffering from any mental illness or he used tobecome mad. We find no infirmity in the finding of the High Courtthat in case it was so, evidence should have been led on behalf ofthe defence to prove the fact of mental illness. The prescription ofthe treatment given to the appellant in the hospital should have beenbrought in the record or the Doctor who may have treated him couldbe produced to show that the appellant suffered from any mentalillness. Obviously these facts if at all, would be in the specialknowledge of the defence and in case the defence wanted to takeadvantage of any such ground of mental illness, this plea shouldhave been substantiated by adducing relevant and cogent evidence.No circumstance has been indicated on the basis of which any suchinference could be drawn. We therefore, find no

force in thisargument as advanced on behalf of the appellant.

16. The Submission made on behalf of the appellant that thecomplainant had actually not witnessed the occurrence also has nobasis. She has made the statement to that effect and nothing couldbe elicited in her cross-examination by reason of which any doubtcould arise about the variety of her statement. On return from thedairy she found her husband assaulting the deceased and on heralarm raised he slipped away from the other door. It is also strangethat after the incident the appellant was not available for more than15 days until he was arrested by the police. In the normal course,on the murder of his two sons, he should have been moving aroundthe scene and to have lodged the report against the real assailants orin case real assailants were not known, he could have lodged thereport without naming any accused therein. PW-3 has made herstatement in a very natural way without trying to hide anything.She has stated categorically that her husband suspected hercharacter from the beginning and had been quarreling on thataccount. She also stated that about a week before he was drunkand had also given a beating to her. She has given a vividdescription of the incident most naturally the way she wasawakened and was told by her husband to go to deliver the milk atthe dairy . She did go and on return as soon as she entered into thehouse, she raised alarm, this part of statement is supported by PW-7also, but for the fact that according to him on his arrival, he foundno one else at the scene of occurrence. It would be a matter ofminutes or a fraction thereof, if the accused had at once left theplace by the other door, the moment he heard the alarm of PW-3.The PW-7 though a neighbour lives in different house and by thetime he reached, it is not unlikely that he may have missed theappellant who had left the spot. Therefore, on the basis of the merestatement of PW-7 that on his arrival he found no one else it can notbe said that PW-3 told a lie while stating that her husband hadslipped away from the other door on hearing her cries. At the sametime, we also find no good reason to suspect that she would falselyimplicate her husband for the killing of their sons by some one else.The real assailants of her own children would not be spared. It istrue, as pointed out by the learned counsel for the appellant that herhusband suspected her and there had been quarrel between them yetthe fact remains that they continued to live together. It is difficultto accept that after loosing sons she would be prepared to loose herhusband too by falsely implicating him though she had been livingwith him for last 15 years along with his parents in the same house.As indicated earlier also at the risk of repetition we may again pointout the question which stares for an answer is as to why theappellant himself, his father or brother would not lodge the report orin any case if it was correct that he was being falsely fixed then toothey would prefer silence rather to come forward to save the life ofhis son or the brother.

17. In the above background we find that the Trial Court and theHigh Court have rightly placed implicit reliance upon the statementof PW-3 despite the infirmities which crept in due to carelessinvestigation and contradiction regarding the place of lodging of thereport. PW-3 was quite categorical that after the report was soribed.she had put her thumb impression upon the same. According to I.O.PW-9, it was forwarded to the police station for registration of thecase, which according to PW-3 was lodged at the police stationitself. The Trial Court and the High Court have already appreciatedthe position and have rightly observed that it may be due to someconfusion or carelessness or under an impression that the reports arelodged at police station. PW-3 had stated that she has lodged thereport at the police station, whereas it has been found that it waswritten at Village Bhadresar at her place. Learned counsel for theappellant relying upon the decision reported

in 1994 (Suppl) 1 SCC590.7 submitted that if the Investing Officer reaches the spotwithout recording the FIR first, the statement given by thecomplainant is to be treated as under Section 162 Cr.P.C. and itwould not be safe to rely upon it and as it can not be treated as aFIR. It is also submitted that the prosecution case also becomesdoubtful and unreliable. We feel that we have substantially dealtwith this aspect of the matter in the earlier part of the judgment evenwhat has submitted by the learned counsel for the appellant isaccepted, in our view, it will have no effect on the merit of the casebased on the unimpeachable evidence on the record supported bythe medical evidence and the independent circumstances of the case.

18. Statement of PW-3 Ashaben totally inspire confidence. Italso appears that she was not ill-disposed to her husband to theextent that it could be inferred that she would be falsely implicatinghim in such a crime. This fact would be apparent from the statementof her father PW-4 who had stated that he knew that sometimesquarrels took place between her daughter and the appellant but hewas never given any details about the same. Had she been ill-disposed to him she might have been making all sorts of complaintsto her parents but that does not appear to be so. The prosecutionstory as per her statement rings true and stands established by cogentevidence on the record and independent circumstances.

19. We may now turn to the question of sentence. In BachanSingh v. State of Punjab this Court saidthat death sentence is to be awarded only in the rarest of rare cases.In Manoharalal @ Munna and other v. State of NCT of New Delhi death penalty was not awarded eventhough four innocent children of the family of the witness were burntto death. It was however a case of rioting. In the case of Kishoriv. State (NCT) Delhi also death sentencewas not awarded as it was a case of mob attack and frenzy. Anumber of persons were killed. It was not considered to be the rarestof rare cases. Apart from these cases a reference has also beenmade to a decision - Om Prakashv. State of Haryana, where accused a member of para militaryforce had killed seven members of a family in a pre-planned manneras he was labouring under the strain that the accused and the members of his family were suffering agony at the hands of thefamily of the victims. He had a feeling of injustice being meted outto them. The Court considered it to be mitigating circumstanceand not treated it to be rarest of rare cases. Similarly, in the case of Krishan v. State of Haryana (2000) 10 SCC 451 punishmentof life imprisonment was awarded where the murder was committedwhile the accused was already undergoing life imprisonment andwas on parole. It was observed that this fact alone would not besufficient to inflict the death penalty. Other facts and circumstanceswould also have to be taken into account. In Machhi Singh andOrs. v. State of Haryana it has beenobserved that extreme penalty of death need not be inflicted exceptin gravest cases of extreme culpability. Circumstances of theoffender are also required to be taken into account while consideringthe question of awarding the death penalty. Imprisonment for life isthe rule as punishment for murder and death sentence is anexception. It has then been observed that a balance-sheet ofaggravating and mitigating circumstances has to be drawn up and abalance has to be struck. The other facts which need to beconsidered are magnitude of the crime, the anti-social nature of thecrime, personality of the victim, notice and the manner ofcommission of the murder etc. In State of Madhya Pradeshv. Shyam Sunder Trivedi 1994 (4) SCC 262 also it has beenobserved that the Court must balance the mitigating and aggravatingcircumstances of the case which would depend upon the particularand peculiar circumstances of each case. On the other hand thecases in which death sentence was

awarded and taken note of by theHigh Court are Kuljeet Singh alias Rangs v. Union of Indiaand Anr. . In this case also two innocentchildren were murdered. However, we find that they werekidnapped first with oblique motive and were murdered. In Asharafi Lal and Sons v. State of U.P. the accused persons had killed their two innocent nieces to wreakpersonal vengeance regarding property dispute with the mother ofthe victims. In this case also death sentence was awarded by thisCourt. A reference is also made to a case -- Ramdeo Chauhan alias Rajnath Chauhand v.State of Assam. It was observed that when a man becomes beastand menace to the society, he could be deprived of his life accordingto the procedure established by law. In Dhananjoy Chatterjeealias Dhana v. Sate of West Bengal theaccused had killed his pregnant wife and three minor children for noreason and without provocation. He had assaulted his mother alsowho came to their rescue. The incident was described to beshocking to the conscience of the society. Hence, death sentencewas awarded.

20. Every murder is a heinous crime. Apart from personalimplication it is also a crime against the society but in ever caseof murder death penalty is not to be awarded. Under the presentlegal position imprisonment for life is the normal rule for punishingcrime of murder and sentence of death, as held in different casesreferred to above, would be awarded only in the rarest of rare cases.The number of factors are to be taken into account namely, themotive of the crime, the manner of the assault, the impact of thecrime on the society as a whole, the personality of the accused,circumstances and facts of the case as to whether the crimecommitted, has been committed for satisfying any kind of lust,greed or in pursuance of anti-social activity or by way of organizedcrime, drug-trafficking or the like. Chances of inflicting the societywith the similar criminal act that is to say vulnerability of themembers of the society at the hands of the accused in future andultimately as held in several cases mitigating and aggravatingcircumstances of each case has to be considered and a balance hasto be struck. The learned State counsel as indicated earlier hasalready indicated the aggravating circumstances by reason of whichit has been vehemently urged that sentence of death deserves to beconfirmed.

21. Now considering the facts of the present case in thebackground of our observation made in the preceding paragraph,we take note of the fact that the appellant had been labouring underthe strain suspecting character of his wife. This fact is mentionedby none else but by the complainant Ashaben herself in her report.She also admitted in her statement in Court that quite often therehas been quarrel between the two on that count. Though denied, asuggestion has been made to PW-3 Ashaben in her cross-examinationthat the appellant had been telling her that their sonswere not born of him. It is true that there does not seem to be anyimmediate cause before the commission of offence, yet the factremains that rightly or wrongly such a painful belief was beingentertained by the appellant since long which constantly engagedhis mind as admittedly there had been quarrels on that countbetween the two. Obviously he would have been brooding underthat idea, which perhaps he could not contain any more. It is truethat two innocent children lost their lives for no fault of theirs. Wealso notice that Dharia is a weapon, which is ordinarily to be foundin the house of any farmer or agriculturist in that area as stated byPW-3. He seems to have used the weapon as lying in the house.The offence was obviously not committed for lust of power orotherwise or with a view to grab any property nor in pursuance ofany organized criminal or anti-social activity. Chances of repetitionof such criminal acts at his hands making the society furthervulnerable are also not apparent. He had no previous criminalrecord.

22. For the above reasons in our view it cannot be said that thecase falls in the category of rarest of rare cases so as to make theappellant liable for extreme penalty of death. The crime committedis no doubt heinous and unpardonable. The act of the appellant iscondemnable. In our view however the normal sentence of lifeimprisonment for the offence of murder would meet the ends ofjustice.

23. In the result, while dismissing the appeal against hisconviction, we set aside the sentence of death as awarded by thetrial court and confirmed by the High Court and commute to that ofimprisonment for life. The appellant shall serve out the sentence ofimprisonment for life.