

SURESH CHANDRA BAHRI ETC. ETC.

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v.

STATE OF BIHAR

JULY 13, 1994

[DR. A.S. ANAND AND FAIZAN UDDIN, JJ.]

B

Indian Penal Code 1860, Ss.302, 201 r/w 120A—Husband and two accomplices conspiring and committing murder of wife and two children—Evidence of approver trustworthy and corroborated in material particulars by circumstantial and expert evidence—Held, proved beyond reasonable doubt that husband who master minded plan and co-accused hatched conspiracy and in pursuance thereof committed murder and made efforts to screen the offence

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Indian Penal Code, S.120A—Criminal conspiracy—Husband and two accomplices conspiring and killing wife and two children—Held, essential ingredient is agreement between conspirators to commit crime; not necessary that each party to conspiracy must do some overt act.

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Code of Criminal Procedure, 1973, S.306(4)(a)—Approver granted pardon by CJM without recording statement—Case committed to Trial Court—Thereafter records sent back to CJM for recording statement of approver—Whether provision mandatory and whether failure to comply vitiates the trial—Held, provision mandatory but on facts trial not vitiated.

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Code of Criminal Procedure, 1973, S.306(4)(b)—Approver in custody at time of pardon—Later released on bail by High Court even before conclusion of trial—Whether mandatory provision violated—Held, no; release of approver on bail in the circumstances not illegal.

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Code of Criminal Procedure, 1973, S.313—Incriminating circumstances not put to the accused during examination—Held, does not vitiate trial unless real prejudice caused to the accused.

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Indian Evidence Act, 1872, S27—Discovery of incriminating articles pursuant to confessional statement of accused—Held, in the instant case disclosure statement true and worthy of credence.

Indian Evidence Act, 1872, Ss.114 Illustration (b), S.133—Conviction

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- A for offence of murder on basis of approver evidence—Evidence on broad and material particulars scrutinised—Held, approver's evidence trustworthy and corroborated in material particular; deserves credence.

- B Criminal trial—Sentencing—Death sentence—Accused killing wife in extremely brutal gruesome diabolical and dastardly manner—Body trunicated into two parts in devilish style evincing total depravity to gain control over property—Further killing two children in cold blooded manner making them believe about being taken on a pleasure trip—Bodies thrown into river after infliction of severe injuries—Held, rarest of rare case with no mitigating circumstances; death sentence justified—Code of Criminal Procedure 1973, S.354(3).

- C Criminal trial—Sentencing—Co-accused assisting main accused in killings but no evidence about part played and manner in which he acted in the killings—Held, extreme penalty not warranted; death sentence commuted to life imprisonment—Code of Criminal Procedure 1973, S.354(3).

- D Criminal trial—Circumstantial evidence—Facts and circumstances must be established beyond reasonable doubt—Should not only be consistent with guilt of accused but must be entirely incompatible with innocence of accused.

- E Criminal trial—Corpus delecti—Discovery of skull of deceased long after occurrence—Identity established through forensic methods—Held, even where dead body not recovered offence of murder could be established if there is positive evidence to connect culprit.

- F Criminal trial—Test identification parade—Accused seen by witnesses in court without previous identification parade—Held, witnesses had seen accused continuously for several days and recognised him before they made their statements in Court; test identification parade not necessary—Indian Evidence Act, 1872, S.9.

- G Constitution of India, Article 136—Trial Court and High Court after giving concurrent finding of guilt of accused—Held, finding fully supported by evidence on record; does not call for interference.

- H Accused SB was married to deceased U and had two children R and S. The relations between SB and U were strained and difference arose between them over a house at Ranchi which U wanted to dispose of with a

view to use the proceeds to migrate along with her children to America, where her parents lived. Accused SB not liking this, hatched a conspiracy with the two co- accused RPS and GS to eliminate U and the two children.

On October 11, 1983 SB and RPS murdered U in SB's house at Ranchi and served her head from the body. With the help of GS and his assistant RSV who later turned approver, the headless body was wrapped in a blanket and dumped in a septic tank in the compound of the house. SB and RPS later threw the head under a bush in the forest on the Ranchi Patrautu Road. Later in January 1984 GS took the body out of the septic tank carried it in a lorry and threw it in a dumping pit known as Madhukam dump. SB then wrote two letters on October 29 and November 3 to U's parents falsely stating that U was extremely busy at his Dhulli farm house and that henceforth would not be able to writ letters to them.

SB withdrew the two children R and S from the school at Delhi Where they were studying. Later SB with RPS and the children left Delhi by car and reached SB's Dhulli farm house near Ranchi on December 16, 1983. SB and RPS committed the murder of R and S in the intervening night of December 16 and 17, took the bodies by car to Varansi and threw them in the Varuna river. While S's body was later discovered on December 20 the body of R was swept away never to be recovered.

U's parents suspecting foulplay asked their son B working at Libya to go to India and make enquiries about U and the children. After making frantic enquiries at Ranchi, Dhulli and Delhi B came to know the facts leading to the murders and lodged FIRs at both Ranchi and Delhi. The CBI took over the investigation of the case. On interrogating GS he made a disclosure about throwing U's body in the Madhukam dump from where a blanket, piece of saree and rope were recovered. SB who had gone into hiding and was staying in different places including Nepal, was arrested in Delhi on July 31, 1984. RPS who was arrested on August 8 made a disclosure statement leading to the recovery U's skull, hair and jaw.

RSV who was arrested on December 3 made a confessional statement before the judicial Magistrate under S. 164 Cr. P.C. on December 19, 1984. Thereafter on an application by RSV, the CJM accepted him as approver and granted him pardon on January 9, 1985. RSV's statement as approver was recorded on January 30, 1986 and he was granted bail by the High Court on January 13, 1987.

A The Trial Court found SB, RPS and GS guilty of the offence causing the murder of U, R and S and of criminal conspiracy to commit the murders and sentenced each of them to death. The High Court, on reference confirmed. SB, RPS and GS appealed to this Court.

B It was contended that no question relation to motive having been put to the Appellants while recording their statements under S.313 Cr.P.C., no motive could be attributed to them. Further, the approver was not examined as a witness by the Magistrate at the stage of grant of pardon but only later after the matter was remitted to the committal Magistrate.

C Further, in contravention of S.306(4)(b) which was mandatory, the approver was released on bail even before the conclusion of the trial. The approver's statement under S.164 Cr. P.C. was not voluntary and his evidence, in the absence of corroboration of material particulars could not form the basis of the convictions. The recovery of the blanket, piece of saree and rope at the instance of appellant GS was not, in the absence of any disclosure statement, valid in law. Without there being any previous identification parade, the identification of RPS in the dock for the first time by witnesses was of no evidentiary value. There was no direct evidence against the appellants for their involvement in the conspiracy and no factual evidence of the actual participation of GS in the crime. Finally it was contended that the facts and circumstances did not warrant the extreme penalty of death sentence.

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Dismissing the appeal of SB and partly allowing the appeals of RPS and GS, this Court

F **HELD : 1.1.** On an overall independent consideration of the circumstantial and expert evidence as well as the evidence of the approver adduced by the prosecution it is abundantly clear and satisfactorily established that the evidence of the approver has received requisite corroboration on all material particulars and the totality of the surrounding circumstances, antecedents and subsequent conduct amongst other factors established against the three appellants prove beyond all reasonable doubt that at the instance of SB who masterminded the plan, the other two appellants conjointly hatched a conspiracy to commit the murder of U and that in prosecution of the common intention SB and RPS did commit the murder of U. Not only this but all the three appellants with a view to screen themselves from the commission of the offence made all out efforts for the

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disappearance of the dead body of U. [534-C, D]

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1.2. The totality of the circumstances complete the chain which lead to the only irresistible conclusion that the appellants hatched the conspiracy to commit the murder of the two children and in prosecution of their said plan executed it at Dhulli farm. [552-C]

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2.1. The essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A of I.P.C., then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained Section 120- B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may frustrate and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit offence may be legitimately drawn. [552-H, 553-A to D]

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N.M.M.Y. Momin v. State of Maharashtra, AIR (1971) SC 885 and *State (Delhi Admn.) v. V.C.Shukla*, AIR (1980) SC 1382, referred to.

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2.2. The facts and circumstances fully establish the offence under Section 302/120-B of the Penal Code against the appellants GS and RPS also and there is hardly anything deserving interference with the view taken by the two courts below after a detailed and elaborate discussion of

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A the evidence and material on record. The conclusions recorded by the two courts below as well as the convictions of the appellants under Section 302, 302/120-B and 201 of the Penal Code are confirmed. [555-D, E]

B 3.1. The examination of accomplice or an approver after accepting the tender of pardon as a witness in the Court of the Magistrate taking cognizance of the offence is a mandatory provision and cannot be dispensed with and if this mandatory provisions is not complied with it vitiates the trial. [508-C]

C 3.2. Breach of the provisions contained in clause (a) of Sub-section (4) of Section 306 is of a mandatory nature and not merely directory and, therefore, non-compliance of the same would render committal order illegal. [508-E]

D 3.3. On remand by the Additional Judicial Commissioner the learned Magistrate examined the approver as a witness on 31.1.86 and then again committed the case for trial to the Court of Additional Commissioner. Thus in any case the provisions of clause (a) of sub-section (4) of Section 306 were ultimately complied with. No prejudice much less any disadvantage was caused to any of the accused. [509-F, G]

E *Kalu Khoda v. State*, AIR (1962) Gujarat 283 F.B.; *Re Ramaswamy*, (1976) Cr. L.J. 770 Madras and *V. Vijayaraj v. State*, (1986) Cr. L.J. 2104 A.P., discussed.

F 4.1. Even though the approver was not granted any bail by the committal Magistrate or by the trial Judge yet his released by the High Court would not in any way affect the validity of the pardon granted to the approver. [511-F]

G 4.2. The dominant objective of requiring an approver to be detained in custody till the conclusion of the trial is not intended to punish the approver for having come forward to give evidence but to protect him from possible indignation, rage and resentment of his associates in a crime as well as with a view to prevent him from the temptation of saving his one-time friends after he is granted pardon and released from custody. The provisions are based on statutory principles of public policy and public interest. [511-C, D]

H 5.1. In the event of any inadvertent omission on the part of the Court

to question the accused on any incriminating circumstance appearing against him the same cannot *ipso facto* vitiate the trial unless it is shown that some prejudice was caused to him. [504-H, 505-A] A

Bijoy Chandra v. State of West Bengal, (1952) Criminal Law Journal 644 SC and *Rama Shankar v. State of West Bengal*, AIR (1962) SC 1239 para 14, referred to. B

5.2. No such point was raised and no such objection seems to have been advanced either before the Trial Court or the High Court. Appellant being unable to show what in fact was the real prejudice caused by the omission, it cannot be said that any prejudice was caused. [505-C] C

6.1. The confessional statement of the disclosure made by the appellant GS is confirmed by the recovery of the incriminating articles and, therefore, there is reason to believe that the disclosure statement was true and the evidence led in that behalf is also worthy of credence. [532-F] D

6.2. The provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false. [532-D, E] E

- *Nari Santa v. Emperor*, AIR (1945) Patna 161 and *Abdul Sattar v. Union Territory*, AIR (1986) SC 1438, distinguished. F

7.1. Though a conviction can be based on uncorroborated evidence of an accomplice but as a rule of prudence it is unsafe to place reliance on the uncorroborated testimony of a approver as required by illustration (b) Section 114 of the Evidence Act. [517-H] G

Bhiva v. State of Maharashtra, AIR (1963) SC 599; *Ram Narayan v. State of Rajasthan*, [1973] 3 SCC 805 and *Ravinder Singh v. State of Haryana*, AIR (1975) SC 856, referred to. H

7.2. The testimony of the approver remained consistent except for minor and insignificant contradictions and omissions which are bound to H

- A** occur in the statement of anyone. (p.59) The evidence of the approver has received requisite corroboration on all material particulars. [523-A, 516-E]

7.3. The confession of the approver is free from all infirmities and conforms to the requirements of S.164. [513-C]

- B** 8.1. As far as SB is concerned, the rule of rarest of rare cases has to applied. There could be no other proper and adequate sentence except the sentence of death as there are no mitigating circumstances whatsoever. The murder of U was committed in an extremely brutal, gruesome, diabolical, revolting and dastardly manner so as to arouse intense and extreme indignation of the society. The victim was subjected to inhuman acts of torture and cruelty while causing her murder as her body was truncated into two parts in a devilish style evincing total depravity simply to gain control over property. Having not been satisfied with the killing of his wife SB was further determinated to kill his innocent children at Dhulli farm making them believe that they were being taken on a pleasure trip to the farm and after they were done to death by inflicting severe injuries on the neck and other parts of the body threw their dead bodies in the Varuna river having no consideration for human life and that too for his own flesh and blood. The cold blooded cruel murder of the innocent children by none else but their own real father shows the enormous proportion with which it was committed eliminating almost all members of the family.

[560-B, 559-E, F, G]

- F** 8.2. Appellant GS does not deserve the extreme penalty of death but the adequate sentence for the part he played would be life sentence. Although GS was an active member of the party who hatched the conspiracy to kill U, he was not party to her actual murder. Similarly though he rendered assistance in sending the cots and chairs to Dhulli farm and sharpening the dagger and batalies for the murder of the two children he was not in fact present at Dhulli farm when the two children were done to death. [560-H, 561-A, 560-G]

- G** 8.3. It would not be proper to inflict the extreme penalty of death to RPS also but in the facts and circumstances of the case the sentence of life imprisonment will be just and proper sentence. [561-D]

- H** *Bachan Singh v. State of Punjab*, [1980] 2 SCC 684; *Machhi Singh v. State of Punjab*, AIR (1983) SC 597 and *Dhananjay Chatterjee @ Dhana v. State of West Bengal*, JT (1994) 1 SC 33, followed.

9. In a case of murder in which the evidence that is available is only circumstantial in nature then in that event the facts and circumstances from which the conclusion of guilt is required to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and circumstances so established should not only be consistent with the guilt of the accused but they also must entirely be incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence. [514-B, C] A
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10. It could not be accepted that the prosecution has failed to establish that the skull which was recovered at the instance of RPS did not belong to U. Most often and in certain cases even the dead body of the deceased person is not recovered or seized but if there is positive evidence to connect the culprit, it cannot be said that the offence of murder is not established. [529-F, E] C

11. Test identification parade was not necessary at all as the witnesses had seen the appellant RPS continuously for several days and they had the opportunity of knowing and recognising him since before they had made their statement in the Court. [542-H] D

Kannan v. State of Kerala, [1979] 3 SCC 319 and *Mohanlal Ganga Ram Gehani*, [1982] 1 SCC 700, distinguished.

12. Since after going through the evidence and material on record the facts and circumstances established by the Trial Court as well as by the High Court are well founded and fully supportable by evidence on record, the same do not call for interference by the Supreme Court under Article 136. Ordinarily the Supreme Court does not review and reappraise the evidence under Article 136 of the Constitution. [541-A] E
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CRIMINAL APPELLATE JURISDICTION : Criminal appeal No. 329 of 1992 etc. etc.

From the Judgment and Order dated 16.12.91 of the Patna High Court in CrI. A. No. 152/90 (R). G

Sushil Kumar, K.B. Sinha, Ashok Kumar Sharma and J.P. Sharma for the Appellants.

A. Raghubir, Tara Chand Sharma, Ms. Neelam Sharma, B.B. Singh and P. Parmeshwaran for the Respondent/State/C.B.I. H

A The following judgment of the Court was delivered by

FAIZAN UDDIN, J.

B 1. In Sessions Trial No. 77/85 the appellants Suresh Bahri and Raj
C Pal Sharma were convicted under Section 302 of the Penal Code for
D causing murder of Urshia Bahri and her two children, namely, Richa Bahri
E and Saurabh Bahri. All the three appellants, Suresh Chandra Bahri, Gur-
bachan Singh and Raj Pal Sharma were also convicted under Section
302/120-B of the Penal Code for the offence of criminal conspiracy to
commit murder of Urshia Bahri and her two children named above. The
appellants Suresh Chandra Bahri and Raj Pal Sharma were further con-
victed under Section 201 of Penal Code for causing dis-appearance of
evidence of murder of Saurabh Bahri and the appellants Suresh Chandra
Bahri. Gurbachan Singh and Raj Pal Sharma were also convicted under
Section 201 of the Penal Code for causing disappearance of evidence of
murder of Urshia Bahri by the Additional Judicial Commissioner, Ranchi
by judgment dated 27.7.90 who awarded the sentence of death for the
offences under Section 302 and 302/120- B of the Penal Code and Rigorous
Imprisonment to all the three appellants for a period of seven years' for
the offence under section 201 of the Penal Code. The learned Trial Judge
made a reference to the High Court of Patna, Ranchi Bench under Section
366 of the Code of Criminal Procedure for confirmation of the sentence of
death and at the same time the three appellants also preferred separate
criminal appeals No. 142, 143 and 152 of 1990 challenging their convictions
under Sections 302/120-B and 201 of the IPC. The High Court of Patna
(Ranchi Bench) dismissed the three appeals preferred by the three appel-
lants affirming the sentences awarded to them and accepted the death
reference by judgment dated 16.12.91 against which these three appeals by
leave of this Court have been preferred. Since all these appeals arise out
of the common judgment of the High Court, they are being disposed of
together.

G 2. It may be pointed out that along with the above named three
appellants three other accused, namely, Y.D. Arya, the maternal uncle of
the appellant Suresh Bahri, Smt. Santosh Bahri the mother of the appellant
Suresh Bahri and one Mohd. Suhail, Truck driver, were also charged and
tried as co-accused for the offences punishable under Sections 302/120-B
and 201 of the Penal Code, but they were acquitted by the learned Trial
Judge giving them benefit of doubt. No appeals against their acquittal are
H preferred.

3. Admittedly, at the relevant time the appellant Suresh Chandra Bahri (hereinafter referred to as Suresh Bahri) resided along with his deceased wife Urshia Bahri, at south Ranchi, House No. 936 on the Station Road within the jurisdiction of Chutia Police Station. He also had a farm and house attached thereto at Dulli, a place situated at a distance of about 40 kilometers from Ranchi, towards Khelari within the jurisdiction of Police Station Khelari, District Ranchi. Suresh Bahri was married to the deceased Urishia Bahri in 1971 and out of their wed-lock deceased Kumari Richa Bahri and Saurabh Bahri were born. Kumari Richa Bahri was a student of class VI in Father Aqnel School, New Delhi in the year 1983, while Saurabh Bahri was a student of class IV in the same school. The acquitted accused Smt. Santosh Bahri is the mother of Suresh and the acquitted accused Y.D. Arya is the maternal uncle of appellant Suresh Bahri and real brother of Smt. Santosh Bahri. There is no dispute that the parents of deceased Urshia Bahri were living in America having settled down there and the first informant of the incident Bineet Singh Sarang, PW 69 the brother of the deceased Urshia Bahri was employed as an Engineer in Libya. The deceased Urshia used to write letters from time to time to her parents in America and also used to talk to them on telephone.

4. This case has a chequered story and the prosecution case unfolds a pathetic chilling and sinister phenomenon whereby the three innocent lives who were the heirs of the properties of appellant Suresh Bahri, were eliminated from this worldly scene and consigned to their heavenly abode by putting an untimely end to their innocent lives simply in a bid to avoid interference and intermeddling in the property belonging to the appellant Suresh Bahri and thwart the accomplishment and foil the wishes of Urshia from migrating to America with her children with the sale proceeds of Ranchi house and settle down at America.

5. The prosecution case is that the parents of deceased Urshia Bahri have settled down in America and their deceased daughter Urshia used to write letters to her parents from time to time, but they did not receive any letters from Urshia in America for quite some time, and on the contrary they received two letters in America from the appellant Suresh Bahri, one dated 29.10.83 and another dated 3.11.83 which are marked Ext. 23/6 and 23/7, intimating them that henceforth his wife Urshia will not be in a position to address them any letter as she was engaged in urgent work and, therefore, in her place he himself would be writing letters to them. This gave rise to a serious suspicion in the mind of the parents of deceased

A Urshia and they suspected some foul play. Consequently, the parents of Urshia directed their son Bineet Singh Sarang, PW 69 working in Libya to proceed to India with a view to find out the welfare and whereabouts of Urshia and her children.

B 6. Further prosecution case is that acting on the advice of his parents Bineet Singh Sarang, (hereinafter referred to as Bineet) landed in India on 16.1.84 and reached to the house of his brother-in-law, the appellant Suresh at Delhi. But to his utter surprise he found the house locked. Bineet was informed by some of the tenants living in the first floor of the house that the acquitted accused Smt. Santosh Bahri the mother of appellant Suresh would be coming to Delhi on 21.1.84. Finding no one in Delhi house Bineet
C visiting the business premises of the appellant Suresh at Bajaj House, Nehru Place, New Delhi, where he met one Dhar, an employee of appellant Suresh who informed Bineet that the appellant Suresh was at Ranchi. In the mean-while Smt. Santosh, mother of appellant Suresh returned to Delhi and when Bineet met her and enquired about the whereabouts of his sister
D and her children, she informed him that they had gone to Ranchi. Bineet, therefore, rushed to Ranchi on 25.1.84 where he met the appellant Gurbachan Singh Proprietor of Singh Furniture Works, Main Road. Ranchi as telephone number of Gurbachan Singh was found recorded in the records kept in the business premises of appellant Suresh at Delhi as his contact address of Ranchi. Bineet enquired from the appellant Gurbachan Singh
E the whereabouts of his sister and her children. Gurbachan Singh took Bineet to the farm house of appellant Suresh at Dhulli but there they found neither Urshia Bahri nor her children, namely, Richa and Saurabh nor the appellant Suresh. However, at Dhulli farm Bineet. PW 69, was informed by Gopi Mistry, (PW 29) the Caretaker of the farm-house of appellant
F Suresh that he had not seen Urshia for the last about 5-6 months and further he disclosed that the appellant Suresh had visited Dhulli farm in mid December along with his two children and one unknown person and that during that period the appellant Gurbachan Singh had also visited the said farm.

G 7. When Bineet did not find the appellant Suresh, his sister Urshia and her children at Dhulli farm also he again came back to Station Road Ranchi House No. 936 of the appellant Suresh but again he did not find any one there. He, however, met one Murari, PW 1. the next door neighbour of House No. 936 of appellant Suresh situated at the Station Road,
H Ranchi, who used to keep the keys of the house of accused/appellant

Suresh. On enquiry by the informant Bineet, Murari, PW 1 told him that he had seen Urshia at the house of appellant Suresh Bahri on 11.10.83 but the children of Urshia Bahri had not come to the Ranchi house. The witness Murari, PW1, further told him that in the morning of 12.10.83 the appellant Suresh Bahri told him that Urshia Bahri had left Ranchi for Delhi by aeroplane that very morning and Suresh remained at Ranchi till end of October 1983. Witness Murari Lal also told him that thereafter he did not see Urshia and her two children at Ranchi. The information Bineet also met one B.N. Mishra, PW2, another neighbour of appellant Suresh at Ranchi who told him that his sister Urshia Bahri was known to him because he was negotiating with her for purchase of the house No. 936, Station Road, Ranchi and the sale would have completed but for the sudden disappearance of Urshia Bahri, the sale could not take place. B.N. Mishra, PW 2, also told him that he had gone to the house of Suresh Bahri at Ranchi in the evening of 11.10.83 to meet Urshia Bahri but he did not find her there. He, however, met Suresh Bahri there who was sitting in the verandah of the house and there was no electric light in the house of Suresh Bahri though there was light in the other neighbouring houses. The witness Misra also told to Bineet that when he was ascending the verandah of the house the appellant Suresh Bahri caught hold of him and led him away from the house saying that Urshia had gone to the house of the appellant Gurbachan Singh in a party and she will proceed to Delhi direct from the house of Gurbachan Singh by next morning flight.

8. Later when the informant Bineet, PW 69 again has a talk with the witness Murari, PW 1 about the whereabouts of his sister Urshia and her children, it is said Murari told him that there was rumour that his sister Urshia has been murdered. Thereafter, Bineet, PW69 went to the Police Station Chutia where he made a written report that his sister and her children were missing. On the basis of this report P.S. case No. 27/84 was registered at Chutia Police Station. Bineet then left Ranchi on 26.1.84 and reached Delhi same day by plane and went to the house of Urshia Bahri at C-70, South Extension - II, New Delhi where he met the acquitted accused Mrs. Santosh Bahri and enquired from her the whereabouts of his sister Urshia. It is said that Mrs. Santosh Bahri told Bineet that she had no information about Urshia. Bineet further gathered information that Urshia was never seen at New Delhi after 30.9.83 though the appellant Suresh had come to New Delhi in the month of December, 1983. He also learnt that in December, 1983 the appellant Suresh Bahri had left Delhi along with his mother Mrs. Santosh Bahri and the two children Richa and

- A Saurabh in Ambassador Car No. DLE 3179 and the appellant Suresh Bahri came back to Delhi in January, 1984. When appellant Suresh Bahri learnt about the arrival of the informant Bineet at New Delhi he disappeared.

9. Further prosecution case is that sometimes in the month of September, 1983 the appellant Suresh Bahri had sent his associate appellant Raj Pal Sharma to Ranchi who stayed in the Station Road House No. 936 at Ranchi but when the appellant Suresh Bahri along with his deceased wife Urshia arrived at Ranchi on 1.10.83 the appellant Raj Pal Sharma left the house. Deceased Urshia Bahri had come to Ranchi to sell the said House No. 936 and had contacted several persons in that connection including Murari Lal. PW 1, Badri Narayan Misra, PW 2 and Laxmi Narayan, PW 21 who in fact had agreed to purchase the said house and the deal was almost settled and the sale-deed was likely to be executed very soon. It is said that as the appellant Suresh Bahri was not agreeable for sale of the said house. Suresh Bahri and the appellant Raj Pal Sharma murdered her in the night of 11.10.83 in a room of the said house. The head of Urshia Bahri was truncated and severed from her body. At or about the same time the appellant Gurbachan Singh also arrived along with his servant Ram Sagar Vishwakarma who was also arrayed as an accused but later turned approver and was examined as PW 3. It is said that the headless body of Urshia Bahri was wrapped in a Blanket and saree piece and tied with rope was dumped in a septic tank situated within the compound of the said house. Later on in the morning of 13.10.83 it is said that the appellant Raj Pal Sharma and Suresh Bahri took the head of Urshia Bahri and threw the same under a bush in the forest on the Ranchi Patrautu Road. It is also alleged that sometimes in the month of January, 1984 the appellant Suresh Bahri and Gurbachan Singh managed to take out the body of Urshia from the septic tank and took the body in truck No. BHM 5879 driven by the acquitted accused Mohd. Suhail and threw it in a dumping pit known as Madhukam dump.

10. Further prosecution case with regard to the murder of the two children Richa Bahri and Saurabh Bahri is that they were studying in Father Agnel School. South Extension-II. Saurabh was a student of class IV and Richa was a student of class VI in the said school. It is said that on 5.12.83 the appellant Suresh Bahri, the father of the two children filed two separate applications before the Principal of the school for withdrawal of both the children from the school. These applications are Ext. 40 and 40/1. Both the children were, thus withdrawn from the school on 5.12.83.

It is said that the appellant Suresh Bahri left his New Delhi house No. C-70 for going to Ranchi by his Ambassador Car No. DLE 3179 along with his two children, his mother, acquitted accused Mrs. Santosh Bahri, one maid-servant and the appellant Raj Pal Sharma. On his way to Ranchi. Suresh Bahri dropped his mother Mrs. Santosh Bahri and a maid-servant at Basti in Uttar Pradesh and having stop-overs at Varansi. Uttar Pradesh and Daltonganj (Bihar) he reached his Dhulli farm house on 16.12.83 where he along with the appellant Raj Pal Sharma and the two children stayed on 16/17. 12.83. During the aforesaid stay the appellant Gurbachan Singh also visited Dhulli farm house. It is said that a few days earlier appellant Gurbachan Singh had sent some cots and chair at the Dhulli farm house and according to the prosecution in the intervening night of 17/18-12-83 the appellants Suresh Bahri and Raj Pal Sharma Committed the murder of Richa Bahri and Saurabh Bahri in Dhulli farm house of the appellant Suresh Bahri. They took the body of Richa Bahri and Saurabh Bahri in the Ambassador Car No. DLE 3179 to Varanasi where they threw their dead bodies in Varuna River, a tributary of Ganges.

11. On 20.12.83 at about 8.30 AM dead body of a boy aged about 12 Years' was found floating at the bank of river Varuna near the bridge of village Puratepur which was noticed by one Hiralal PW 36. The naked body was packed in a gunny bag. Report about it Ext. 11 was made by Hiralal, PW 36 in the Police Station, Sarnath where P.S. Case No. 100/83 was registered. Atma Nand Singh. PW 46. Police Officer. Sarnath on receiving the report reached at the bank of Varuna river, inspected the dead body and having found marks of injury on the neck of the dead body prepared inquest report in the presence of witnesses. The gunny bag in which the dead body was packed was seized as per seizure memo Ext. 5/8. He also received information that one gadda, one guilt and one bed-sheet were lying at the dumping place of Panchkoshi - Varansi Road. The Police Officer, Atma Nand Singh, PW 46 seized the said articles by seizure Memo Ext. 5/9 as also two bed-sheets which were also found on the same road near the forest department nursery vide seizure memo Ext. 5/10.

12. Dr. B.K. Bhatnagar, PW 27. District Hospital. Varanasi performed an autopsy on the dead body of the boy on 21.12.83 at about 4.15 PM. He found that it was dead body of a male child aged about 12 years. The doctor noticed two incised wounds in the neck. The trachea and blood vessels and larynx were cut. There was also a contusion on the chest. There were various other injuries found on his person which were ante-mortem

A in nature caused by sharp object.

B 13. Police Officer, Sarnath, Atma Nand Singh, PW 46 got the photographs of the dead body taken by the photographer Ashok Kumar PW 48 and published the same in newspapers to collect information about the identity of the dead child but as nobody claimed the dead body he disposed of the same after preparing a panchnama to that effect. Consequently, the Police Officer, Sarnath closed the investigation of P.S. Case No. 100/83 by making a final report.

C 14. By a notification dated 18.6.84 the Government of India, Ministry of Home Affairs entrusted the investigation of Chutia Police Case No. 27 to the C.B.I. with the consent of the Government of Bihar. The C.B.I. on the basis of the written report dated 1.2.84 made by Bineet, PW 69 registered the case No. RC-2/84 on 28.6.84 under Section 120-B read with Sections 302/364/201 of the Penal Code. Shri Madanlal PW 85. Senior Inspector of C.B.I. New Delhi was the Investigating Officer of this case. By D another notification dated 14.9.84 the Central Government. Ministry of Home Affairs entrusted the investigation of Sarnath P.S. Case No. 100/83 also to the C.B.I. with the consent of the Government of Uttar Pradesh and the investigation of this case was entrusted to the C.B.I. Inspector, Rajendra Singh, PW 82.

E 15. The Investigating Officer, Madanlal, PW 85 and Rajendra Singh, PW 82 seized the entire records of Chutia P.S. Case No. 27/84 as well as the records of Sarnath P.S. Case No. 100/83. Both these Investigating Officers visited and inspected the Ranchi House No. 936 of appellant Suresh Bahri Situated at Station Road, along with some experts where F murder of Urshia Bahri is said to have been committed. A steel trunk containing blood-stains and some scrapings of the blood stains of the wall of the room were seized which were examined by the Serologist and found it to be stained with human blood. A sketch map of the alleged place of occurrence was prepared. The photographs of the dead body taken by the photographer. Ashok Kumar, PW 48 in Sarnath P.S. Case No. 100/83 were G identified by the witnesses who had seen Saurabh Bahri during his life time and stated that the photographs were of Saurabh Bahri, indicating that it was the body of Saurabh who was murdered. The articles Gadda, guilt and bed-sheets seized from Panchkoshi Road. Varanasi were also identified as belonging to the appellant. Suresh Bahri.

H 16. The appellant Gurbachan Singh was already arrested earlier by

Rajeshwar Singh (PW 59), incharge. Police Station. Chutia (Ranchi) before 22.4.1984 when chargesheet by Chutia Police was filed, though further investigation continued by CBI, in pursuance of notification issued by the Govt. of India. During the course of investigation. Rajeshwar Singh. PW 59, interrogated Gurbachan Singh who made disclosure statement that he had thrown the dead body of Urshia Bahri in Madhukam dump known as "Khad-Gaddha". On digging the said dumping pit no dead-body was recovered but a piece of blanket, saree and rope were recovered from there which were seized as per seizure memo Ext. 5/12. These articles were put on the test-identification parade on 6.3.84 in which the witnesses Murari Lal Sharma, PW 1 and B.N. Mishra, PW 2 had identified the said articles of piece of blanket, saree and rope to be the materials used in wrapping the dead body of Urshia Bahri on 11.10.83.

17. The appellant Suresh Bahri was absconding but he was arrested on 31.7.1984 at Delhi. The appellant Raj Pal Sharma was arrested at Delhi by C.B.I. Officer on 8.8.84. He was produced before the Metropolitan Magistrate, New Delhi on 8.8.84 and Police remand for 10 days was obtained. On 12.8.84 while in Police custody, Raj Pal Sharma made a disclosure statement. Ext. 32 to the C.B.I. Investigating Officer, Madanlal, PW 85. In pursuance of the disclosure statement the appellant Raj Pal Sharma took the Investigating Officer and witnesses to the said forest on Ranchi-Patratu Road. The skull some hairs and pieces of cotton were recovered from the bushes of the forest at the instance of the appellant. Raj Pal Sharma which were seized as per seizure memo Ext. 33 dated 12.8.84. The said skull was sent to Dr. Harish Chandra, Director, Medico Legal Institute and Head of the Forensic Science Gandhi Medical College, Bhopal for examination. Dr. Harish along with some other experts examined the said skull and found that it was of a female aged about 33 years with a margin of plus minus five years' on either side. Dr. Harish for want of certain information could not definitely opine that the said skull was that of Urshia Bahri.

18. The Investigating Officers detected that one Ram Sagar Vishwakarma, an employee of the appellant Gurbachan Singh was also associated in hatching the conspiracy to commit the murder of Urshia and her two children. They, therefore, arrested Ram Sagar Vishwakarma on 3.12.84 and produced him before the Chief Judicial Magistrate, Ranchi on 4.12.84 who remanded him to police custody till 17.12.84. On 17.12.84 Ram Sagar Vishwakarma filed a petition Ext. 3 before the Chief Judicial

- A Magistrate for recording his confessional statement. The Judicial Magistrate Shri Bhuneshwar Ram, PW 76 recorded the confessional statement Ext. 28/1, under Section 164 Criminal Procedure Code of Ram Sagar Vishwakarma on 19.12.84, 20.12.84 and 21.12.84. Thereafter on 8.1.85 Ram Sagar Vishwakarma made a petition to the Chief Judicial Magistrate, Ranchi that he may be granted pardon and he be made a prosecution witness. The Chief Judicial Magistrate granted pardon to Ram Sagar Vishwakarma by order dated 9.1.85 and accepted him as an approver and recorded the statement of Ram Sagar Vishwakarma on 30.1.86 as approver under Section 306 of the Code of Criminal Procedure. Thereafter, Ram Sagar Vishwakarma was granted bail by the order of the High Court dated 13.1.87 and he was released from custody on 21.1.87.

- D 19. All the accused persons were charged and tried as said in the earlier part of this judgment. All the accused persons including the three appellants denied their guilt and pleaded false implication. The appellant Suresh Bahri in his statement under Section 313. Cr. P.C. stated that his wife Urshia Bahri and his two children were not murdered at all and they were still alive. The appellants took the defence that the prosecution has failed to prove factum of death of Urshia and her two children and that in any case the prosecution has failed to bring home the guilt against any of the appellants for alleged murders and they have been implicated only on the basis of suspicion.

- E 20. On evaluation of the evidence adduced by the prosecution and relying on various circumstances found to be established against the three appellants which according to the learned Trial Judge are of conclusive nature and consistently only with the hypothesis of the guilt of the appellants convicted and sentenced them as said above. The said conclusions and findings found favour with the High Court also in appeals and, therefore, the High Court dismissed all the three appeals affirming the conviction and sentence awarded by the Trial Court.

- G 21. At the very outset we may mention that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the

offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime. In the present case before us the prosecution has adduced evidence that the appellant Suresh Bahri had strong motive to eliminate his wife and two children from his way which evidence has been accepted by both the courts below. We shall, therefore, have a look to the said evidence to see whether the two courts are justified or not in taking the view that the appellant Suresh Bahri had a strong motive to hatch a conspiracy with the assistance of the other two appellants, namely, Rajpal Sharma and Gurbachan Singh to commit the murder of his wife and the two children.

22. According to the prosecution the motive behind the murder of Urshia Bahri and her two children is said to be the strained relations and differences between the deceased Urshia and her husband, the appellant Suresh Bahri and her mother-in-law, Smt. Santosh Bahri (since acquitted) which had developed on account of the firm determination of the deceased Urshia Bahri to dispose of the house No. 936 situated on the Station Road Ranchi and migrate along with her two children to America where her parents were already settled because her life and that of her two children had become miserable due to the mental and physical tortures caused by Suresh Bahri, his mother Santosh and Maternal uncle Y.D. Arya (since acquitted). It is said that the acquitted accused Smt. Santosh Bahri had started causing harassment to her daughter-in-law, the deceased Urshia in diverse ways after her marriage with the appellant Suresh who maintained a quiescence and never intervened in the mal-treatment meted out to her. It is said that the systematic course of ill-treatment meted out to Urshia was communicated by her to some of her relatives and parents orally and through letters. Admittedly at the time when Urshia was wedded to the appellant Suresh, his maternal uncle Y.D. Arya (since acquitted) was also living with Suresh and his mother in the same house and used to interfere not only in the family matters but in the business affairs also by reason of which Suresh had suffered great setback and loss to his property and business assets at Calcutta. Consequently Urshia had developed disliking towards Y.D. Arya and ultimately Arya was made to leave Delhi house at the instance of the deceased. It is also said that the acquitted accused Smt. Santosh Bahri, mother-in-law of deceased Urshia had no love and affection

A either for Urshia or for her two children, namely, Richa and Saurabh and for that reason she never kept the children with her. According to the prosecution it is in this background that the deceased Urshia was forced to take the decision in her own interest and to fulfill her dreams of a better future of her two children, to dispose of the Ranchi house and migrate to America along with her two children with the sale proceeds of the property and settled down there. But the idea of migration with the sale proceeds of the house entertained by late Urshia could not be cherished by appellant Suresh Bahri and, therefore, the appellant Suresh Bahri hatched a conspiracy with the two convicted associates Raj Pal Sharma and Sardar Gurbachan Singh to eliminate his wife and two children from his way once for all and to achieve this objective all the three appellants are said to have systematically executed their scheme in a planned way in the commission of murders of Urshia and her two children on two different dates at Ranchi and Dhulli Farm House of appellant Suresh Bahri. This part of the prosecution story is said to be established by the documentary as well as the oral evidence which we shall refer to briefly hereinafter.

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23. Murarilal Sharma, PW1 is the next door neighbour of the appellant Suresh Bahri, his house-cum-grocery shop being just adjacent to the Station Road house of Suresh at Ranchi. He deposed in para 3 of his deposition that the appellant Suresh Bahri used to tell him that there were frequent family squabbles between him and his wife deceased Urshia and his mother Smt. Santosh Bahri on account of his maternal uncle Y.D. Arya and the insistence of his wife for sale of their house at Ranchi and go to America with her children with the sale proceeds. The witness also deposed that Suresh Bahri told him that in fact he did not want to dispose of the said house and was very much disturbed on account of the frequent quarrels. The witness also stated that Suresh had also told him that his children were spoiled due to the encouragement by Urshia and they had no respect for his mother by reason of which he was fed up with this world and most often thought to put an end of the entire family along with his own life.

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24. Dinanath Sharma, PW 6 is the witness who has been the class-mate of the appellant Suresh Bahri and the entire family of Suresh is known to him. He was on visiting terms also. This witness has also deposed that the relations between the appellant Suresh Bahri and his deceased wife Urshia were strained since after about two years from their marriage. He deposed that as and when he met Urshia she always complained against

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the behaviour of Suresh towards her. Almost similar is the statement of Moolchand. PW 24 who worked as Mali at the Ranchi house of appellant Suresh. Smt. Surina Narula, PW 66 is the sister. Bineet Singh Sarang, PW 69 is the brother and informant and Smt. Rohtas Sarang, PW 79 is the mother of the deceased Urshia Bahri. They all deposed that the relations between the appellant Suresh Bahri and his deceased wife Urshia were not cordial but strained as Urshia used to complain against her husband, mother-in-law and the maternal uncle of her husband. According to the evidence of Badri Narayan Mishra, PW 2 through whom Laxmi Narayan, PW 21 has negotiated for purchase of the Ranchi house, it turns out that the deal was almost finalised for purpose of the house by him but for the sudden disappearance of Smt. Urshia on 11.10.83, the same could not take place.

25. Besides the afore-mentioned oral evidence the prosecution has produced documentary evidence also to support the allegation that the relations of the appellant Suresh, his mother and maternal uncle were not cordial with the deceased Urshia Bahri and that the deceased Urshia was determined to sell out the Ranchi house and migrate to America with her children and the sale proceeds against the wishes of the appellant Suresh Bahri and his mother. The trial Court has elaborately dealt with the documentary evidence in this behalf. The High Court has also in paragraphs 25 to 28 of its judgment not only discussed but has reproduced various letters written by deceased Urshia to her parents in America to show the sufferings and state of mind of Urshia on account to the behaviour meted out to her by her husband Suresh Bahri and her mother-in-law and her determination to sell out the house and shift to America and arrived at the conclusion that the appellant Suresh had a strong motive to commit the murder of his wife Urshia and her two children in conspiracy with the other two appellants. It is, therefore, not necessary for us to discuss the entire evidence again which has been evaluated by the two courts below. On a close scrutiny of the evidence on this point we find ourselves in complete agreement with the view expressed by the learned Trial Judge and the High Court. The argument of the learned counsel for the appellant that even if it is accepted that there were strained relations and serious differences between the deceased Urshia and the appellant Suresh Bahri his mother Santosh and maternal uncle Y.D. Arya, yet Suresh would not go to the extent of hatching a conspiracy and actually killing his wife and the two children does not appeal to us and we are not at all convinced by this argument *because different persons react differently under*

- A *given circumstances. It is difficult to lay down a hard and fast rule as to how and in what manner a person would react and to achieve his motive could go to what extent in the commission of crime under a particular circumstance. It is not possible to measure up to extent of his feeling, sentiments and desire and say as to what compelled him to commit a particular crime. There may*
- B *be persons who under frustration and on mere trifling domestic matters take decision to commit a serious crime, while others may approach it with cool and calm mind and think more dispassionately before taking any hazardous and serious steps. It all depends as to how a person reacts in a given circumstance and it is he alone who best knows his intention and motive to commit a crime and the extent thereof. In the present case, it appears that*
- C *the appellant Suresh Bahri was under the misguided apprehension that the murder of his wife Urshia alone would not be safe as the survival of the two children may ultimately expose him of the murder of his wife Urshia and therefore, he was left with no option but to wipe of the entire family and clear the deck for smooth sail in life as a free lancer which to*
- D *his misfortune proved to be too expensive as he had not only to pay the price of his own life but also the lives of his two associates who helped him actively in the commission of the crime in question.*

26. Learned senior counsel Shri Sushil Kumar appearing for the appellant Raj Pal Sharma submitted that in view of the fact that no question relating to motive having been put to the appellants on the point of motive under Section 313 of the Code of Criminal Procedure, no motive for the commission of the crime can be attributed to the appellants nor the same can be reckoned as circumstance against the appellants. It is no doubt true that the underlying object behind Section 313. Cr. P.C. is to enable the accused to explain any circumstance appearing against him in the evidence and this object is based on the maxim *audi altrem partem* which is one of the principles of natural justice. It has always been regarded unfair to rely upon any incriminating circumstance without affording the accused an opportunity of explaining the said incriminating circumstance. The provisions in Section 313, therefore, make it obligatory on the Court to question the accused on the evidence and circumstance appearing against him so as to apprise him the exact case which he is required to meet. But it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance but he must also show that such non-examination has actually and materially prejudiced him and has resulted in failure of justice. In other words in the event of
- H any inadvertent omission on the part of the Court to question the accused

on any incriminating circumstance appearing against him the same cannot *ipso facto* vitiate the trial unless it is shown that same prejudice was caused to him. In *Bijoy Chandra v. State of West Bengal*, (1952) Criminal Law Journal 644 SC this Court took the view that it is not sufficient for the accused merely to show that he has not been fully examined as required by section 342 of the Criminal Procedure Code (now Section 313 in the new Code) but he must also show that such examination has materially prejudiced him. The same view was again reiterated by this Court in *Rama Shankar v. State of West Bengal*, AIR (1962) SC 1239 - para 14. In the present case before us it may be noted that no such point was raised and no such objection seems to have been advanced either before the Trial Court or the High Court and it is being raised for the first time before this Court which appears to us to be an after thought. Secondly, learned counsel appearing for the appellants was unable to place before us as to what in fact was the real prejudice cause to the appellants by omission to question the accused/appellant Suresh Bahri on the point of his motive for the crime. No material was also placed before us to show as to what and in what manner the prejudice, if any, was caused to the appellants or any of them.

27. Apart from what has been stated above, it may be pointed out that it cannot be said that the appellants were totally unaware of the substance of the accusation against them with regard to the motive part. In this regard a reference may be made to question Nos. 5, 6 and 7 which were put to the appellant Suresh Bahri in the course of his statement recorded under Section 313, Cr. P.C. The sum and substance of these questions is that from the prosecution evidence it turns out that the acquitted accused Y.D. Arya, the maternal uncle of the appellant. Suresh Bahri was living in a portion of the upper storey of his house at Delhi. He with the consent of Santosh Bahri, the mother of Suresh Bahri, was interfering in the family affairs as well as in business matters by reason of which the maternal uncle had to leave the house and that having regard to the future of her children Urshia Bahri not only wanted to manage the property but also to dispose of the same which was not liked by Suresh Bahri and with a view to remove Urshia Bahri from his way the appellant Suresh Bahri wanted to commit her murder. In view of these questions and examination of Suresh Bahri, it cannot be said that he was totally unaware of the substance of the accusation and charge against him or that he was not examined on the question of motive at all. In the facts and circumstances discussed above it cannot be said that any prejudice was caused to the

- A appellant. The contention of the learned counsel for the appellants in this behalf therefore has no merit.

28. Learned counsel for the appellant strenuously urged that there was utter non-compliance of clauses (a) and (b) of sub-section (4) of Section 306 of the Code of Criminal Procedure in as much as that after recording the statement of the approver Ram Sagar Vishwa Karma under Section 164 of the Code of Criminal Procedure and after tendering him pardon, the approver was not examined as witness by the learned Magistrate who took cognizance of the offence, as required by clause (a) of Sub-section (4) of Section 306, Cr. P.C. but he was examined as a witness by the committing Magistrate only after the Court of Sessions remitted the case back to the committal Magistrate for examining the approver as a witness in accordance with Section 306(4)(a) Cr. P.C. Secondly clause (b) of Section 306(4) mandates that the approver shall be detained in custody until the termination of the trial unless he is already on bail but contrary to that the approver was enlarged on bail after he was granted pardon and as such the trial was vitiated. Reliance was placed on the decisions in *Kalu Khoda v. State*, AIR (1962) Gujarat 283 F.B.; re Ramaswamy, 1976 Cr. L.J. 770 Madras and *V. Vijayaraj v. State*, (1986) Cr. L.J. 2104 A.P., in support of his above submissions.

29. Section 306 of the Code of Criminal Procedure (hereinafter referred to as the Code) relates to the tender of pardon to an accomplice and the procedure of committing the case for trial. It would be appropriate to reproduce Section 306 of the Code which reads as under :

"306. Tender of pardon to accomplice :

- (1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or an Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettors, in the commission thereof.

(2) This section applies to :

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(a) any offence triable exclusively by the Court of Session or by Court of a Special Judge appointed under the Criminal Law Amendment Act. 1952 (46 of 1952) :

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

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

(a) his reasons for so doing :

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(b) whether the tender was or was not accepted by the person whom it was made, and shall on application made by the accused, furnish him with a copy of such record free of cost.

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

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(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any:

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

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

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(a) commit it for trial -

(i) to the court Session if the offence is triable exclusively by that Court if the Magistrate taking cognizance is the Chief Judicial Magistrate;

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(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act. 1952 (46 of 1952). if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial

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A Magistrate who shall try the case himself.

- B** 30. A bare reading of clause (a) of sub-section (4) of Section 306 of the Code will go to show that every person accepting the tender of pardon made under sub-section (1) has to be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any. Sub-section (5) further provides that the Magistrate taking cognizance of the offence shall, without making any further enquiry in the case commit it for trial to any one of the Courts mentioned in clause (i) or (ii) of clause (a) of sub-section (5), as the case may be. Section 209 of the Code deals with the commitment of cases to the Court of Session when offence is tried exclusively by that Court. The examination of accomplice or an approver after accepting the tender of pardon, as a witness in the Court of the Magistrate taking cognizance of the offence is thus a mandatory provision and cannot be dispensed with and if this mandatory provision is not complied with it vitiates the trial. As envisaged in sub-section (1) of Section 306, the tender of pardon is made on the condition that the approver shall make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence. Consequently, the failure to examine the approver as a witness before the committing Magistrate would not only mount to breach of the mandatory provisions contained in clause (a) of Sub-section (4) of Section 306 but it would also be inconsistent with and in violation of the duty to make a full and frank disclosure of the case at all stages, the breach of the provisions contained in clause (a) of Sub-section (4) of Section 306 is of a mandatory nature and not merely directory and, therefore, non-compliance of the same would render committal order illegal. The object and purpose in enacting this mandatory provision is obviously intended to provide a safeguard to the accused in as much as the approver has to make a statement disclosing his evidence at the preliminary stage before the committal order is made and the accused not only becomes aware of the evidence against him but he is also afforded an opportunity to meet with the evidence of an approver before the committing Court itself at the very threshold so that he may take steps to show that the approver's evidence at the trial was untrustworthy in case there are any contradictions or improvements made by him during his evidence at the trial. It is for this reason that the examination of the approver at two stages has been provided for and if the said mandatory provision is not complied with the accused would be deprived of the said benefit. This may cause serious prejudice to him resulting in failure of justice as he will lose the opportunity of showing the approver's evidence
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as un-reliable. Further clause (b) of sub-section (4) of Section 306 of the code will also go to show that it mandatory that a person who has accepted a tender of pardon shall, unless he is already on bail, be detained in custody until the termination of the trial. We have, therefore, also to see whether in the instant case these two mandatory provisions were complied with or not and if the same were not complied with, what is the effect of such a non-compliance on the trial?

31. It may be noted that the approver Ram Sagar Vishwakarma hereinafter referred to as Ram Sagar was arrested on 3.12.84 and was under police remand till 17.12.84. He made an application Ext. 3 on 17.12.84 for recording his confessional statement under Section 164 of the Code and his confessional statement Ext.28/1 was recorded on December 19th to 21st, 1984 by the Magistrate Shri Bhuneshwar Nath, PW 76. Thereafter on 7.1.85 CBI Investigating Officer made an application that Ram Sagar be granted pardon and his statement be recorded under Section 306 of the Code. The approver Ram Sagar also made an application Ext.1 for grant of pardon on 8.1.85 stating that he wanted to become a prosecution witness and make disclosure of true facts of the case. Learned Chief Judicial magistrate tendered pardon to Ram Sagar by his order dated 9.1.85 stating that he was directly concerned with the commission of the crime relating to the offence of murders in question. The learned Chief Judicial Magistrate committed the case to the Court of Session for trial without examining the approver Ram Sagar as a witness in his Court. But the learned Additional Judicial Commissioner, Ranchi to whom the case was committed for trial noticed this defect that the approver was not examined as a witness in the Court of Magistrate taking cognizance of the offence and committed it for trial before him and, therefore, learned Additional Judicial Commissioner remanded the case back to the Court of Chief Judicial Magistrate with a direction to record the Statement of the approver Ram Sagar as required by clause (a) of sub-section (4) of Section 306 of the Code. After receiving the records with the aforesaid directions learned Magistrate examined the approver Ram Sagar as a witness on 31.1.86 and then again committed him for trial to the Court of Additional Commissioner. Thus in any case the provisions of clause (a) of sub-section (4) of Section 306 were ultimately complied with. That being so with no stretch of any amount of arguments it can be said that any prejudice much less in dis-advantage was caused to any of the accused/appellants. The order of the Additional Judicial Commissioner remanding the case back to the Court of Magistrate directing him to examine the approver as a witness

- A was challenged by the accused persons in the High Court of Patna. Ranchi Bench but the High Court maintained the order of the Additional Judicial Commissioner in Criminal Revision No. 2347/85. This order of the High Court was not challenged further by any of the appellants and same attained finally and, therefore, it cannot be questioned now.
- B It may be noticed that similar question arose for consideration of Madras High Court in *Re Ramaswamy* (supra) and relied on by the learned counsel for appellants, wherein the learned Magistrate has committed the case for trial to the Court sessions without examining the approver as a witness in his Court before coming the case. But Pandian, J. (as he then was) took the view that the action of the Magistrate in committing the case to the Court of Session without examining the approver was a clear violation of the mandatory provisions of Section 306 of sub-sections (4) and (5) of the new Code and as such he committed irregularity. The learned Judge, therefore, quashed the committal order and directed the Magistrate to comply with the provisions of Section 306 of the Code by examining the approver and then again pass fresh order of Committal, if called for. In almost similar circumstances similar view was taken by the High Court of Andhra Pradesh in the case of *U. Vijaya* (supra) and in this case also the Magistrate was directed to examine the approver as required by sub-section (4) of Section 306 of the Code by giving an opportunity to the accused to cross-examine the approver and then pass the appropriate orders in accordance with law.
- E In *33. In Kalu Khoda* (supra) similar question came for consideration before the Full Bench of the Gujarat High Court wherein the committing Magistrate committed the accused to the Court of Session without examining the person who had been tendered pardon and who had accepted the same. The Full Bench set aside the committal order and directed the committing Magistrate to hold a fresh enquiry in accordance with law. The ultimate result of the aforesaid discussion is that if the said defect of not examining the approver at the committal stage by the committing Magistrate is rectified later, no prejudice can be said to be caused to an accused person and therefore the trial can not be said to be vitiated on that account. Since in the present case, as noticed above the defect was rectified, the argument that the trial was vitiated can not be accepted.
- G 34. As regards the contention that the trial was vitiated by reason of the approver Ram Sagar being released on bail contrary to the provisions contained in clause (b) of sub-section (4) of Section 306 of the code, it may
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be pointed out that Ram Sagar after he was granted pardon by the learned Magistrate by his order dated 9.1.85, he was not granted bail either by the committing Magistrate or by the learned Additional Judicial Commissioner to whose Court the case was committed for trial. The approver, Vishwakarma was, however, granted bail by an order passed by the High Court of Patna, Ranchi Bench in Criminal Misc. Case No. 4735/86 in pursuance of which he was released on bail on 21.1.87 while he was already examined as a witness by the committing Magistrate on 30.1.86 and 31.1.86 and his statement in Session trial was also recorded from 6.9.86 to 19.11.86. It is no doubt true that clause (b) of Section 306(4) directs that the approver shall not be set at liberty till the termination of the trial against the accused persons and the detention of the approver in custody must end with the trial. The dominant object of requiring an approver to be detained in custody until the termination of the trial is not intended to punish the approver for having come forward to give evidence in support of the prosecution but to protect him from the possible indignation, rage and resentment of his associates in a crime who he has chosen to expose as well as with a view to prevent him from the temptation of saving his one time friends and companions after he is granted pardon and released from the custody. It is for these reasons that clause (b) of Section 306(4) casts a duty on the Court to keep the approver under detention till the termination of the trial and thus the provisions are based on statutory principles of public policy and public interest, violation of which could not be tolerated. But one thing is clear that the release of an approver on bail may be illegal which can be set aside by a superior Court, but such a release would not have any effect on the validity of the pardon once validly granted to an approver. In these circumstances even though the approver was not granted any bail by the committal Magistrate or by the trial Judge yet his release by the High Court would not in any way affect the validity of the pardon granted to the approver Ram Sagar.

35. Learned counsel for the appellants next contended that the statement Ext. 28/1. of the co-accused Ram Sagar Vishwakarma who turned as an approver recorded under Section 164 of the Code after about 16 days of his arrest cannot be said to be voluntary confession particularly when the Magistrate did not inform him that he would not be remanded to police custody after the statement. It was further submitted that in any case the statement of the approver made under Section 164 was made under constant fear and with a promise of immunity because he was given to understand by the C.B.I. officials that he would be set at liberty in case

A in made the confessional statement.

36. After the perusal of the Statement of Ram Sagar PW 3 as well as the statement of learned Magistrate Shri Bhuneshwar Ram. P.W. 76, who recorded the statement of Ram Sagar under Section 164 of the Code we find that there is absolutely no substance in these submissions.

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37. Ram Sagar Vishwakarma was arrested on 3.12.84. A persual of the statement of Ram Sagar made under Section 164 of the Code will go to show that he himself made an application Ext. 3 before the Magistrate requesting him to record his confessional statement and according to Ram Sagar it was at his instance and request that his confessional statement Ext.28/1, was recorded by the Magistrate PW 76, from 19.12.84 to 21.12.84 in which he had confessed the guilt. Ram Sagar PW 3. stated that the Magistrate had told him that it was his own choice and volition to make or not to make the confessional statement and that he made the statement on his free will. He denied the suggestion that while making the statement under Section 164 any police officer was present there and deposed that he was not given any assurance by the C.B.I. officials that if he would become approver he would be set at liberty or discharged from the case. He, however, stated that he himself thought that if he made correct statement before the Magistrate he may be set at liberty. He asserted that the made a true disclosure of the circumstances relating to the offence before the Magistrate in his statement under Section 164 irrespective of the fact whether he would be released or not. Ram Sagar was subjected to a very lengthy and searching cross examination in this regard but nothing could be elicited from him to suggest that that he did not make true disclosure of the facts of the case or that he made the confession under threat or pressure or on any assurances from the prosecuting agency or from any official in authority. The statement that the made gives an impression that it was made on his own volition which fact is further fortified from the statement of the Judicial Magistrate who recorded his statement.

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38. The Judicial Magistrate, Ranchi, Shri Bhuneshwar Ram PW 76, on the order passed by Chief Judicial Magistrate, Ranchi, recorded the confessional statement of Ram Sagar, PW 3 as stated earlier from 19.12.84 to 21.12.84 which was marked as Ext. 28/1. Shri Bhuneshwar Ram deposed that before recording the statement of Ram Sagar under Section 164 he had given the necessary warning to him as required by law and this fact is borne out from the certificate Ext. 'A' appended to that effect in the confessional statement Ext. 28/1 before he proceeded to record the con-

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fession. This is indicative of the fact that he did caution Ram Sagar and sounded a note of warning that he is not bound to make the confessional statement and if he chooses to make any the same may be used against him and it was thereafter that he made the confession voluntary on his own volition. He deposed that Ram Sagar did not tell him that he made his confessional statement under any threat or fear or on any promise. In view of this positive evidence on record, it is difficult to accept that the confessional statement made by the approver Ram Sagar under Section 164. Cr. P.C. was not voluntary or under any fear or promise or assurance. On the contrary we find that the confession is free from all infirmities and conforms to the requirements of Section 164.

39. The prosecution case, for the sake of scrutiny of the evidence and discussion may be bifurcated into two parts, one relating to the murder of Urshia Bahri in the evidence of 11th October 1983 and the other relating to the murder of the two children, namely Richa and Saurabh in the intervening night of 17th and 18th December, 1983 although all the three murders stem out of one and the same conspiracy to do away with the lives of all the three deceased persons and both the acts on two different dates are so connected that they form the same transaction. It is true that there is no eye witness to either of the two incidents and the prosecution case rests on the evidence of the approver Ram Sagar (PW 3) and the circumstantial evidence advanced by the prosecution. We shall therefore deal with the evidence of each of the two incidents one after the other.

40. Learned counsel appearing for the appellant Raj Pal Sharma next contended that there is no direct evidence or ocular testimony with regard to the alleged murder either of Urshia Bahri or that of her two children Richa and Saurabh and the conviction of the appellants has been founded on the approver's evidence and other circumstantial evidence adduced by the prosecution. Learned counsel submitted that the two Court below are not justified in relying on the evidence of accomplice/approver Ram Sagar, PW 3 whose evidence is not free from serious doubt particularly in view of the fact that he was examined as a witness by the committing Magistrate on 30.1.1985 after about one year and two months of the occurrence. It was urged that in the absence of corroboration of material particulars no conviction can be based on the testimony of an accomplice and since the circumstances alleged against the appellants are not proved to the hilt the same cannot be regarded as complete chain of circumstances established against the appellants so as to base their convictions on the same. Similar

- A arguments were advanced by the learned counsel appearing for the appellants Suresh Bahri and Gurbachan Singh. Before we discuss the merits or demerits of the aforesaid submissions we would like to state that the law relating to conviction based on circumstantial evidence is well settled and it hardly requires a detailed discussion on this aspect. Suffice to say that in a case of murder in which the evidence that is available is only circumstantial in nature then in the event the facts and circumstances from which the conclusion of guilt is required to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and circumstances so established should not only be consistent with the guilt of the accused but they also must entirely be incompatible with the innocence of the accused and must exclude every reasonably hypothesis consistent with his innocence.

41. In order to meet the aforementioned arguments of the learned counsel for the appellants, we shall now proceed to state the law relating to the grant of pardon to an accomplice/approver, the value of his evidence and the extent of reliance that can be placed on his evidence.

42. We have already reproduced above Section 306 of the Code the provisions of which apply to any offence triable exclusively by the Court of Special Judge to any offence punishable with imprisonment extending to seven years or with a more serious sentence. Section 306 of the Code lays down a clear exception to the principle that no inducement shall be offered to a person to disclose what he knows about the procedure. Since many a times, the crime is committed in a manner for which no clue or any trace is available for its detection and, therefore, pardon is granted for apprehension of the other offenders for the recovery of the incriminating objects and the production of the evidence which otherwise is unobtainable. The dominant object is that the offenders of the heinous and grave offences do not go unpunished, the Legislature in its wisdom considered it necessary to introduce this Section and confine its operation to cases mentioned in Section 306 of the Code. The object of Section 306 therefore is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. There can therefore be no objection against tender of pardon to an accomplice

simply because in his confession, he does not implicate himself to the same extent as the other accused because all that Section 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence.

43. The evidence of an approver does not differ from the evidence of any other witness except that his evidence is looked upon with great suspicion. Consequently in the event the suspicion which is attached to the evidence of an accomplice is not removed his evidence could not be acted upon unless corroborated in material particulars. But where the suspicion is removed and the evidence of an approver is found to be trustworthy and acceptable then that evidence may be acted upon even without corroboration and the conviction may be founded on such a witness. Here in this connection it would be appropriate to make reference to the provisions of Section 133 of the Evidence Act which deal with the testimony of an accomplice. It contemplates that an accomplice shall be a competent witness against an accused person : and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The first part envisages that an accomplice, in other words, a guilty companion in crime, shall be a competent witness while the second part states that conviction is not illegal merely because it is based on the uncorroborated testimony of an accomplice. But if we read Section 133 of the Evidence Act with illustration (b) of Section 114 of the Evidence Act it may lead to certain amount of confusion and misunderstanding as to the real and true intention of the Legislature because quite contrary to what is contained in Section 133 illustration (b) to Section 114 of the Evidence Act lays down " that an accomplice is unworthy of credit, unless he is corroborated in material particulars". A combined reading of the two provisions that is Section 133 and illustration (b) of Section 114 of Evidence Act go to show that it was considered necessary to place the law of accomplice evidence on a better footing by stating in unambiguous terms that according to Section 133 a conviction is "not illegal or in other words not unlawful" merely because it is founded on the uncorroborated testimony of an accomplice while accepting that an accomplice is a competent witness. But at the same time the Legislature intended to invite attention to the illustration (b) of Section 114 of the Evidence Act with a view to emphasis that the rule contained therein as well as in section 133 are parts of one and the same object and neither can be ignored in the exercise of judicial discretion except in cases of very exceptional nature. However, the difficulty in understanding the combined effect of the aforementioned two

- A provisions arises largely due to their placement at two different places of the same Act. It may be noticed that illustration (b) attached to Section 114 is placed in chapter VII of Evidence Act while Section 133 is inserted in chapter IX of the Act. The better course was to insert the illustration (b) to Section 114 as an explanation or in any case as a proviso to Section 133 of the Act instead of their insertion at two different places and that too in different chapters of Evidence Act. In any case since an approver is guilty, companion in crime and, therefore, illustration (b) to Section 114 provides a rule of caution to which the Courts should have regard. It is now well settled by a long series of decisions that except in circumstances of special nature it is the duty of the Court to raise the presumption in Section 114 illustration (b) and the Legislature requires that the Courts should make the natural presumption in that Section as would be clear from the decisions which we shall discuss hereinafter.

44. In *Bhiva v. State of Maharashtra*, AIR (1963) SC 599 this Court took the view that the combined effect of Sections 133 and 114, illustration (b) may be stated as follows : According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. There should be corroboration of the approver in material particulars and *qua* each accused. Similar observations were made by this Court in *Ram Narayan v. State of Rajasthan*, [1973] 3 SCC 805, in the following words :

- F "Section 133 expressly provides that an accomplice is a competent witness and the conviction is not illegal merely because it proceeds on uncorroborated testimony of an accomplice. In other words this section renders admissible such uncorroborated testimony. But this section has to be read along with illustration (b) to Section 114.
- G The latter section empowers the court to presume the existence of certain facts and the illustrations elucidate what the court may presume and make clear by means of examples as to what facts the court shall have regard in considering whether or not the maxims illustrated apply to given case before it. Illustration (b) in express terms says that an accomplice is unworthy of credit unless
- H he is corroborated in material particulars. The statute permits the

conviction of an accused person on the basis of uncorroborated testimony of an accomplice but the rule of prudence embodied in illustration (b) of Section 114 strikes a note of warning cautioning the court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. In other words, the rule is that the necessity of corroboration as a matter of prudence except when it is safe to dispense with such corroboration must be clearly present to the mind of the Judge."

45. Further in *Ravinder Singh v. State of Haryana*, AIR (1975) SC 856, this Court while considering the approver's testimony within the meaning of section 133 of the Evidence Act made the following observations :

"An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in Court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story if given of minute details according with reality is likely to save it from being rejected *brevi manu*. Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case, taking into consideration all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the Court may be permissible. Ordinarily. However, an approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an approver appertaining directly to an accused, if reliable, by the touchstone of other independent credible evidence, would give the needed assurance for acceptance on his testimony on which a conviction may be based."

Thus it is clear that a definite rule has been crystallized to the effect that though a conviction can be based on uncorroborated evidence of an accomplice but as a rule of prudence it is unsafe to place reliance on the uncorroborated testimony of an approver as required by illustration (b) of Section 114 of the Evidence Act.

A 46. The two Courts below after a thorough examination of the
statement of the approver Ram Sagar PW 3 took the view that his testimony
was corroborated on all material particulars by the independent witnesses
and, therefore, he was worthy of reliance. Ordinarily this Court under
B Article 136 of the Constitution does not review and reappraise the evidence
for itself and the conclusions of the High Court on questions of fact or
appreciation of evidence are considered to be final. It is, therefore, not
necessary for us to scrutinize the evidence of approver tread-bare again.
We shall, however, scrutinize his evidence on board and material par-
ticulars to satisfy ourselves whether the two Courts below were justified in
C recording conclusion that the testimony of the approver deserved credence.

47. The examination of the approver Ram Sagar Vishwakarma com-
menced in the trial Court on 6.1.86 as PW 3 and continued for several days
in which he deposed that he worked in the furniture shop of the appellant
D S. Gurbachan Singh from 1979 to 1984, which covers the relevant period.
He stated that the appellant Suresh Bahri was known to him as he used to
visit the shop of S. Gurbachan Singh quite often and wife and the children
of Suresh also visited the shop. He stated that on 4.10.83 while he was going
from the shop after the work was over the appellant Gurbachan Singh
stopped him and said that he had some important work with him. Gur-
E bachan Singh then took him into confidence and enquired him whether he
knew anyone who could commit the murder of the wife of his friend. When
the witness Ram Sagar PW 3 enquired him as to which friend, the appellant
Gurbachan Singh told that the wife of Suresh Bahri is to be murdered on
account of the family dispute. Ram Sagar further stated that next day when
he again went to the shop, Gurbachan Singh again in the presence of
F appellant Suresh Bahri persuaded him for the same thing attracting him
with an allurements that he will not be required to pay back the money taken
by him as an advance and on the contrary he will ask Suresh also to give
him some more money for the assistance rendered by him. Ram Sagar then
asked them as to what he had to do. The appellant Suresh told him that
G he has to prepare and bring a Danda (Baton) to his bungalow and hide it
in the Shrubs of the Bungalow. He was further advised by Suresh that while
they would be busy in taking tea he should strike the Baton on the head
of his wife and make her unconscious and rest of the work will be done by
himself and S. Gurbachan Singh. Ram Sagar further deposed that he
prepared a Baton as advised and he along with S. Gurbachan Singh went
H to the house of Suresh Bahri on scooter at 7.30 PM and kept the Baton

under the shrubs of a flower plant as directed by Gurbachan Singh and sat at the place where scooter was parked by Gurbachan Singh. At that time Suresh Bahri and two others were taking tea in the varandah of the house of Suresh Bahri. After five minutes those two persons went away from there. Meanwhile the wife of Suresh Bahri came in the varandah from inside and pointing towards him, enquired from Suresh as to who was sitting in the dark near the scooter. Suresh told that he was labour of S. Gurbachan Singh. After some time S. Gurbachan Singh took him on the scooter and came back saying that since there is frequency of visitors, it is not possible to execute the work.

48. Ram Sagar PW 3 further stated that next day when he again attended the shop Gurbachan Singh for work as usual the appellant Suresh came there at about 10.00 AM and told to Ram Sagar that the Baton he had prepared will not work being very thin and asked him to prepare a heavy Baton. Then he along with S. Gurbachan Singh Proceeded to the house of Suresh Bahri at about 7.30 PM same day, but he stopped the scooter on the way and Ram Sagar declined to go with him saying they it was the festival day and the police was patrolling the area. S. Gurbachan Singh also did not go to the house of Suresh that day as he too had to go to the hospital. Next day the appellant Suresh Bahri came to the shop of S. Gurbachan Singh and asked the reason for not reaching his house the previous day. According to the statement of Ram Sagar Suresh again approached Gurbachan Singh at his shop next day saying that the work has to be done urgently and if it could not be done that day 'Machhiwala' would come for registration of sale deed and then Gurbachan Singh took him on a scooter that very day i.e., 11.10.83 at about 4.30 PM to a house in the Railway Colony, Ranchi for taking measurements for fixing doors and windows and while they were returning at about dusk on 11.10.83 Gurbachan Singh took him to the house of Suresh Bahri. Gurbachan Singh met Suresh in the varandah of his house. After having some talk in the varandah both Gurbachan Singh and Suresh Bahri went inside the house. But immediately Gurbachan Singh came out and called the witness Ram Sagar. On being asked by S. Gurbachan Singh he went inside but remained standing dump-founded at the door of the small room connecting a big room. Gurbachan Singh called him inside but he ignored as his body began to tremble and Gurbachan Singh made him sit on the sofa and served him a glass of water. Ram Sagar goes on to state that when he was standing near the door of the room he saw the dead body of the wife of Suresh Bahri in the small room. He saw her head totally severed and separated from the

A body placed on a cotton in the corner of the room. The appellant Raj Pal Sharma was also present there putting on only underwear and was seen collecting the blood with the cotton. He stated that at that time a lamp was burning in the drawing room and a candle stick was burning in the small room and that there was no other person except Suresh Bahri, Raj Pal Sharma, S. Gurbachan Singh and Ram Sagar himself.

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49. Ram Sagar, PW 3 further deposed that a saree was kept by the side of the dead body which was stained with blood and a long knife was kept near the head which was given by S. Gurbachan Singh a few days prior to the occurrence to Rameshwar Thakur, PW 4 an employee of the shop for sharpening. A short while later there came a sound of opening the gate of the compound of Suresh Bahri indicating that someone was coming. A person came and as soon as he stepped forward to go to the varandah the appellant Suresh Bahri went out caught hold that person by his hand and took him down the varandah. That man enquired from Suresh about his wife saying 'where is Mem Saheb' meaning thereby the wife of Suresh. D Suresh Bahri told him that his wife had gone to the house of S. Gurbachan Singh for dinner and from there she will proceed to Delhi by the next morning flight. Suresh then took that man out of the compound of his house and returned back. Then Suresh Bahri went out on a motor cycle along with Gurbachan Singh directing the appellant Raj Pal Sharma to clean all stains properly and that they will be returning shortly. Both of them returned within 10 minutes with a liquor bottle. Since no glasses were available in the house Suresh Bahri went out to bring the glasses. Murari Lal PW 1 came with four glasses whose house was situated adjacent to the house of Suresh and then went back. All of them then consumed liquor. Thereafter, when Ram Sagar PW 3 wanted to go Suresh made him to say in order to help them in tying up the dead body, Suresh brought a plastic sheet from inside the house. Raj Pal Sharma spread the plastic sheet in the room in which the dead body was laid and the witness Ram Sagar and Raj Pal Sharma lifted the dead body and placed it on the plastic sheet. Suresh Bahri then torn half of the saree already kept there and wrapped the dead body with it. S. Gurbachan Singh torn a piece of rope from the cot, Suresh Bahri brought a blackish blanket and then the witness Ram Sagar himself and the appellant Raj Pal Sharma wrapped the dead body in the blanket and tied it with the rope.

50. The approver Ram Sagar, PW 3 further stated that appellant H Suresh Bahri asked Gurbachan Singh to prepare a box with a view to put

the dead body in the box and leave the box in any train. But later on changed the idea because of the risk involved in carrying the dead body in the wooden box and decided to dump the dead body in septic tank of the house itself and to throw the head in some jungle. Suresh asked Gurbachan Singh to come to his bungalow at about 7.30 PM same day for purposes of dropping the dead body in the septic tank. He, therefore, alongwith Gurbachan Singh went to the house of Suresh Bahri where Suresh Bahri and appellant Raj Pal were already present there. Suresh Bahri and Gurbachan Singh asked the witness Ram Sagar and appellant Raj Pal to take out the dead body from the house to dump it in the septic tank. Appellant Raj Pal attempted to lift the body but could not and then Gurbachan Singh brought a bamboo ladder and with the help of ladder they dumped the dead body in the septic tank situated on the southern side of the bungalow compound of Suresh. The appellant Suresh then asked the appellant Gurbachan to bring some salt for putting it in septic tank. The witness Ram Sagar and Gurbachan Singh then brought 20 kg. salt after purchasing it and the witness Ram Sagar and Raj Pal dropped the salt in the tank. The approver Ram Sagar, PW 3 further deposed that Suresh came to the furniture shop of his master the following day at about 10 AM and reported that the head of Urshia has been thrown in a forest.

51. The approver Ram Sagar went on to state that on 21.10.83 Suresh told Gurbachan Singh that he was going to Delhi to attend some court case and would return upto 26/27th October. But when Suresh did not return on 27.10.83 Gurbachan Singh sent him to Delhi but he could not meet Suresh Bahri there. He was told by the Manager that he had gone to Ranchi. He therefore went to Ranchi on 4th November. There Gurbachan told him that Suresh had come to Ranchi and was staying in Blue Heaven Hotel, Ranchi. He met Suresh Bahri in the said hotel. After a few days Gurbachan Singh told the witness that the Police Inspector. Chutia Police Station was searching Suresh Bahri in connection with murder of Urshia and, therefore, Gurbachan Singh sent him to Delhi to tell Suresh about it. The witness Ram Sagar came to Delhi and Informed Suresh accordingly and Suresh sent message to Gurbachan Singh to handle the matter carefully. Ram Sagar also stated that Suresh had asked him to send four chairs and one cot to his farm house at Dhulli.

52. Ram Sagar further stated that he again came back from Delhi to Ranchi on 20/21-11-83 where Suresh Bahri told to Gurbachan that there is a red coloured attachee kept in the almirah of his house in which there is

A a'chhuri' Suresh asked Gurbachan to get the chhuri sharpened and keep the three kataries and chhuri in that very attachee again. Ram Sagar also deposed that he had fixed the handles in the three kataries and Gurbachan Singh had given him Rs. 20 for purchasing the katari. The witness Ram Sagar was shown the katari, Ext. 5 which he identified to be the same. Ram Sagar goes on to state that he went to Dhulli farm along with Gurbachan Singh with the said attachee and the bag in which chhuri and katari and some papers were kept. The witness Ram Sagar was shown 13th, 14th long knife which he identified as the one with which wife of Suresh Bahri was murdered. At Dhulli farm Gurbachan Singh gave that attachee to the gardener of Suresh Bahri and asked him to keep the attachee and give it to Suresh who was due to come within 3-4 days. Ram Sagar further stated that he had sent four chairs, and one cot to Dhulli farm through the son of the gardener of Suresh.

53. Further approver Ram Sagar, PW 3 deposed that one morning in the month of December appellant Raj Pal Sharma came to the shop of Gurbachan Singh and told him that the appellant Suresh had come to Dhulli farm with his children and he has called Gurbachan Singh. Thereafter Raj Pal Sharma and Gurbachan Singh went towards Dhulli on a motor-cycle. A few days later Gurbachan Singh said to Ram Sagar PW 3 that the dead body has to be taken out from septic tank and in this connection he may take the help of John Linda PW 31 and Manohar the employees of his shop. Ram Sagar further stated that he went to the bungalow of Suresh along with John Linda PW 31 and Manohar. After taking out some mud from the tank the dead body became visible. Ram Sagar told to John Linda that the dead body was dropped in the tank and he should not tell to S. Gurbachan Singh that I had told this fact to him. F At this John refused to take out the dead body. Ram Sagar, therefore, along with John Linda and Manohar came back to his shop as both of them had refused to clean the tank and take out the dead body. At this appellant Gurbachan Singh went on a scooter saying that he will have to do the work himself. Ram Sagar further stated that Gurbachan Singh told to a truck driver at the shop that he had purchased a piece of land where he had to drop some soil and if he finds any dead body there the driver should throw it away. As stated earlier the confessional statement of approver Ram Sagar, PW 3 was recorded by the learned Magistrate on 19.12.84 to 21.12.84 and he was examined on 31.1.85 as witness in the Court of Magistrate under Section 306(4)(a) of the Code. While his statement as PW 3 as recorded H by the learned trial Judge on 6.9.86 which continued for several days and

concluded on 19.11.86 as he was thoroughly cross examined by several learned counsel appearing for the appellants as well as for the three acquitted accused. But we find that the testimony of the approver remained consistent except for minor and insignificant contradictions and omissions which are bound to occur in the statement of any one.

54. The only question that now remains to be considered is whether the evidence given by the approver has received corroboration in material particulars from independent sources. We shall now first advert to the witness connected with murder of Urshia and the circumstantial evidence relating thereto.

55. As stated earlier Murari Lal, PW 1 had a grocery shop just adjacent to the house of appellant Suresh Bahri in Ranchi. He was not only the next door neighbour but a family friend of Suresh Bahri for the last about 15 to 20 years prior to the occurrence and in fact he also served as Care Taker of the Bungalow No. 936. Murari Lal, PW 1. stated that the appellant Raj Pal Sharma met him for the first time on 26th or 27th September, 1983 when he came with a letter of Suresh stating therein that he should hand over the keys of the house to Raj Pal Sharma. Murari Lal, therefore, directed the gardener Mool Chand Mali, PW 24 to allow Raj Pal to stay in the house where Raj Pal stayed till 1.10.83. Murari Lal also stated that on 1.10.83 when Suresh came to Ranchi accompanied with his wife Urshia. Raj Pal Sharma could not be seen in the house thereafter and that he saw Raj Pal Sharma only after 5-6 days later on Chutia Road along with Suresh. When Murari Lal enquired about Raj Pal Sharma Suresh told him that he had arranged a job to him in the shop of S. Gurbachan Singh. Murari Lal further stated that on 11.10.83 at about 5.00 PM Suresh and his wife Urshia came to his shop when he was told by Urshia that both of them would be leaving next day for Delhi and, therefore, he should not give the bill of the articles purchased by them from his shop on credit, Murari Lal further deposed that Badri Narayan Mishra, PW 2 also came to his shop at about 7.00 PM and told him that he had gone to the house of Suresh Bahri to meet Suresh and his wife but he could not meet his wife and was told by Suresh that his wife had gone in a party to the house of S. Gurbachan Singh and she would be going to Delhi next morning by air direct from his house. Murari Lal PW 1. went on to state that on 10.11.83 itself at about 8.00 PM he went to the house of Suresh Bahri with the bills as required by them and handed over the bills to Suresh in the drawing room where he found Gurbachan Singh and the approver Ram Sagar, PW

A 3 also sitting on a sofa. He noticed that a kerosene lamp was lighted in the room and he saw Raj Pal Sharma with a blood stained chhura. Suresh asked him for four empty glasses which he supplied from his shop and came back to his shop. Suresh told him that payment of the bills would be made next day.

B 56. Next morning when Murari Lal. PW 1. noticed Suresh standing outside his house, he told him that he had returned back from airport after seeing off his wife. Murari Lal also stated that he purchased some land from Suresh out of his Ranchi house and one Arjun Sharma and another person also purchase some land. He further stated that on 6.1.84 Bhola Nath Choubey, Rajan Sharma and appellant Gurbachan Singh had also
C purchased land out of the Ranchi property of Suresh when Suresh was staying in Amber Hotel, Ranchi. From the evidence of S. Ranjit Singh, PW 18 the Manager of Amber Hotel, Ranchi, it is evident that though the appellant Suresh had his own house at Ranchi yet he prepared to stay in Amber Hotel from 5.1.84 to 9.1.84, in the name of S. Chander and the
D handwriting expert S.C. Mittal, PW 65 established that the entries in the Amber Hotel register were in the handwriting of appellant Suresh.

57. Murari Lal, PW 1 further deposed that the appellant Suresh had asked Bhola Nath, one of the purchasers of the land to demolish the septic
E tank which existed in the land purchased by him and on questioning by Bhola Nath the reason for so doing, the appellant Suresh said that he should speak to Gurbachan Singh in this connection. Murari Lal stated that in his presence Bhola Nath asked Gurbachan Singh the reason for demolition of the septic tank but Gurbachan Singh did not disclose the same.
F Murari Lal stated that on 7.1.84 Gurbachan Singh came to his house and told him that he would himself demolish the septic tank and when Murari, PW 1. along with Bhola Nath went to the septic tank they met Gurbachan Singh there who told that there was a headless body in the septic tank tied with a blanket and rope. Gurbachan Singh told them to fill up the septic tank by dumping red soil in it. At this Bhola Nath said that he would
G like to take neat and clean land to which Gurbachan Singh agreed but at the same time gave a threat that if he divulged these facts to anybody else he would kidnap the only son of Bhola Nath and blow him with a bomb. Murari Lal stated that same evening Gurbachan Singh brought truck load of soil in the compound of the house of Suresh Bahri and after half an hour the truck went back. He stated that same day at about 9.00 PM Gurbachan
H Singh again came to him and asked him to call Choubey. He called Bhola

Nath Choubey when Gurbachan Singh told him that MALL has been removed from the sceptic tank (meaning thereby that the dead body has been removed from the sceptic tank). When the witness Murari Lal. PW 1 enquired from Gurbachan Singh as to where has he disposed of the same the later replied that it has been thrown behind the hillock. A

58. Badri Narayan, PW 2 is yet another neighbour of Suresh at Ranchi who is fully known to his family for the last several years. Badri Narayan worked as an intermediary in the deal of the house between Urshia Bahri and Laxmi Narayan. PW 21. who wanted to purchase Ranchi house from Urshia. He deposed that the deal was almost finalised. He also stated that Suresh and his wife Urshia had come to Ranchi on 1.10.83 and Laxmi Narayan. PW 21 came to him on 10th October and expressed the desire of his family members to see the house of Suresh on 11.10.83. Badri Narayan, therefore, conveyed this information to Suresh and informed Laxmi Narayan also that the house can be seen in the afternoon of 11.10.83. At about 7.30 PM when he went to the house of Suresh, he noticed no light in the house though there was electric light in the adjoining houses. Badri Narayan stated that when he reached near the door of the drawing room the appellant Suresh rushed out and took him out of the verandah. But while going out Badri Narayan saw Gurbachan Singh and one another man sitting on the sofa of the drawing room to whom he identified as Ram Sagar, PW 3. Badri Narayan also saw while going away that a kerosene lamp was lighted in the drawing room and a person was moving about from one room to another wearing only an underwear. While he was taken out of the verandah Badri Narayan enquired about Urshia and Suresh told him that she had gone in a party to the house of Gurbachan Singh where she would be staying in the night and proceed to Delhi by the morning flight. Badri Narayan also stated that after a few days Laxmi Narayan. PW 21 told him that although the deal was finalised but he noticed that other persons were digging earth for laying foundation on the property and when they met Suresh he told that he would not sell the property but a memorial of his father would be constructed there. Laxmi Narayan, PW 21 got suspicious and, therefore, he made enquires from Airlines Booking Office, Ranchi and learnt that no person named as Urshia had travelled by air on 12.10.83 from Ranchi to Delhi. The prospective purchaser Laxmi Narayan, PW 21 corroborated the statement of Badri Narayan, PW 2 so far as it relates to the negotiations with regard to the purchase of the house is concerned. B
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59. Rameshwar Thakur, PW 4 was also at the relevant time and H

- A employee of Gurbachan Singh in his furniture shop who stated about his acquaintance with Suresh who was on friendly terms with his master and was a frequent visitor to his shop. He stated that sometimes in the month of October, 1983 Suresh visited the shop of Gurbachan Singh when Gurbachan Singh handed over a dagger to the witness to sharpen it. Rameshwar further stated that after a couple of days he returned the dagger to
- B Gurbachan Singh after getting it sharpened. As said *John Linda*, PW 31 was also an employee of Gurbachan Singh in his furniture shop. Linda also stated that he was acquainted with Suresh Bahri who made frequent visits to his master's shop. He deposed that Gurbachan Singh called him along with Ram Sagar, PW 3 at the house of Suresh in the month of Januray 1984
- C for taking out soil from the septic tank but when he along with others after digging the septic tank noticed a bundle of dead body tied with blanket and rope, he became upset. He further deposed that when Gurbachan Singh asked them to take out the dead body, they refused to comply the direction and he as well as other workers went back to the shop.
- D 60. Moolchand, Mali, PW 24 was the gardener at the relevant time in Ranchi house No. 936 of Suresh Bahri and lived in a servant quarter behind the bungalow. He knew the family of Suresh Bahri very well. Moolchand stated that there used to be frequent dispute between Suresh Bahri, his mother and the deceased wife of Suresh in connection with the sale of the bungalow, as Urshia insisted for sale but Suresh and his mother
- E were opposed to it. He stated that one day in the month of Chaitra 1983 (much before the murder of Urshia) Suresh Bahri took him behind the bungalow and told that a person has to be murdered and if he helped him in doing so, he will make him wealthy. The witness replied to Suresh that he would not be able to do it. Suresh then asked him to call someone else
- F for this purpose and the witness replied that he does not know any such person for this purpose. At this Suresh asked him to make his arrangement else where. The witness Moolchand deposed that thereafter he managed his employment with Jogda Math and started working there but he continued to live in the servant quarter in the bungalow of Suresh. He also stated that Suresh came to Ranchi along with his wife sometimes after the summer vacations and one day he asked him to take him to one Ojha
- G known as Lal Saheb. He took Suresh to that Ojha who lived in Chutia. Suresh Bahri spoke to that Ojha that his wife was mad and was a nuisance for him and hence he wanted to bring an end to her life. At this Ojha demanded Rs. 250 saying that his work would be done and Suresh complied with the directions given to him by that Ojha Moolchand further
- H stated that next day the appellant Suresh again took him to that Ojha and

complained that the work could not be done though he had paid the desired amount of Rs. 250. At this that Ojha said to Suresh that he will not be able to do his work and he may get it done from someone else. A

61. Witness Moolchand Mali, PW 24 corroborated the statement of Murari Lal, PW 1 stating that he was called by Murari Lal who told him that Suresh had sent a man (Raj Pal Sharma) from Delhi who will stay in the bungalow. Murari Lal gave him the key and directed him to open the bungalow. Moolchand further stated that he opened the bungalow for that man who was tall and thin and he identified Raj Pal Sharma to be that person who had stayed in the bungalow. Moolchand further stated that Murari Lal Sharma had given Rs. 10 for the meals of Raj Pal Sharma and therefore he took him to the hotel where he took his meals. Moolchand also stated that Raj Pal continued to stay in the bungalow till about 4-5 days when Suresh Bahri also came to Ranchi along with his wife and stayed in the bungalow. Suresh asked Moolchand to vacate the quarter of the bungalow and therefore he vacated and left the place. B C

62. Shambhu Tiwari, PW 7 who at the relevant time was running a tea stall opposite Chutia Police Station. Ranchi stated that sometimes towards the end of September 1983 Raj Pal Sharma had come to his tea shop for taking tea and continued to take tea twice or thrice a day for about 10-12 days but he had no money to make payment of tea for 5-6 days and when he demanded the money he told him that he was a man of Suresh and had come to Ranchi to look after the house of Suresh which was going to be sold. He further stated that Murari Lal, PW 1 confirmed that Raj Pal Sharma was a man of Suresh and that Suresh will make payment of his dues. Witness Tiwari, PW 7 identified Suresh also. D E

63. In addition to what has been discussed above clearly establishing the conspiracy hatched by the appellant Suresh along with his two associates, namely, Raj pal Sharma and S. Gurbachan Singh for the murder of Urshia and in pursuance of which Urshia was murdered, there is some other evidence also which connects the appellants with the crime in question. F

64. Rohtas Sarang, PW 79 is the mother of Urshia who deposed that she had received last letter from Urshia in America in the month of September, 1983 as a result of which she was very much upset. When she received two unusual letter dated 29.10.83 and 3.11.83 i.e. after the murder of Urshia which are Ext. 23/6 and Ext. 23/7 from Suresh Bahri that Urshia was very much busy and henceforth he would be writing them and also H

- A asked them that in future correspondence they should use the address of S. Gurbachan Singh who is a good friend of Suresh at Ranchi her suspicion increased exceedingly. A perusal of the letters will go to show that Suresh mentioned therein that Urshia had given up the idea of divorce. Ranchi house has been sold away and as Urshia would be busy for quite a long time, the two children will be shifted to Ranchi for their study and, therefore, they should not worry about them. A reading of the two letters reproduced by the High Court in its judgment, evidently go to show that Suresh was conscious of the fact that Urshia was in regular contact with her parents in America and as the contact had come to an end with her murder, something had to be done to explain her silence by misguiding her parents that there exist no dispute between them. Urshia having given up the idea of divorce and they were living in harmony and a happy life and as the Ranchi house has been sold away they should not worry about them at all.

- D 65. This brings us to the evidence relating to the disclosure statement said to have been made by Raj Pal Sharma about the skull of Urshia and the recovery thereof. After his arrest on 12.8.84 appellant Raj Pal Sharma made the disclosure statement Ext.32 which was drawn up by C.B.I. Inspector Madan Lal, PW 85 assisted by Inspector Rajendra Singh PW 82, in the presence of two witnesses, namely, Satya Dev Tiwari, PW 73 and Dev Nandan, PW 74. Satya Dev Tiwari and Dev Nandan stated that in pursuance of disclosure statement a skull hair and some other articles were seized as per seizure memo Ext. 33 at the instance of appellant Raj Pal Sharma from a forest on Ranchi Patrutru Road. Similar is the statement of C.B.I. Inspector, Madan Lal, PW 85 and Rajendra Singh PW 82. There is nothing on record to disbelieve or doubt their testimony with regard to disclosure statement and the recovery of a skull, hair and other articles at the instance of the appellant Raj Pal Sharma.

- G 66. The skull and other articles seized as per seizure memo. Ext. 33 referred to above were sent to the Director. Medico Legal Institute, Gandhi Medical College, Bhopal for examination and report of its Director, Dr. Harish Chander. Dr. Harish Chander, the Director of the Institute-cum-Legal Advisor to the Government of M.P. sent his report Ext. 2/81 after examination with his opinion that the skull belonged to a female human being whose aged was 33 years plus minus 5 years. Dr. Harish in his report had also asked for some other information and photograph clothings of the deceased in order of fix up the identity of the person to whom the skull belonged to but the prosecution could not furnish the

required information. Dr. Harish submitted another report giving his opinion that in the absence of the material required by him it cannot be said with certainty that identity was established though there is resemblance with the skull of the deceased Dr. Harish could not be examined by the prosecution as a witness due to his illness but an expert of his department Dr. S.C. Jain, PW 80 had appeared and stated that prof. Harish Chander was suffering from paralysis and, therefore, could not appear as a witness. He further proved the aforesaid two reports sent by Prof. Harish Chander. He stated that he had examined the skull and other materials after discussion with prof. Harish Chander for which he prepared a note Ext. 30.

67. On the basis of the two reports sent by Prof. Harish Chander and the statement made by Dr. S.C. Jain, PW 80 Shri Sushil Kumar, Learned counsel appearing for the appellant Raj Pal Sharma contended that the identity of the skull alleged to be of the deceased Urshia Bahri is doubtful and remained unestablished and, therefore, the conviction for the charge of murder and/or conspiracy to murder Urshia Bahri cannot be said to be established by the prosecution particularly when there is no positive proof of the hair said to have been recovered along with the skull belonging to a woman or the head of the deceased Urshia. In our considered opinion there is no substance in these submissions as most often and in certain cases even the dead body of the deceased person is not recovered or seized but if there is positive evidence to connect the culprit, it cannot be said that the offence of murder is not established. In the present case it is no doubt true that prof. Harish could not give his opinion with certainty with regard to the identity of the skull, but in view of the evidence on record which has been discussed by us in detail it could not be accepted that the prosecution has failed to establish that the skull which was recovered at the instance of the appellant Raj Pal Sharma did not belong to the deceased Urshia. The very fact that Raj pal Sharma made the disclosure statement that after severing the neck from her body the skull was thrown in the jungle which was seized only at the instance of the appellant Raj Pal Sharma who searched out the skull in the forest and produced to the investigating agency in the presence of independent witness coupled with the report of Prof. Harish Chander that it was the skull of a female whose age was about 33 years plus minus 5 years on either side which in fact was the age of deceased Urshia, there is no difficulty in recording the conclusion that the skull belonged to none else but Urshia.

68. There is yet another piece of circumstantial evidence to connect

A the accused appellants with the conspiracy and murder of Urshia in the shape of recovery of certain articles which were used in wrapping the dead body while throwing the same in the sceptic tank, and which were recovered from a Khadgraha at Ranchi where the waste of Ranchi was dumped Rajeshwar Singh, PW 59 was the Station House Officer. Police Station Chutia at the relevant time, stated that on the report of Bineet Singh, PW 69 P.S. Case No. 27/84 with regard to murder of Urshia was registered in Lower Bazar Police Station as at that time Chutia Police Station was under Lower Bazar Police Station and the case was handed over to C.B.I. by notifications of the Central and State Governments. Rajeshwar Singh PW 59 investigated the case. During the course of investigation as stated earlier, PW 59 had arrested the appellant Gurbachan Singh. He deposed that during the course of investigation the appellant Gurbachan Singh took him near Khadgraha hillock where the waste of Ranchi city is dumped. He deposed that at the instance of Gurbachan Singh he got the place unearthed by labourers to discover the dead body of Urshia which could not be found but a piece of blanket, piece of saree and a rope were found which were seized at the instance of Gurbachan Singh by seizure Memo. Ext. 5 dated 2.2.84 which was prepared by ASI Rangnath Singh on his direction. These articles were put to Test Identification. Shri Atulya Kumar Bara, PW 83 an Executive Magistrate on the order of C.J.M. Ranchi held T.I. parade of the articles in the verandah of the Chutia Police Station. An old piece of light green blanket, three pieces of sky blue-black cheque saree and rope were identified by Murari Lal PW 1 and Badri Nath Mishra, PW-2 as per identification memo Ext.36 prepared by Atulya Kumar Bara, PW 83.

69. He deposed that no person was present at the place where identification of these articles was held. Murari Lal, PW 1 was one of the witness who identified the blanket piece, saree pieces and the rope in T.I. parade and had signed the T.I. memo. He deposed in para 17 that Urshia Bahri was wearing that saree when she came to his shop in the evening of 11.10.83 and he had seen in the sceptic tank the blanket and the rope with which the dead body was wrapped and tied. Similar is the statement of Badri Narayan Mishra, PW 2 who stated in para 9 of his deposition that he had identified the aforementioned articles in the T.I. parade held in Chutia Police Station and had signed the memo. He stated that when he met Urshia Bahri at her house in the morning of 11.10.83 she was wearing the saree of which the pieces were identified by him in the T.I. parade and he had seen the blanket kept on the Takht in the house of Suresh Bahri

when he visited the house. He also stated that rope was a part of the rope of the cot which was kept in the varandah of the house of Suresh Bahri. This part of the prosecution evidence also could not be demolished by the defence although the witnesses were cross-examined thoroughly and by several counsel appearing for the accused persons. There is nothing on record to discredit their testimony.

70. However, learned counsel appearing for the appellants relying on the decision in the case of *Nari Santa v. Emperor*, AIR (1945) Patna 161 and *Abdul Sattar v. Union Territory*, AIR (1986) SC 1438 vehemently urged that the alleged recovery of blanket, piece of saree and rope said to have been made by the Investigating Agency at the instance of the appellant Gurbachan Singh, in the absence of any disclosure statement and without any pointing out memo of the place of recovery and without the public witness to the alleged recovery could not be treated as valid recovery in the eye of law within the meaning of Section 27 of the Evidence Act. It is true that no disclosure statement of Gurbachan Singh who is said to have given information about the dumping of the dead body under the hillock of Khadgarha dumping ground was recorded but there is positive statement of Rajeshwar Singh, PW 59. Station House Officer of Chutia Police Station who deposed that during the course of investigation Gurbachan Singh led him to Khadgarha Hillock along with an Inspector Rangnath Singh and on pointing out the place by Gurbachan Singh he got that place unearthed by labourers where a piece of blanket, pieces of saree and Rassi were found which were seized as per seizure memo Ext. 5. He further deposed that he had taken two witnesses along with him to the place where these articles were found. Rajeshwar Singh, PW 59 was cross-examined with regard to the identity of the witness Nand Kishore who is said to be present at the time of recovery and seizure of the articles as well as with regard to the identity of the articles seized vide paragraphs 18, 21 and 22 of his deposition but it may be pointed out that no cross-examination was directed with regard to the disclosure statement made by the appellant Gurbachan Singh or on the point that he led the police party and others to the hillock where on his pointing out, the place was unearthed where the aforesaid articles were found and seized. It is true that no public witness was examined by the prosecution in this behalf but the evidence of Rajeshwar Singh, PW 59 does not suffer from any doubt or infirmity with regard to the seizure of these articles at the instance of the appellant Gurbachan Singh which on T.I. parade were found to be the articles used in wrapping the dead body

- A of Urshia. According to the evidence of PW 1 and PW 2 as said earlier the saree pieces were part of the saree of Urshia that she was seen wearing by these witness the blanket piece was a part of the blanket which was seen on the Takht in the house of the appellant Suresh Bahri and the piece of rope was the part of the rope said to be taken out from the cot kept in the varandah of the house of Suresh.
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71. The two essential requirement for the Application of Section 27 of the evidence Act are that (1) the person giving information must be an accused of any offence and (2) he must also be in police custody. In the present case it cannot be disputed that although these essential requirements existed on the date when Gurbachan Singh led PW 59 and others to the hillock where according to him he had thrown the dead body of Urshia but instead of the dead body the articles by which her body was wrapped were found. The provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false. In the present case as discussed above the confessional statement of the disclosure made by the appellant Gurbachan Singh is confirmed by the recovery of the incriminating articles as said above and, therefore, there is reason to believe that the disclosure statement was true and the evidence led in that behalf is also worthy of credence.
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72. In the light of the facts stated above we are afraid that two decisions mentioned above and relied on by the learned counsel for the appellants have no application to the facts of the present case and do not advance the case of the appellants challenging the discovery and seizure of the incriminating articles discussed above. In *Nari Santa* (supra) the accused of that case was charged for the theft and it is said that in the course of investigation the accused produced certain articles and thereafter made a confessional statement and it was in these facts and circumstances it was held that there was no disclosure statement within the meaning of Section 27 as the confessional statement was made only when the articles were already discovered having been produced by the accused. Similarly the
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decision rendered in *Abdul Sattar* (supra) also does not help the appellants in the present case. In the case of *Abdul Sattar* (supra) recovery of wearing apparels of the deceased is said to have been made at the instance of the accused of that case more than three weeks after the occurrence from a public place accessible to the people of the locality and, therefore, no reliance was placed on the disclosure statement and recovery of the wearing apparels of the deceased. But in the present case it was soon after the arrest of appellant Gurbachan Singh that he took the Police Officer while in custody to the place where according to him he had thrown the dead body of Urshia wrapped by the incriminating articles. Those articles were not found laying on the surface of the ground but they were found after unearthing the Khadgarha dumping ground under the hillock. Those articles were neither visible nor accessible to the people but were hidden under the ground. They were discovered only after the place was pointed out and it was unearthed by the labourer. No fault therefore could be found with regard to the discovery and seizure of the incriminating articles.

73. Now we come to the evidence of the experts examined by the prosecution, and the expert opinion rendered by them touching upon the crime in question. K.K. Arora, PW 51 at the relevant time was working as the senior Scientist in Chemistry branch of the Central Forensic Science Laboratory, Delhi having 24 years experience. He had examined the gunny bag which was used for carrying salt for the dropping in the septic tank after the dead body of Urshia was thrown in the said tank. K.K. Arora is his report Ext. 20 found salt in the said bag. Dr. G.B. Gupta, PW 53 Senior Scientist has examined the wall scrappings of the blood from the room of the Ranchi house of Suresh and scrappings from the steel trunk seized from the room of the said house of Suresh and found human blood stains in the same. Dr. R.P. Bhatnagar another Senior Scientist, Head of Surgery Division-cum-Assistant Chemical Examiner to the Govt. of India (CBI) New Delhi has examined the scrapping of the blood taken from the Ranchi house of Suresh Bahri and he as per his report Ext. 20/40 found human blood of 'B' group in the same.

74. The prosecution had also examined about 20 employees Managers and Proprietors of different hotels which have been catalogued by the High Court in para 69 of its judgment in which the appellants Suresh and Raj Pal Sharma had stayed on different dates by concealing their real names and giving out different names and addresses under the fear of

- A being apprehended as they had received intimation that the rumours were circulating about the murder of Urshia Bahri and had also learnt about the arrival of Bineet Sarang, PW 69 brother of Urshia Bahri in January, 1984 at Delhi who was searching and making enquiries about his sister and her children and had visited the Delhi house, business premises and Ranchi house of the appellant Suresh Bahri and made reports to the Chutia Police Station.
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75. Thus on an overall independent consideration of the circumstantial and expert evidence as well as the evidence of the approver adduced by the prosecution and discussed by us in the foregoing paras it is abundantly clear had satisfactorily established that the evidence of the approver Ram Sagar Vishwakarma, PW 3 has received requisite corroboration on all material particulars and the totality of the surrounding circumstances, antecedents and subsequent conduct amongst other factors established against the three appellants prove beyond all reasonable doubt that at the instance of Suresh Bahri who master minded the plan, the other two appellants conjointly hatched a conspiracy to commit the murder of Urshia Bahri and that in prosecution of the common intention Suresh Bahri and Raj Pal Sharma did commit the murder of Urshia Bahri. Not only this but all the three appellants which a view to screen themselves from the commission of the offence made all out efforts for the disappearance of the dead body of Urshia.
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76. The High Court affirming the findings recorded by the trial Court and on taking stock of the entire prosecution evidence on record by itself came to the conclusion that the following circumstances were fully established beyond all reasonable doubt against the three appellants and on that basis found them guilty for the aforesaid offences :
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"(1) Deceased Urshia whose parents and brother were living aboard was married to the appellant Suresh in the year 1972.

- (2) Appellant Suresh was the only issue of his parents, having business and a farm house in village Dhulli, 40 kms. from Ranchi.
- G

(3) Out of their wedlock of Suresh and Urshia two children were born, a girl by name Richa and a boy Saurabh.

- (4) A couple of years after the marriage the relations between Suresh and Urshia became strained on account of constant interference by Y.D.
- H

Arya. maternal uncle of Suresh in the domestic as well as business affairs. A

(5) Deceased Urshia was extremely unhappy with her husband Suresh and mother-in-law Santosh, the acquitted accused on account of their mal-treatment and undesirable attitude towards her and her children. The stay of Y.D. Arya in the house of the couple was not acceptable to Urshia because of his undesirable interference in their business and domestic affairs. Deceased Urshia realised that her status in the family was just like undesirable person. B

(7) Urshia became highly despaired and disappointed on account of incapability of her husband to manage the family business having fallen into bad company and became addict excess drinking and had disposed of the Calcutta properties and she did not receive a single penny out of it. C

(8) Constant efforts of Urshia to associate herself with family business to improve its condition was frustrated by her mother-in-law who poisoned the mind of her husband Suresh against her. D

(9) The removal of Y.D. Arya at the instance of Urshia from occupation of a portion of the house had further annoyed her mother-in-law and husband Suresh.

(10) Her mother-in-law had once tried to kill her by administering poison in the grab of medicine as deposed by her sister PW66 and her life was saved only by timely medical aid. E

(11) For all the aforesaid reasons Urshia had decided to shift to America to her parents for the better future of her children but she was helpless in doing so far want of citizenship and ready money. F

(12) In order to overcome this problem Urshia persuaded her parents through letters to immediately arrange for her citizenship and to get over the monetary problems she decided to dispose of Ranchi house No. 936. G

(13) With a view to shift to America permanently she was even ready to take divorce from her husband Suresh, as is evident from her letters addressed to parents.

(14) The appellant Suresh was not happy with the decision of Urshia H

A to shift to America with children specially with the sale proceeds of Ranchi house.

(15) Being convinced that Urshia had finally decided to shift to America with children by disposing of Ranchi house. Appellant Suresh decided to do away with her life at any cost and to meet this end he hatched a conspiracy with the appellants Raj Pal Sharma and Gurbachan Singh.

(16) It was for this reason that he had first tried to take the assistance of his Mali, Moolchand, PW 24 to commit her murder and when he declined to do so he was turned out from the out-house.

(17) Suresh also tried to persuade the approve Ram Sagar, PW 3 through his employer Gurbachan Singh for the murder of Urshia in pursuance of which appellant Gurbachan Singh gave him allurement in the presence of Suresh that not only the advance taken by him would be set off but some amount will also be given to him by Suresh.

(18) Though the approver Ram Sagar, PW 3 did not accept the offer but extended full cooperation in that regard to his employer Gurbachan and Suresh Bahri.

(19) While Urshia was negotiating with Laxmi Narayan PW21 through Badri Naryan Mishra, PW2 to dispose of Ranchi house No. 936, her husband Suresh was busy in hatching a conspiracy with Raj Pal Sharma and Gurbachan Singh and approver Ram Sagar, PW 3 to do away with her life and for that purpose he started making preparations.

(20) Having found that the negotiation to disposed of Ranchi house have been finalised by Urshia. Suresh became desperate and sought for the help of Raj Pal Sharma and Gurbachan Singh for committing the murder of his wife at the earliest.

(21) The appellant Raj Pal Sharma, a resident of Masjid Moth, Delhi was quite close to Suresh as both were seen together on different occasions and Suresh was also paying for the tea and articles consumed by Raj Pal Sharma (vide PW1 and PW7)

(22) On 1.10.83 Suresh along with Urshia came to Ranchi and stayed in house No. 936 but before their arrival Raj Pal Sharma had already arrived in the last week of September, 1983 to take stock of overall

situation.

A

(23) Before leaving Delhi Urshia had informed her parents through a letter that she would be shifting to America after disposing of the house in October.

(24) Appellant Suresh with the help of Gurbachan Singh got a dagger sharpened by Rameshwar Thakur PW 4 an employee of Gurbachan Singh and also got a danda prepared by Ram Sagar, PW 3 another employee of Gurbachan a few day before 11.10.83.

B

(25) As per settled programme Ram Sagar PW3 was taken by Gurbachan Singh to the house of Suresh three days before 11.10.83 with a danda, but on account of arrival of some outsiders that plan could not be executed.

C

(26) A similar plan was again made on the next day but as police was patrolling in the area on the eve of festival. PW 3 declined to do the work under apprehension of being detected.

D

(27) After the deal with regard to sale of Ranchi house was complete with Laxmi Narayan, PW 21 for a consideration of Rupees five and a half lakhs. Laxmi Narayan inspected the house in the presence of Suresh and Urshia on 11.10.83 when Urshia told him to bring the Income tax clearance certificate so that document could be executed and thereafter she would return to Delhi on 12.10.83.

E

(28) The appellant Suresh purchased two railway tickets in the waiting list in his name and his wife Urshia name for Delhi to give a colour that the couple would be leaving on 12.10.83 but in fact none of them travelled on 12.10.83 as per the reservation chart and evidence of the then Chief Reservation Supervisor of Ranchi Railway Station.

F

(29) On 10.11.83 electric light of the house of Suresh was deliberately put off though there was light in the vicinity so that in the darkness murder of Urshia could be committed by Suresh and Raj Pal in a room of the house.

G

(30) As per plan appellant Gurbachan and PW 3 also arrived at the house soon after the ghastly crime and as PW 3 became nervous on witnessing the qhastly crime, his employer Gurbachan Singh patted him

H

A and offered water.

(31) Murari Lal, PW1 also happen to come to the house soon after the murder with the bill of the articles purchased from his shop on credit as required by Urshia and found no electric light in the house but a kerosene lamp was lighted, appellant Gurbachan Singh and PW 3 were sitting on a sofa, the appellant Suresh was in the drawing room and Raj Pal wearing an underwear was seen moving from one room to another with the dagger stained with blood. The appellant Suresh asked Murari Lal. PW 1 to supply four empty glasses as they wanted to enjoy liquor. Murari Lal brought the glasses and then went away.

(32) A middleman Badri Narayan Mishra. PW 2 also happened to arrive at about the same to meet Urshia but he was driven out from the varandah of the house by Suresh saying that Urshia had gone in the party to the house of the appellant Gurbachan Singh and from there she would be leaving for Delhi by next morning flight, which was later found to be false by verification from the airlines office, vide PW 9.

(33) After PW1 and PW 2 were virtually driven out as aforesaid all the three appellants with the help of Ram Sagar Vishwakarma, PW3 wrapped the body with a saree which Urshia was wearing, a blanket and then tied with a rope and wrapped the severed skull separately in polythene bag.

(34) The next morning the skull was taken to a jungle down the hill on Ranchi-Patratru Raod by Raj Pal and Suresh in a motor-cycle and thrown there. This fact was communicated to Gurbachan Singh also.

(35) The trunk portion of the body of Urshia with the help of appellant Gurbachan, Raj Pal Sharma and Ram Sagar, PW3 was concealed in a septic tank within the compound of the house of Suresh in the following evening with the help of a bamboo ladder and the appellant Gurbachan and approver Ram Sagar, PW 3 brought 20 kgs of salt on the direction of Raj Pal Sharma and poured the same in septic the tank for speedy decomposition of the body.

(36) Suresh had earlier decided to place her truck portion in the box and keep it in some train for which a box was prepared by Gurbachan Singh with the help of approver PW 3 but that plan was given up as there

were changes of detection.

(37) Appellant Suresh gave false information to his in-laws even after Urshia was murdered by sending two letters dated 29.10.83 and 3.11.83 Ext. 23/6 and 23/7 stating that henceforth only he would be writing letters to them as Urshia was busy like a bee at Dhulli farm and was not in a position to write letters.

(38) In letter dated 31.11.83 Ext. 23/7 purporting to have been written from Ranchi house while in fact on that date Suresh was staying in a hotel named Blue Heaven at Ranchi in the name of S. Saxena mentioning his arrival on 2.11.83 and departure on 5.11.83 giving his address as 409 Defence Coloney though he had no house in Defence Coloney (vide Ext. 2/9 and 4/12).

(39) In the letters Suresh not only tried to impress upon his in-laws that they were leading a very happy life and at the same time also made attempts to explain the sudden silence of Urshia by a improbably story. The said letters also indicated the pre-planned idea of Suresh in committing the murder of his two issues subsequently by informing them that Urshia was staying at Ranchi for about one had a half years and the children were to shift there for studies. This unusual information given by Suresh created a serious suspicion in the mind of his in-laws and, therefore, they directed their son Bineet Singh, PW 69 to go to India and find out the welfare and whereabouts of Urshia and her children. The conduct of Suresh and Gurbachan after the arrival of informant Bineet Singh, PW 69 from Libya to make an enquiry about his sister and children was not only misleading but their activities at every stage were conflicting and suspicious which directly suggested that Suresh was deliberately avoiding to divulge the truth. The informant Bineet Singh, PW 69 made frantic enquiries about his sister at Delhi, Ranchi and Dhulli farm and from different sources came to know all the facts leading to the murder of his sister and, therefore, he lodged the reports both at Ranchi and Delhi.

(40) When the investigation by Chutia Police was found to be unsatisfactory, CBI took over the charge by virtue of Government notifications and during the course of investigation Raj Pal was arrested on 8.8.84 who made disclosure statement Ext. 32 as to how Urshia was killed in one of the rooms of the Ranchi house No. 936 and her head was severed and thrown in the jungle.

A (41) Prior to Raj Pal, Ram Sagar, PW 3 was arrested and made confessional statement leading to unearthing of the murders.

(42) On the disclosure statement made by appellant Raj Pal the head of Urshia, hair and jaw, etc. were seized at his instance from the forest as per seizure Ext. 33.

B

(43) The expert Dr. Harish Chander on examination found a skull of a female aged 33 years plus minus 5 years on either side which fitted the age of Urshia as it appears in her passport. Ext. 25.

C

(44) From the evidence on record the friendship between Suresh and Gurbachan Singh is fully established. Suresh was a regular visitor of the shop of Gurbachan Singh and he took the help of his employees in preparing Dandas. Dagger for killing Urshia.

D

(45) The active participation of Gurbachan Singh in executing the plan of murder by extending all sorts of help at each and every stage prove that he was an active partner in the criminal conspiracy.

E

(46) The removal of truck portion of dead body of Urshia by Gurbachan to a hillock known as Khadgraha and filling up the septic tank with morum, for disappearance of the evidence of murder is an added circumstance to establish that he had all through taken active part.

F

(47) The conspiratory acts of the appellants are established by the fact that after the murder of Urshia they were in contact with each other for communicating developments of offences committed and action of the public and police in that sequence, Gurbachan Singh had sent the approver PW 3 to Delhi meet Suresh and inform him that suspicion has arisen in the vicinity and Chutia Police was searching Suresh who was moving from hotel to hotel in different names.

G

(48) Raj Pal Sharma was equally very close to Suresh from before otherwise he would not have taken the leading part in the murder of Urshia. Raj Pal also went under ground forcing Chutia Police to move the C.J.M. Ranchi on 23.8.84 for issuance of warrant against him leading to his arrest on 8.8.84 by C.B.I. in a Boarder village of Delhi and Haryana."

H

77. After going through the evidence and material on record we are

also satisfied that the aforementioned facts and circumstances found to be established by the Trial Court as well as by the High Court are well founded and fully supportable by evidence on record. Since we find ourselves in agreement with the said conclusion the same do not call for any interference by this Court in exercise of our jurisdiction under Article 136 of the Constitution.

78. Learned counsel for the appellants, however, contended that in a case where a witness identifies an accused who is not known to him, in the Court for the first time, his statement is not of any evidentiary value without their being a previous identification parade and as in the present case the appellant Raj Pal Sharma was quite stranger to the witnesses who for the first time identified him in the dock, without their being any previous identification parade, their evidence should not have been accepted with regard to the factum that he was the person who came and stayed in the house of Suresh Bahri and took part in the alleged murder of Urshia and her two children. While advancing these arguments support was sought to be taken from the decisions in *Kannan v. State of Kerala*, [1979] 3 SCC 319 and *Mohanlal Ganga Ram Gehani* - [1982] 1 SCC 700. There can be no dispute with regard to the principles as to the evidence relation to identification of a stranger accused involved in any crime. It is well settled that substantive evidence of the witness is his evidence in the Court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in Court at the trial. Form this point of view it is a matter of great importance both for the Investigating agency and for the accused and a *fortiori* for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards were effectively taken so that the investigation proceeds on correct lines for punishing the real culprit. It would, in addition, be fair to the witness concerned also who was a stranger to the accused because in that even the changes of his memory fading away are reduced and he is required to identify the alleged culprit at the earliest possible opportunity after the occurrence. It is in adopting this course

- A alone that justice and fair play can be assured both to the accused as well as to the prosecution. But the position may be different when the accused or a culprit who stands trial had been seen not once but for quite a number of times at different point of time and places which fact may do away the necessity of T.I. parade. In the present case as stated earlier the appellant
- B Raj Pal Sharma approached Murari Lal, PW 1 with a letter of Suresh in pursuance of which Murari Lal had directed the bungalow gardener, Moolchand, PW 24 to open the house and permit Raj Pal Sharma to stay there. Raj Pal Sharma came and stayed in the Ranchi house in the last week of September and continued to live there till 1.10.83 when Suresh
- C alongwith Urshia arrived and stayed there. Thus Murari Lal, PW 1 and Moolchand Mali, PW 24 had an opportunity to see Raj Pal for several days and it was not for the first time that they saw him in the Court when they identified him to be the one who took active part in the crime. Similarly Shambhu Nath Tiwari, PW 7 who was running a tea stall at Chutia where
- D Raj Pal Sharma used take tea and other eatable articles for a number of days and had no money to pay the charges but continued to serve him with tea, etc. on the assurance of Murari Lal, PW 1 that the dues would be cleared by Suresh Bahri as Raj Pal was a man of Suresh. Moolchand Mali, PW 24 also had on opportunity to see Raj Pal living in Chutia house, Ranchi for several days. Similar is the case with other witnesses who had
- E identified Raj Pal to be the person who had stayed in the house of Suresh Bahri. Thus in view of this evidence it cannot be said that the witnesses who identified Raj Pal in the Court had seen him only once for a short while by reason of which their evidence should not be accepted. In the case of *Kannan* (supra) relied on by the learned counsel for the appellants the
- F accused of that case was seen by the identifying witness only once in the Court and, therefore, in the absence of T.I. Parade the evidence was not accepted which is not the case before us. Similar was the position in *Mohanlal Ganga Singh Gehani* (supra) wherein the witness who identified the accused for the first time in Court did not know him before and
- G therefore in the absence of T.I. Parade the evidence of that witness was held valueless and unreliable. In the present case and in the facts and circumstances discussed above T.I. parade was not necessary at all as the witnesses had seen the appellant Raj Pal Sharma Continuously for several days and they had the opportunity of knowing and recognising him since
- H before the made their statement in the Court.

79. This brings us to the second leg of prosecution case relating to the murder of two children, namely, Richa and Saurabh who are alleged to be murdered in the intervening night of 17/18th December, 1983 at Dhulli farm house of Suresh Bahri in conspiracy with the other two appellants, namely Raj Pal Sharma and S. Gurbachan Singh. This episode of their plan commenced with two applications Ext. 40 and Ext. 40/1 made by the appellant Suresh on 5.12.83 to the Principal, Father Agnel's School, South Extension, New Delhi, stating that his children Richa and Saurabh will not be attending the classes from 5.12.83 till the end of February, 1984. To establish this fact the prosecution had examined the Principal of the said school Shri M. Cawli, PW 33. He deposed that he knew well Richa and Saurabh who were the students of his school. Saurabh was in 4th standard and Richa was in 6th standard. He further deposed that the aforesaid two applications were made by Suresh Chandra Bahri, father of the two children named above. The application about Richa Bahri was received by her class teacher named Sonia and the other application relating to Saurabh Bahri was received by Mrs. Randhawa and he recognized the endorsement and signatures made by the two class teachers on the aforesaid two applications. The Principal of the School further deposed that both the applications were seized by CBI officials. A copy book Ext.1/2 of Richa Bahri was also seized by the CBI in his presence and he had signed at pages 1, 2, 23 and 36 of the said copy book. He also identified Richa in the photograph Ext. 1 and Saurabh in the photograph Ext.1/3. He also identified the father and mother of the two children Saurabh and Richa in the photograph Ext.1/2. Mrs. George, PW 34 a teacher of Father Agnel School was also examined who was the class teacher of Richa when she was in 4th and 5th standard and claimed to be fully acquainted with her handwriting. She identified the handwriting of Richa in her copy book from pages 2 to 26 seized by CBI from the Principal of the School as she had seen the writings when the copy book was submitted to her for correction and she had signed the said copy book at pages 5, 16, 20 and 23. PW 34 also identified Saurabh in the photograph Ext.1 and 1/3. She also identified Richa in the photograph Ext. 1/1. The evidence of these two witnesses was half heartedly sought to be challenged by the counsel for the appellants as unreliable, a mention of which is made only to be rejected as both of them are independent witnesses having no animus against any of the accused/appellants. Their evidence does not suffer from any infirmities

A and we find their version as fully truthful.

B 80. The prosecution in order to establish further chain of circumstances in the murder of two children examined Dina Nath Sharma PW 6 who knew Suresh Bahri since 1965 and both were class-mates. He deposed that he frequently visited the Delhi house of Suresh Bahri and also used to stay with him. He knew all the family members of Suresh Bahri including his wife and children. Dina Nath stated that when he visited Delhi house of Suresh in the first week of December, 1983 he saw the two children of Suresh in Delhi house when Suresh had told him that he will take his children to Ranchi to get them admitted in any school there so that the children and their mother may live together. PW 6 further deposed that C Suresh Bahri left for Ranchi house in the morning of 8.12.83 in the Ambassador car along with his mother Santosh Bahri and a maid-servant and one more person (identifying Raj Pal in the court to be that person). Suresh told him that his mother and maid servant would be going upto D Basti (UP). On asking about the other man Suresh told him that he was a Motor Machanic whom he had taken by way of precaution as he had to cover a long journey. He also stated that he had taken 3-4 beddings besides other articles in the car.

E 81. Witness Gopi Krishna, PW 11 Manager of the Tourist Dak Bungalow, Varansi added further link to the incident. He deposed that Suresh Bahri and Raj Pal Sharma along with the two children had stayed at his bungalow on two days i.e., 13/14-12-83. The Guest House Register Ext. 8 contained the entry about their stay on the aforesaid dates. Gopi Krishna identified the appellants Suresh and Raj Pal Sharma in the court F and stated that Suresh had made the said entry in the Guest register. It was shown in the said entry that they were coming from Basti and were going to Ranchi which fact lend support to the statement of Dina Nath. PW 6 that his mother and the maid servant would travel only upto Basti and it was for this reason that only the appellants Suresh, Raj Pal and the two children had stayed in the Guest House on 13/14-12-83. The entries G made by Suresh in his handwriting in the Guest House Register were compared with his admitted Writings by the handwriting expert Shri S.C. Mittal, PW 65 who found both the writings to be in the hand of Suresh. After leaving Varansi in the evening of 14.12.83 the appellant Suresh, Raj Pal along with the two children proceeded further by car to Ranchi and H before reaching Ranchi stayed in New Punjab Rest House at Daltonganj,

as testified by its Proprietor S. Gurbax Singh, PW 19 who deposed that in 1983-34 the hotel was known as Punjab Rest house but the name was subsequently changed as New Punjab Rest House. The witness stated that Suresh along with the two children and another person came and stayed in the hotel on 15.12.83 in room No. 4 as per entry at Serial No. 576 of the Guest Register. The entries in the Guest Register were made by Richa Bahri which was also signed by Suresh. The number of passengers as given in the entry was shown as four coming from Delhi and going to Ranchi. CBI Inspector, Rajendra Singh, PW 82 seized the register of his hotel. The entries in the said register made in the writing of Richa Bahri and in her copy book were compared by the expert S.C. Mittal, PW 65 who opined that the writings and signature of Richa in the Guest House Register fully tallied with her writing in the copy book of Father Angel School as proved by her class teacher, PW 34.

82. The party of four i.e., Suresh, Raj Pal and the two children ultimately landed at Dhulli farm in the afternoon on 16.12.83 as testified by Caretaker, Gopi Mistry, PW 29 of Suresh on his Dhulli farm house and his son Shiv Nandan Lohare, PW 60. Both of them stated that their master Suresh along with Raj Pal and the two children had arrived at Dhulli farm house in the afternoon of 16.12.83 and stayed there till the morning of 18.12.83. Both the witnesses also stated that about a fortnight before the arrival of Suresh and party, the appellant Gurbachan Singh had also come to Dhulli farm to make arrangement for some cots and chairs which were sent by him from Ranchi in a bus. Gopi Mistry also deposed that Raj Pal Sharma and two Children stayed at Dhulli in the night following 16.12.83 and next day on 17.12.83 Raj Pal went to Ranchi and came back with appellant Gurbachan Singh on a motorcycle but Gurbachan went away after about an hour. In the night of 17.12.83 all the four took food prepared by the wife of Gopi Mistry and then all the four slept in one room at Dhulli farm. Gopi Mistry proceeded further to state that on 11.12.83 at about dawn Suresh gave a call to him and on hearing the call he, his wife and his son Shiv Nandan woke up. He came out and noticed the two children in the rear seat of the car in the sleeping position fully covered with a guilt and only some parts of their legs alone were visible. Suresh Bahri and Raj Pal were sitting in the front seat of the car and Suresh told him that they were going and if any one enquired about him they be told that he was not there and then left Dhulli farm. Shiv Nandan, PW 60 the son of Caretaker. Gopi Mistry also made similar statement but further added that when

- A Suresh and party was ready to leave at dawn on 18.12.83 he came and tried to look inside the car through the glasses, but the appellant Raj Pal shouted at him commanding him to go away.

- B 83. The evidence of these two witnesses PW 29 and PW 60 was sought to be assailed by the learned counsel for the appellants by pointing out some minor and insignificant contradictions as also the statement of PW 60 that he tried to look inside the car through the glasses when he was shouted down and directed to be away by the appellant which statement has not been made by his father PW 29. We are not impressed at all by these arguments as the immaterial omissions and contradictions have hardly any bearing on the reliability of these two witnesses whose evidence is consistent on all material aspects and there is no reason at all to discredit their testimony.

- D 84. In the series of circumstances connecting the appellant Suresh Bahri and Raj Pal with the murder of the two Children the prosecution has examined Vijay Kumar Asthana, PW 12 who was the Manager of Hotel India, Varansi at the relevant time. Asthana deposed that Suresh had stayed his hotel on 18.12.83 by making entry Ext. 4/2 in his presence in the Guest Register Ext. 8/1 at Sl. No. 1448 at page No.25 in his handwriting in the name of Mahesh Chandra Gupta. The said hand writing was compared with the specimen writing and signature of Suresh by the expert S.C. Mittal, PW 65 who found the two writings having been made by the same person in other words by Suresh. The purpose of this evidence is to show that after leaving Dhulli farm at dawn on 18.12.83 when on their return journey Suresh stayed in Hotel India at Varansi on 18.12.83 there were only 2 persons i.e., Suresh himself and the appellant Raj Pal Sharma and the two children were no longer in their company whose bodies were disposed of somewhere on the way which would be clear from the evidence discussed hereinafter.

- G 85. Hiralal, PW 36 is a businessman of Sarnath, District Banaras who had gone to the bank of Varuna river on 20.12.83 at about 8.00 AM to ease himself when he noticed crowd there. He went and saw a gunny bag was floating in the water of Varuna river which was taken out and opened in the presence of persons present there. In the said bag dead body of a Hindu boy aged about 12/13 years was found having incised wounds in the neck. In the meanwhile one Dr. Mahendra Prasad, PW 35 also arrived there who at his instance wrote a report which he took and lodged in

Sarnath Police Station in respect of the dead body. On the basis of his report the First Information Report, Ext. 13 was recorded in the Police Station and Atma Nand Singh, PW 46, Incharge, P.S. Sarnath went to the bank of Varuna river, prepared the panchnama of the dead body Ext. 14 and seized the gunny bag as per seizure memo Ext. 12. Investigating Officer, PW 46 then called a photographer, Ashok Kapoor, PW 48 and took the photographs of the dead body of the boy for purpose of identification later. Dr. Bhargav, PW 27 performed an autopsy over the dead body of the boy on 21.12.83 and found two incised wounds on the neck. There was also contusion on the chest and various other injuries on his person which were ante-mortem in nature caused by sharp object.

86. Here it may be mentioned that next door neighbour Murari Lal, PW 1, a family friend Dina Nath Sharma, PW 6 Gopi Krishna Asthana, PW 11, Manager of Tourist Dak Bungalow, Varansi. Gopal Mistry, PW 29, the caretaker of Suresh at Dhulli farm. Mrs. George, PW 34, a teacher of Father Agnel School where the two children studied. Satvender Kaur, PW 41, a close relative of Urshia Bahri and the informant Bineet Singh, PW 69 the brother of the deceased have all identified from the photographs that were taken by the photographer Ashok Kapoor, PW 48 to be the photographs of none else but Saurabh and thus there is overwhelming evidence to establish that the dead body found floating in Varuna river was that of Saurabh.

87. However, learned counsel for the appellants referring to the statement of Dr. Bhargav, PW 27 contended that the prosecution story that the two children were done to death in the intervening night of 17/18-12-83 at Dhulli farm is not consistent with the medical evidence and on the contrary it is falsified by the medical evidence inasmuch as the dead body was found at about 8.00 AM on 20.12.83 but without any sign of decomposition and only *rigour mortuus* was present while putrefaction starts after about 24 hours of the death but the same was not found at the time of post-mortem which was performed after 60 hours of the alleged time of murder. On the basis, therefore, it was submitted that the dead body recovered was either not the dead body of Saurabh or the murder was not committed in the intervening night of 17/18-12-83. Learned counsel for the appellants further submitted that the doctor had found that the stomach of the deceased was empty while according to the evidence of Gopi Mistry, PW 29 and his son Shiv Nandan Lahore, PW 60 the two children had slept after taking their meals in the meals in the night of 17-12-83. These

A arguments were advanced on the basis of some stray sentences here and there from the evidence of Dr. Bhargav in isolation. A reading of the full statement of Dr. Bhargav, PW 27 will go to show that there is absolutely no substance in the aforementioned submissions.

B 88. So far as the identity of the dead body is concerned, we have already discussed above that there is over-whelming evidence to show that it was the dead body of Saurabh as stated by a large number of witnesses after seeing the photographs. So far as the question of putrefaction and decomposition of the dead body is concerned, it depends on various factors such as the season, place and the manner in which the dead body was kept besides other relative considerations. A perusal of evidence of Dr. Bhargav, C PW 27 would reveal that he clearly stated that putrefaction may take place even after 3 to 5 days if the dead body remained submerged in water. Admittedly the dead body of Saurabh was found floating in Varuna river in the morning of 20.12.83. Consequently according to the evidence of Dr. D Bhargav the progress of putrefaction or decomposition could not have commenced at the time when the dead body was recovered and post-mortem was conducted. This circumstance, therefore, does not render the prosecution story improbable or unreliable. The absence of food at the time post-mortem of Saurabh is also not of much significance to render the prosecution story doubtful. The presence or absence of food at the time of E post-mortem in relation to the time of death is based on various factors and circumstances such as the type and nature of the food consumed, the time of taking the meal, the age of the person concerned and power and capacity of the person to digest the food. In the present case there is no evidence about the exact time when the meals were taken by the children on the night of 17.2.83 not about the type or nature of the food consumed F by them. Saurabh was a young boy aged about 12 years and he being a young and energetic boy, his power of digestion must be assumed to be quick and strong, therefore, if the stomach at the time of post-mortem was found to be empty it was but natural.

G 89. The prosecution story with regard to the murder of the two children proceeds further by adding some more links to the circumstantial evidence against the appellants in the shape of recovery of some incriminating articles on Panchkoshi Road, near Nursery of Forest Deptt, and some other places. The Investigation Officer, Sarnath, Atma Nand Singh, PW 46 stated that in the evening of 27.12.83 he received information from some H persons that some articles stained with blood were lying at Panchkoshi

Road near Palghambarpur village where the refuse is dumped. PW 46. A therefore, rushed there and in the presence of witnesses seized bed-sheet and a gadda which looked like a guilt by seizure memo Ext. 5/9. At the same time he also learnt that some articles were also lying near a Nursery of the Forest Department at Asapur Road crossing. He, therefore, visited that place also and seized two blood-stained bed-sheets in the presence of witnesses by seizure memo Ext. 5/10. All these articles seized under seizure memo 5/9 and 5/10 were sent to the Central Forensic Science Laboratory, Delhi which were examined by Dr. G.D. Gupta, PW 53, a Senior Scientist who found human blood on the guilt and its cover. These articles were further sent for examination by Serologist Dr. P.K. Bhatnagar, PW 56 who as per his report Ext. B/4 found that the aforesaid articles contained blood group 'B'. B C

90. It may be noticed that when Atma Nand Singh, PW 46 Police Officer, Sarnath could not succeed in finding out the identity of the dead body of the child he got his photographs published in police gazette as well as various newspapers but still nobody came forward to claim the body or to identify the child and, therefore, he made a final report and closed the case but it appears that during the investigation of the murder of Urshia and her Children when the CBI Inspector Madan Lal. PW 85 arrested Suresh Bahri on 31.7.84 at Delhi who appears to have made disclosure about his children also and it was thereafter that the Government of India entrusted the Sarnath case also to CBI by another notification dated 14.9.84 on the basis of which R.C. Case No. 5/84 was registered by CBI and the CBI Inspector Rajendra Singh, PW 82 was entrusted with its investigation by him, a large number of witnesses were examined by him who identified the photographs as that of Saurabh. D E

91. Though no trace of the dead body of Richa could be made but in view of the overwhelming circumstantial evidence which we shall discuss hereinafter the same leads to the conclusion that she also met the same fate as that of her brother Saurabh at Dhulli farm in the intervening night of 17/18-12-83 at the hands of the appellants Suresh and Raj Pal Sharma. It has already been discussed that the two children were withdrawn from the Delhi school on the pretext that they would be taken to Ranchi where they would stay with their mother and prosecute their further studies as is clear from the letters of Suresh written to his in-laws, but the two appellants Suresh and Raj Pal took them to Dhulli farm and after a short stay of one F G H

- A and a half day there both the appellants proceeded back to Delhi. No plausible reason is discernible as to what were the compelling reasons for the two appellants that after a long journey from Delhi to Dhulli farm, they thought of to return back to Delhi only after a very short stay at Dhulli and without even visiting his house at Ranchi at a short distance of about 40 kms. from Dhulli. But the reason is not far to seek, the purpose being to execute their plan to do away with the children in a lonely and secluded place so that their dastardly and unholy act may not come to light and be not detected or suspected by anyone. After their withdrawal from school from 5.12.83 by the appellant Suresh he took them to his South Extension residence, Delhi and thereafter Suresh left Delhi along with the children on 8.12.83 and reached Dhulli farm in the afternoon of 16.12.83 via Basti. Varanasi and Daltongan, having their halts in the hotels at two places as already discussed earlier. The entries of the said hotels indicated that there were four persons - appellants Suresh and Raj Pal and the two children. The two children were accompanying these two appellants is fully established from the entries in Daltonganj hotel which were made and signed by Richa and Saurabh. The said entries are proved by the opinion and evidence of the expert. The return journey of the appellants Suresh and Raj Pal which commenced on 18.12.83 tells a different story that though the two children were shown to be fast asleep in the rear seat of the car but thereafter the two children were not found accompanying them either dead or alive on their onward journey as is evident from the entries made in different hotels in different names by these two appellants and entries indicated that only two persons had stayed in those hotels on the return journey and obviously so because the two children were already done to death and their bodies while proceeding to Delhi were thrown in Varuna river, the body of Saurabh having been found floating while that of Richa appears to have been swept away unnoticed to some unknown destination. The articles gadda, guilt and sheets stained with human blood which were also thrown on the way and the Serologist on examination found blood group 'B' on the same the evidence in respect of which has already been discussed in detail earlier.

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92. There is yet another circumstance which deserves notice. The two children were shown to be fast asleep in the rear seat of the car with their whole body covered except for a part of their legs which is something against the normal conduct of children of that age. The two appellants had resumed their return journey after a short stay at Dhulli at dawn on

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18.12.83 when the two children of the age they were, are not expected to sleep but would be excited to enjoy the trip in the company of their father. This leads to a legitimate conclusion that in fact they were not alive but were dead whose throat were cut as noticed by Dr. Bhatnagar who conducted post-mortem on the dead body of Saurabh. It is also surprising to note that Suresh Bahri and Raj Pal Sharma left Dhulli farm early in the morning of 18.12.83 without any arrangement for the breakfast or tea even for the children while all these facilities were available at Dhulli farm but all this was not necessary because the children were no more alive.

93. It may also be pointed out that after the murders of Urshia and thereafter the killings of the two children Suresh Bahri was running about place to place and staying in different hotels to avoid his apprehension. From 9.5.84 to 17.5.84, Suresh was staying in a hotel at Ghaziabad in the name of Mahesh Chand Gupta though Delhi is not even an hour's run from Ghaziabad. When his mother withdrew an amount of Rs. 25,000 from the State Bank, Delhi and Travellers cheque worth 25,000 was taken in the name of his maternal uncle, Y.D. Arya which was encashed at Ghaziabad on 10.5.84 and this circuitous method was adopted to mislead the prosecution and at the same time provide money to Suresh who was wandering from place to place in different hotels and needed money to go to Nepal according to his plan and create false evidence in support of his defence plea which he had pre-planned in case he was apprehended by police. Here it may also be pointed out that the appellant Suresh went to Kathmandu (Nepal) and firstly he stayed in Kozy hotel from 8.4.84 to 29.4.84 vide Ext. 4/34 and thereafter from 15.5.84 to 22.5.84 vide Exts. 4/35 and 4/36. It is interesting to note that thereafter Suresh left the hotel Kozy of Kathmandu and lodged himself in a private house obtained on rent only with a view to create false evidence for sudden disappearance of his children at Kathmandu according to his plan, with which he had gone to Nepal because Suresh thought that his ultimate apprehension would be unavoidable as the Chutia police has submitted a chargesheet with regard to the murder of Urshia against him in which he was shown absconding accused. In furtherance of his plan to create evidence for his defence the appellant Suresh made a false report Ext. 25/1 to Nepal Police on 10.8.84 that his two children who came to Kathmandu (Nepal) with him were missing while in fact they were already done to death on the nights of 17/18th December, 1983. This report on enquiry was found to be totally unfounded and false as would be clear from the evidence of Basant Kumar Lama, PW 67, a

- A Police Officer of Nepal. There could be no reason to doubt the testimony of Basant Kumar Lama, PW 67 as he is totally a stranger to the appellant Suresh having no axe to grind against him with a view to falsely implicate him. Though Suresh tried to be wiser by making the information with Kathmandu Police about the missing of his children only after shifting in a private house as giving such a false information from the hotel where the number of the guest/passenger is noted, would have exposed him because in fact the children had not gone with him to Kathmandu. But he proved himself only to be a wisest fool in doing so.
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94. The totality of all the aforementioned circumstances complete the chain which lead to the only irresistible conclusion that the three appellants before us had hatched the conspiracy to commit the murder of the two children also in the same way as their mother urshia was killed and in prosecution of their said plan they executed it at Dhulli farm.
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95. Learned counsel appearing for the appellant Gurbachan Singh and Raj Pal Sharma contended that there is no direct and legal evidence against the appellants for their involvement in the alleged conspiracy and that in any case there is no factual evidence against the appellant Gurbachan Singh about his actual participation in the crime and, therefore, the conviction under Section 302/120-B of the Penal Code in his case is bad in law and unsustainable.
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96. In the above context we may refer to the provisions of Section 120-A of the Indian Penal Code which defines criminal conspiracy. It provides that when two or more persons agree to do, or cause to be done.
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- (1) an illegal act or (2) an act which is not illegal by illegal means, such agreement is designated a criminal conspiracy ; provided that no agreement except an agreement to commit an offence shall amount to criminal conspiracy unless some act beside the agreement is done by one or more parties to such agreement in pursuance thereof. Thus, a cursory look to the provisions contained in Section 120-A reveal that a criminal conspiracy envisages an agreement between two or more persons to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal means. Thus the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes
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- H an offence, then in that event no overt act is necessary to be proved by the

prosecution because in such a fact situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A of the I.P.C. then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt Act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120-B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may be frustrated and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn. The observations made by this Court in *N.M.M.Y. Momin v. State of Maharashtra*, A.I.R. (1971) SC 885 at 886 may be quoted with advantage which read as under :

"Criminal conspiracy differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abatement the substantive offence of criminal conspiracy is somewhat wider in amplitude than abatement by conspiracy as contemplated by Section 107. IPC. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant

- A material in fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto."
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Similar view was also reiterated by this Court in *State (Delhi Admn.) v. V.C. Shukla*, AIR (1980) SC 1382.

- C 97. Although we have already discussed the facts and circumstances appearing against the appellants Gurbachan Singh and Raj Pal Sharma indicating their direct involvement in the conspiracy of murder of Urshia and her two children yet at the risk of repetition we shall in brief re-state the same. It is evidently clear from the series of circumstances established by the prosecution and discussed by us in the foregoing paras that the main brain behind the conspiracy who master minded the plan for the killings of the three innocent lives is the appellant Suresh Bahri, the unworthy husband of Urshia and a brute cruel father of the two unfortunate children, who approached the other appellants Gurbachan Singh and Raj Pal Sharma for help in the commission of the said ghastly crime by winning over their favour on account of his friendship and close association with them and as such it appears that they had no hesitation in extending their helping hands by constituting themselves as members of the criminal conspiracy hatched by Suresh Bahri. No doubt there is no direct evidence about the conspiracy and as said earlier it is seldom available. But the trial Court has catalogued a large number of circumstances against the appellants which have also been accepted by the High Court and in our opinion rightly so. The two courts below have noticed the movements and activities of appellants Gurbachan Singh and Raj Pal Sharma at the instance of appellant Suresh right from the beginning and long before the murder of Urshia, there acts in arranging the preparation of a danda, sharpening of a dagger, preparation of batalies and wooden box, dumping of dead body of Urshia in septic tank and taking it out again and dumping it in a hillock at Khadgraha. The appellant Raj Pal arrives at Ranchi in the last week of September, 1983 and stayed in Ranchi house No. 936 of Suresh Bahri till arrival of Suresh and his deceased wife Urshia on 1.10.83 and thereafter his movements at Ranchi itself till she was done to death on 11.10.83 in
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one of the rooms of the house when appellant Raj Pal Sharma was also seen moving about from one room to another wearing only underwear and having a blood staining dagger in his hand. Raj Pal accompanied Suresh while he left Delhi in the ambassador car alongwith the two children for Dhulli farm where the party stayed on 16-17-12-83 and left Dhulli farm at dawn on 18.12.83 with the dead bodies of the two children, throwing the dead bodies in Varuna river on their way back to Delhi. All these facts clearly borne out mainly from the statement of PW 1, PW 2, PW4, PW 6, PW 11, PW19, PW 29, PW 31 and PW 60 besides other evidence that there was not only an agreement to commit the alleged murders but the appellants in fact committed overt acts also for fulfilment of their object which is eloquently evident from the evidence discussed above. All these facts and circumstances without the least hesitation lead to the only irresistible conclusion that they were active members of the agreement who had hatched a conspiracy to eliminate all the three members of the family of Suresh and thus actually executed their plan.

98. The aforementioned facts and circumstances fully establish the offence under Section 302/120-B of the Penal Code against the appellants Gurbachan Singh and Raj Pal Sharma also and there is hardly anything deserving interference with the view taken by the two courts below after a detailed and elaborate discussion of the evidence and material on record. We, therefore, confirm the conclusions recorded by the two courts below as well as the convictions of the appellants under Section 303, 302.120-B and 201 of the Penal Code.

99. Shri Sushil Kumar, learned counsel lastly contended that the prosecution kept away for reasons best known to it the disclosure statement running in 22 pages alleged to have been made by the appellant Suresh Bahri on 1.8.84 before Metropolitan Magistrate, Delhi for which not only the adverse inference has to be drawn against the prosecution but it vitiated the whole trial. He submitted that when the appellant Suresh Bahri was arrested on 31.7.84 and on 1.8.84 produced before the Metropolitan Magistrate he had made a statement running in 22 pages as mentioned in the remand order itself dated 1.8.84 and also in his application for grant of bail. That statement has not been produced by the prosecution for reasons best known to it. In our considered opinion there is no force in the argument. If actually appellant Suresh Bahri had made any disclosure statement it was within his special knowledge as to what he had stated in

- A those alleged 22 pages but he did not divulge anything in this connection in his statement recorded under Section 313. Cr. P.C. as to the nature of that statement, when he was questioned whether had to say any thing else. Yet learned counsel wants us to draw an adverse inference against the prosecution. Learned counsel did not elaborate as to what adverse inference ought to be drawn and how and in what manner withholding of the
- B alleged statement could vitiate the trial. Not only this but the learned counsel appearing for the accused appellant Suresh at the trial did not put any question even to the Investigating Officer, Chutia Police Station, Raghuvir Singh PW 59, Rajender Singh, PW 82 and Madanlal, PW 85, the
- C CBI Inspectors or any other prosecution witnesses about the alleged statement. A mere mention in the remand order or bail application does not by itself prove the recording of any statement as alleged without any further evidence and material being placed on record in support of it. In these facts and circumstances it is difficult for us to hold that Suresh Bahri had made any disclosure statement or if it was so made it would result in
- D vitiating the whole trial.

100. Lastly all the learned counsel appearing for the three appellants made vigorous efforts to persuade us that the evidence and circumstances of the present case do not justify the extreme penalty of death sentence to the three appellants or any of them as there is no evidence as to the manner

E in which the three persons were done to death.

101. It may be noticed that since about the last two decades there has been throughout the civilized world, a great deal of anguished concern about what sentences be given to those convicted of crimes. It is also felt
- F that crime and punishment have a moral dimension of considerable complexity that must guide sentencing in any enlightened society. The criticism of judicial sentencing has raised its head in various forms - that it is inequitable as evidenced by desperate sentences: that it is ineffective; or that it is unfair being either inadequate or in some cases harsh. It has been
- G often expressed that there is a considerable disparity in sentencing an accused found to be guilty for some offence. This sentencing variation is bound to occur because of the varying degrees of seriousness in the offence and/or varying characteristics of the offender himself. Moreover, since no two offences or offenders can be identical the charge or label of variation as disparity in sentencing necessarily involves a value based judgment. i.e.,
- H disparity to one person may be a simply justified variation to another. It is

only when such a variation takes the form of different sentences for similar offenders committing similar offences that it can be said to desperate sentencing.

102. It appears that it was to minimise these considerations indicating the areas of imposition of penalties including the extreme penalty of death that the Legislature introduced sub-sections (3) and (4) in Section 354 of the Code of Criminal Procedure in the new code of 1973. Sub-section (3) contemplates that when conviction is for an offence punishable with death or in the alternative, the imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, *and, in the case of sentence of death, the special reasons for such sentence* (emphasis supplied). Thus, sub-section (3) of Section 354 lays down that in case of sentence of death the judgment shall state special reasons for such sentence. This gives an impression that in the new code of Criminal Procedure the emphasis is that the life imprisonment for the offence of murder is the rule and death sentence an exception to be resorted to for special reasons to be recorded in the judgment. For these reasons, therefore, as far as the extreme penalty of death is concerned the sentencing discretion of the Court is circumscribed within the parameters of a formula laid down by this Court in *Bachan Singh* case as well as in some other subsequent decisions that the extreme penalty should not be inflicted except in rarest of the rare cases and on the four principles, namely, (1) the extreme penalty of death may not be inflicted except in cases of extreme culpability, (2) before opting for the death penalty the circumstances of the offender be also taken into consideration along with the circumstances of the crime (3) life imprisonment is the rule and the death sentence is an exception. In other words, death sentence has to be imposed only while life imprisonment appears to be altogether inadequate punishment having regard to the relevant circumstances of the crime and (4) aggravating and mitigating circumstances have to be given full weightage and the balance has to be struck between the aggravating and mitigating circumstances before the option of the punishment has to be exercised. The Supreme Court affirmed the aforesaid principles laid down in *Bachan Singh*'s case (supra) in a subsequent decision also in *Machhi Singh*, AIR (1983) SC 597, by maintaining the sentence of death imposed on Machhi Singh who had killed Biban Bai and her three sons with fire-arm.

103. In *Dhananjoy Chatterjee @ Dhana v. State of West Bengal*, JT

A (1994) 1 SC 33 one of us (Dr. Anand, J.) who was a member of the Bench which delivered the judgment, speaking for the Court crystallised the principles governing the criminal sentencing by the Courts in view of the changed legislative policy contained in section 354 (3) Cr. P.C. and in para 14 of the report observed as follows :

B "In recent years, the rising crime rate particularly violent crime
C against women has made the criminal sentencing by the courts a
D subject of concern. Today there are admitted disparities. Some
E criminals get very harsh sentences while many receive grossly
different sentence for an essentially equivalent crime and a shock-
ingly large number even go unpunished, thereby encouraging the
criminal and in the ultimate making justice suffer by weakening
the system's credibility. Of course, it is not possible to lay down
any cut and dry formula relating to imposition of sentence but the
object of sentencing should be to see that the crime does not go
unpunished and the victim of crime as also the society has the
satisfaction that justice has been done to it. In imposing sentences
in the absence of specific legislation, Judges must consider variety
of factors and after considering all those factors and taking an
overall view of the situation, impose sentence which they consider
to be an appropriate one. Aggravating factors cannot be ignored
and similarly mitigating circumstances have also to be taken into
considerations."

In the said report it has been further observed in para 15 as follows :

F "In our opinion, the measure of punishment in a given case must
depend upon the atrocity of the crime : the conduct of the criminal
and the defenceless and unprotected state of the victim. Imposition
of appropriate punishment is the manner in which the courts
respond to the society's cry for justice against the criminals.
Justice demands that courts should impose punishment fitting to
G the crime so that the courts reflect public abhorrence of the crime.
The courts must not only keep in view the rights of the criminal
but also rights of the victim of crime and the society at large while
considering imposition of appropriate punishment."

H 104. Having regard to the principles formulated by this Court dis-
cussed above, we have given our anxious consideration to the question of

sentence to the appellants and have also examined in depth and with great A
 concern the facts and circumstances of the present case and the reasons
 assigned by the two courts below for awarding the extreme penalty of death
 to the three appellants before us. At the cost of repetition we may recall
 that the appellant Suresh had strong motive and entertained some grievan- B
 ces against his wife Urshia because she had made up her mind to dispose
 of Ranchi house and migrate to America along with her children with the
 sale proceeds against the wishes of Suresh and, therefore, to put an end to
 her life. Suresh planned a long drawn plot and hatched a conspiracy with
 the appellants Gurbachan Singh and Raj Pal Sharma for execution of this
 plan. Urshia not even having an inkling of the evil designs and hidden C
 unholy intentions of her husband accompanied him from Delhi to Ranchi
 on 1.10.83 with a view to finalise the deal of house and execute the sale
 deed. But according to the pre-plan she was done to death in the interven-
 ing night of 10th of and 11th October, 1983 and she could not see the light
 of 11th October, 1983 when sale deed was to be executed. The evidence
 discussed above shows that her murder was committed in an extremely, D
 brutal, gruesome, diabolical, revolting and dastardly manner so as to arouse
 intense and extreme indignation of the society. The victim was subjected
 to inhuman acts of torture and cruelty while causing her murder as her
 body was truncated into two parts in a devilish style evincing total depravity
 simply to gain control over the property. Having been not satisfied with the
 killing of his wife Suresh Bahri was further determined to kill his innocent E
 two children at Dhulli farm making them believe that they were being taken
 on a pleasure trip of the farm and then after they were done to death by
 inflicting severe injuries on neck and other parts of the body threw their
 dead bodies in the Varuna river having no consideration for the human life
 and that too for his own flesh and blood. Suresh Bahri may be having some
 differences with his wife with regard to the sale of house and her idea about
 settlement with the Children at America but he certainly had no grievance
 or even any remote cause against his innocent minor children who could
 never conceive that their father who was their guardian of the first degree
 was taking them to Dhulli farm for committing their gruesome murder. F

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105. The cold blooded cruel murder of the innocent children by none
 else but by their own real father shows the enormous proportion with which
 it was committed eliminating almost all members of the family. We have
 given our serious thoughts and consideration and posed the question to
 ourselves whether there could be still a worse case than this where a H

- A husband could hatch a conspiracy and kill his wife in a most callous and ghastly fashion as in the present case only on a trifling matter which could have been sorted out in an amicable manner for which no effort appears to have been made by Suresh. Not only this but the appellant Suresh became thirsty of the blood of his own children for absolutely no fault of theirs. In the facts and circumstances discussed above, in our opinion, so far as Suresh Bahri is concerned, the rule of the rarest of rare cases has to be applied as the present case falls within the category of the rarest of rare cases and for the perpetration of the crime of the nature discussed above there could be no other proper and adequate sentence except the sentence of death as there are no mitigating circumstances whatsoever.
- C Having regard to all the facts and circumstances of the present case as far as Suresh Bahri is concerned there is no cause for any interference in the view taken by the two Courts below in awarding the death sentence to him. We, therefore, affirm conviction and sentence of death awarded to Suresh by the High Court. In the event of the execution of death sentence, the sentence awarded under Section 201 of the IPC shall remain only of academic interest.
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106. As far as the question of sentence to the appellants Gurbachan Singh and Raj Pal Sharma is concerned, we may state that there is convincing and conclusive evidence for their involvement and active participation in the criminal conspiracy with Suresh to do away with the three members of his family. But from the evidence on record as discussed by us in the earlier part of this judgment it is clear that Gurbachan Singh had reached the house of Suresh at Ranchi in the fateful evening of 10th October, 1983 when Urshia was already done to death by the appellant Suresh Bahri and Raj Pal Sharma, when Raj Pal Sharma was seen wearing an underwear holding a dagger in his hand and cleaning the blood in the room with cotton. From the evidence it is, therefore, clear that Gurbachan was not a party to the actual murder of Urshia although he was an active member of the party who hatched the conspiracy to kill her. Similarly it is also clear from the evidence that we have discussed in the earlier part of this judgment that though Gurbachan Singh rendered assistance in sending the cot and chairs to Dhulli farm and sharpening the dagger and batonies for the murder of two children but he in fact was not present on 17/18-12-83 at Dhulli farm when the two children were done to death by the appellants Suresh and Raj Pal Sharma. In these facts and circumstances, in our opinion, the appellant Gurbachan Singh does not deserve the extreme
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penalty of death but the adequate sentence for the part he played would be life sentence. We, therefore commute his sentence of death into that of life sentence and modify the judgment of the two Courts below accordingly to that extent. A

107. This brings us to the question of sentence to be awarded to the appellant Raj Pal Sharma. There is no doubt that there is ample evidence for his active participation in the murder of Urshia as well as in the murder of two children but the prosecution evidence is silent about the actual part that he played in the two murders and the manner in which he acted in the said killings. It is difficult to take a definite view that the part he played in said killings was cruel and callous or it was the appellant Suresh alone who took the leading part and did the whole thing by himself, while the appellant Raj Pal Sharma assisted him in one or the other manner. In such a situation, in our opinion, it would not be proper to inflict the extreme penalty of death to Raj Pal Sharma also but in the facts and circumstances of the case the sentence of life imprisonment will be just and proper sentence. We, therefore, commute his sentence of death also into a sentence for life imprisonment and modify the judgments of the two Courts below accordingly. B C D

108. In the result Criminal Appeal No. 329/92 - *Suresh Chandra Bahri v. State of Bihar*, fails and is hereby dismissed. The conviction and sentences awarded to him by the two Courts below are affirmed. The Criminal Appeal No. 159/92 entitled *Gurbachan Singh v. State of Bihar*, and Criminal Appeal No. 160/92 entitled *Raj Pal Sharma v. State of Bihar*, are hereby partly allowed to the extent indicated above. The conviction of the appellants Gurbachan Singh under Section 302/120-B and 201 as well as conviction of appellant and Raj Pal Sharma under Sections 302, 302/120-B and 201 of the Penal Code are maintained but the sentence of death awarded to both of them under Section 302, 302/120-B is set aside and instead they are sentenced to life imprisonment. Their sentence under Section 201 is maintained. All the sentences shall run concurrently. E F

S.M.

Crl. A.No. 329/92 dismissed.

Crl. A. No. 159/92 partly allowed.