

BHERU SINGH S/O KALYAN SINGH

v.

STATE OF RAJASTHAN

FEBRUARY 4, 1994

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

The Indian Penal Code, 1860: Section 302—Murder—Accused committed murders of his wife and five children—Lodged first information report himself disclosing motive of crime, manner in which he committed crime, and produced weapon used in crime—Confession recorded under Section 164 Cr.P.C.—Trial—Judicial confession retracted—Testimony of eye-witness and other witnesses fully supporting prosecution case and corroborating confessional statement—Trial Court convicted accused of offence of murder and sentenced him to death—Conviction upheld by High Court and sentence confirmed—Held, the ocular testimony of eye-witness could by itself form basis for conviction—There is sufficient corroboration to voluntary confessional statement—Courts below rightly convicted accused of offence—Sentence of death imposed upon accused confirmed.

The Indian Evidence Act, 1872: Sections 8, 21, 25, 27—First information report lodged by accused making confession—Admissibility—Held, F.I.R. is not a wholly confessional statement—That part which does not amount to confession and gives information to police admissible against accused as evidence of his conduct under s. 8 and to the extent it is non-confessional in nature it would be relevant under s. 21.

Code of Criminal Procedure, 1973: Section 164—Confession—Recording of—Precautions to be taken by Magistrate—Explained.

The appellant was prosecuted for an offence under s. 302 I.P.C. According to the prosecution case, the appellant murdered his wife and five children aged 2 to 14 years. After committing the murders, the appellant went to the police station with the blood stained sword, and lodged the first information report to the effect that 4-5 days earlier he learnt about infidelity of his wife and on the night preceding the incident, when confronted his wife confessed her illegitimate relationship whereupon he got very much disturbed; the following day when his wife was adjusting the stones of the wall of the house, he cut her head from the throat and also

- A killed four of his children playing nearby. When he was about to kill the fifth child, his sister-in-law reached there and tried to stop him, but was not successful. The police registered the case on the FIR lodged by the accused himself. The accused produced the blood stained sword which was taken into possession. When the appellant was in judicial custody, his confession under s. 164 Cr.P.C. was recorded by the Judicial Magistrate.
- B The investigation culminated in the trial of the accused.

- C During the trial, P.W. 11, sister-in-law of the appellant, appeared as an eye-witness. According to her testimony, when she was returning from the well, she found that the wife of the appellant and his four children had been slaughtered and were lying dead and in her presence the appellant hit on the neck of his fifth child; she pleaded with the appellant not to kill the child but it had no effect on him; the appellant, after committing the murders left the place alongwith the sword which was stained with blood; then her husband arrived at the place of occurrence after one or one-and-a-half hour and she narrated the story to him. The appellant however retracted the confession made under s. 164 Cr.P.C.
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- E The trial court accepted the prosecution case and found the appellant guilty of the offence and sentenced him to death and submitted the papers to the High Court for confirmation of the sentence. The appellant also filed an appeal before the High Court which upheld the conviction, confirmed the sentence and dismissed the appeal. Hence the appeal by special leave.

- F It was contended on behalf of the appellant that in view of provisions of s. 25 of the Evidence Act, the first information report could not have been taken into consideration by the courts below; P.W. 11 was not a reliable or truthful witness because she stood to gain by the conviction of the appellant; no credence could be placed on the retracted confessional statement of the appellant recorded under Section 164 Cr.P.C. since necessary precautions had not been taken by the Magistrate before recording the same; and that if all this evidence was excluded, the appellant was entitled to an order of acquittal. Lastly a prayer for mercy and awarding the lesser punishment of life imprisonment was made.
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Dismissing the appeal, this Court

- H HELD: 1.1. A confession or an admission is evidence against the

maker of it so long as its admissibility is not excluded by some provision of law. [569-E] A

1.2. Where the accused himself lodges the first information report, the fact of his giving the information to the police is, in view of s. 27 of the Evidence Act, admissible against him as evidence of his conduct under s. 8 of the Act and to the extent it is non-confessional in nature, it would also be relevant under s. 21 of the Act; but the confessional part of the first information report cannot be used at all against the accused in view of the bar of s. 25 of the Act. [570-F] B

1.3. In the instant case, the statements in the first information report disclosing the relationship of the appellant with the deceased, the motive for commission of the crime and the presance of his sister-in-law P.W. 11, do not amount to the confession of committing any crime. Those statements are non- confessional in nature and can be used against the appellant as evidence under s. 8 of the Evidence Act. The production of the blood stained sword by the appellant and its seizure at the police station, is also saved by the provisions of the Evidence Act. [572-C-D] C D

1.4. However, the statement that the sword had been used to commit the murders as well as the manner of committing the crime is clearly inadmissible in evidence. [572-D] E

2.1. The High Court rightly relied upon the confessional statement recorded under s. 164 Cr. P.C., holding that the same was voluntary and had been made by the appellant without any threat or fear and that it contained a full confession of the crime and also disclosed the manner in which the crime had been committed. [574-B] F

2.2. The Magistrate observed the formalities envisage by s. 164(3) before recording the statement under s. 164, Cr.P.C. He had taken all necessary precautions to ensure that the appellant had sufficient time to reflect before he made his confessional statement and that he was under no fear or threat or allurement before appearing in the court to make the statement. The various questions put by the Magistrate to the appellant indicate that he had taken all reasonable precautions to remove any trace of fear from the appellant before he made the confessional statement. The caution envisaged by s. 164 Cr.P.C. was properly administered to him and he was told in no uncertain terms that he was not bound to make the statement and that if he G H

A did make one, it could be used against him. [574-F-G]

2.3. There is sufficient corroboration available on the record, both direct and circumstantial to the voluntary confessional statement of the appellant recorded under s. 164 Cr.P.C., even though retrated at the trial. [575-D]

B 3. The testimony of P.W. 11, the sister-in-law of the appellant, who was subjected to repeated and lengthy cross-examination in the trial court, has remained unshaken. Her statement is impressive and she had no reason to falsely implicate the appellant with such a heinous offence. She satisfactorily explained the only discrepancy in her statements with regard to the name of the child, she herself saw being murdered. Her testimony has shown the conduct of the appellant at the time and after committing the crime, and provides sufficient corroboration to the confessional statement of the appellant in all material particulars. The ocular testimony of P.W. 11 suffers from no blemish and she being a wholly reliable witness, it could by itself form the basis for conviction of the appellant for the murder of the fifth child. Besides, P.W. 12 and P.W. 13 have also lent sufficient corroboration to her testimony as well as to the confessional statement of the appellant. [575-D-F]

E 4. The High Court was right in relying upon the report of the Serologist which established that the clothes of the appellant and the sword belonging to and produced by him were stained with human blood of 'B' Group which tallied with the blood group of the deceased persons. The report remained unchallenged and lends sufficient corroboration to the confessional statement of the appellant. Nothing has been pointed out to doubt the ownership and recovery of the blood stained sword from the appellant at the police station by P.W. 17. Seizures made during the investigation have also not been doubted. [574-C-E]

G 5. The courts below rightly convicted the appellant for the offence under s. 302 I.P.C. on each of the counts. The prosecution has established beyond reasonable doubt that the appellant had committed the murder of his wife and five children. There is not infirmity or suspicious circumstance which may in any way cast any doubt on the prosecution version as put forth at the trial. [576-D, E]

H 6. So far as the sentence is concerned, the appellant committed a most heinous, cold blooded and gruesome murder. He not only severed the head

of his wife from her body but went on a murdering spree and murdered his five children aged between 2 to 14 years also, in a most brutal manner for no fault of theirs. The barbaric, gruesome and heinous type of crime which the appellant committed is a revolt against the society and an affront to human dignity. There are no extenuating or mitigating circumstances in the case and it is a fit case which calls for no punishment other than the capital punishment. The plea for mercy is unjustified and the prayer for sympathy, in the facts and circumstances of the case, is wholly misplaced. The conviction is upheld and the sentence of death imposed upon the appellant by the courts below is confirmed. [576-F, G; 578-A, B]

Dhananjay Chatterjee @ Dhana v. State of West Bengal, [1994] 2 S.C.C. 220, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 22 of 1991.

From the Judgment and Order 20.8.1990 of the Rajasthan High Court in D.B. CrI. A. No. 161/89, and D.B. CrI. Ref. No. 2 of 1989.

K.K. Mehrotra for the Appellant.

Sushil Kumar and R. Sasiprabhu for the Respondent.

The Judgment of the Court was delivered by

DR. ANAND, J. 1. This appeal by special leave is directed against the judgment of the High Court of Rajasthan whereby the conviction of the appellant for an offence under Section 302 I.P.C. as recorded by the Sessions Judge, Bundi on May 1, 1989 was upheld and the sentence of death imposed upon him by the Sessions Judge was confirmed vide judgment dated 20th August, 1990.

2. For an occurrence which took place on June 3, 1988 in the broad daylight before noon, the appellant, according to the prosecution case, murdered his wife, Smt. Kajodhai, has two daughters Manrajbai, aged 4 years and Hansabai, aged about 7 years and his sons Raj Bahadur, aged 2 years, Nand Kanwar, aged 14 years and Nathu Singh, aged 8 years. After committing the murders, the appellant went to police station Dablana holding the blood stained sword by which the murders were allegedly committed and himself lodged the first information report Ex. P-42. The

- A blood stained sword, produced by the appellant, was seized vide seizure memo Ex. P-9 and the appellant was arrested. The blood stained shirt and dhoti worn by the appellant were also seized vide seizure memo Ex. P-14. Since the appellant had some injuries on his index finger of the left hand and on the proximal part of middle finger, he was sent for medical examination and was examined by the Medical Officer Incharge, Government Primary Health Centre, Deblana. The Assistant Sub-Inspector of Police, Durga Shankar PW 17 after recording the first information report and affecting seizure of the blood stained sword, produced by the appellant, at the police station proceeded to the place of occurrence, the residence of the appellant and prepared a site plan. The dead body of Smt. Kajodbai was lying in the house with her head completely severed from the rest of her body. Other dead bodies were also lying in the same compound and outside in the lane. The Assistant Sub-Inspector Durga Shankar prepared the inquest report of the dead bodies, and sent the same for post-mortem examination. The blood stained clothes of the deceased were also seized during the investigation. Blood smeared sand and some other articles lying near the place, where the dead bodies were found, were also seized and sealed by investigating officer and sent for chemical examination to the State Forensic Science Laboratory. The Serologist later on submitted his report Ex. P- 12.
- E 3. According to the prosecution, the motive in the case appears to be the suspicion by the appellant of infidelity of his wife, deceased Kajodhai. It is alleged that during the Panchayat Elections, about 4 or 5 days before the unfortunate incident, the appellant was told by some village people that a Rajput lady who was having an affair with Gujar was likely to be co-opted as a Panch and since there was one family of Rajputs in the village and that was of the appellant himself, the appellant suspected that it could be his wife who was going to be co-opted and on the same night he enquired from his wife Kajodbai about her relationship with Bhojak Gujar, but he was not satisfied with the answers given by her to his questions. The same night while he was in a disturbed state of mind, he got the impression during the interrogation of his wife that she had developed some illicit relations with Bhojak Gujar and was having an affair with him. He, therefore, not only doubted the fidelity of his wife but also thought that the five children born of Smt. Kajodbai were not his children. Harboursing those feelings, he committed the murders of his wife and all the five children even though his brother's wife, Smt. Ratnabai PW 11,

while seeing him commit the murders of this children pleaded with him not to go on the killing spree but to no effect. According to the prosecution case, Smt. Ratnabai PW 11, saw the appellant actually rushing with the sword behind his son Nathu Singh and returning to the house with the blood stained sword. She herself witnessed the murder of Manrajbai. In the trial Court, before the learned Sessions Judge, Smt. Ratnabai PW 11 had deposed that she saw Hansabai being murdered by the appellant and that the others had already been murdered by him.

4. Jor Singh PW 12, the brother of the appellant did not actually see the appellant committing the murders but appearing as PW 12, he deposed at the trial that on the day of the incident he had gone to the village Akoda and on his return from the village in the noon he saw the appellant going through the market with the sword in his hand. He was supported by his son Bhanwar Singh PW 13, also in this behalf who had also seen the appellant going with the blood stained sword.

5. It is further the prosecution case that on June 7, 1988 Narain Singh, Circle Officer PW 15 made an application before the Chief Judicial Magistrate, Bundi stating that the appellant wanted to make a confessional statement and that the same be recorded. The appellant was in judicial custody at the time and the Chief Judicial Magistrate forwarded the application to the Judicial Magistrate for further necessary action. On June 8, 1988 when the application came up before the Judicial Magistrate, he adjourned the matter of recording of the confessional statement under Section 164 Cr. P.C. to June 13, 1988 directing the appellant to be kept in judicial custody. When the appellant appeared from the judicial custody, after putting necessary question and disclosing his identity, the Magistrate, informed the appellant that he was not bound to make any statement but that if he did make a statement, it could be read against him in evidence. The appellant was then given 24 hours time to ponder over the matter and was assured that he shall go back to judicial custody and shall not be handed over to the police, whether or not he made the confessional statement. On June 14, 1988 the appellant was produced from judicial custody and according to the prosecution, he made a voluntary statement under Section 164 Cr.P.C. which was recorded by the learned Judicial Magistrate and is Ex. P-2. The appellant of course retracted the confession at the trial.

- A 6. A Medical Board under the Chairmanship of Dr. S.S. Bhola was constituted and the post-mortem of the dead bodies of the victims was conducted. The Medical Board submitted the post-mortem reports of all the six deceased.
- B 7. As already noticed, Smt. Ratnabai PW 11, wife of Jor Singh PW 12, the elder brother of the appellant, is an eyewitness to a part of the occurrence. This witness after having been examined and cross-examined during the trial before the learned Sessions Judge was sought to be recalled on an application made by the public prosecutor, dated 20th February, 1989, in which it was stated that on account of a typing error, the year of the incident had been wrongly typed. She was recalled and her statement was recorded on March 7, 1989 and she was further cross-examined on behalf of the appellant. She supported the prosecution case, as noticed in the earlier part of this judgment. Yet another application came to be filed to recall Smt. Ratnabai PW 11, but this time the application was made by the appellant, on the ground that she had changed her version from the one given in her police statement under Section 161 Cr.P.C. but due to oversight certain questions which were very material and relevant were omitted to be put to her during the trial. It appears that the trial court with a view to afford full opportunity to the appellant to defend himself properly, in the interest of justice, by an order dated August 18, 1989, recalled Smt. Ratnabai PW 11 once again and her statement was further recorded on October 25, 1989, when again she supported the prosecution case fully. According to her testimony, she knew the wife of Bheru Singh appellant, being his sister-in-law and that she also knew the five children of Bheru Singh. On the date of the occurrence, when the witness was returning from the well she found that the wife of Bheru Singh and his four children had been slaughtered and were lying dead and in her presence Bheru Singh hit on the neck of his 5th child. Hansabai. She pleaded with the appellant with folded hands and cried out not to kill the child but it had no effect on him. She went on to state that the appellant after committing the murder left the place of occurrence alongwith the sword which was stained with blood.
- F The clothes of all the deceased were also besmeared with blood. During the cross-examination, she denied the suggestion that there was any dispute between her husband and the deceased on account of property and went on to add that her husband came to the place of occurrence after she had arrived after about one or one and a half hours and she had narrated the story to him. After the witness had been recalled at the request of the
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appellant and re-examined, she categorically asserted "I donot want the land of Bheru Singh. I have left that village and started living in a separate village." This part of her statement has remained totally unchallenged and unquestioned. The only portion of her earlier statement recorded under Section 161 Cr. P.C. with which the witness was confronted was where she had earlier stated that she saw Bheru Singh murder his daughter Manraj while at the trial she had stated to have witnessed the murder of Hansabai. She went on to explain that she had also stated before the police that the appellant had inflicted the sword blow on the neck of his daughter Hansabai and that she had actually seen him inflict the sword blow on Hansabai and not on Manrajbai.

8. Jor Singh PW 12 had gone to village Akoda and when he returned from that village at about noon time, he saw Bheru Singh appellant going through the market with a sword in his hand and that on his arrival at the scene of occurrence, he learnt from his wife PW 11 Ratnabai that the appellant had committed the murders of his wife and five children. Bhanwar Singh PW 13, son of Jor Singh also stated that he has seen his uncle Bheru Singh - appellant going through a field with a sword in his hand towards Dablana at about 11 or 12 noon. That the deceased died as a result of injuries inflicted on their neck by a sword and that those injuries were sufficient in the ordinary course of nature to cause death has been established by the medical evidence. In his statement recorded under Section 313 Cr. P.C. the appellant denied that he had committed the alleged offence.

9. That the appellant went to the police station Dablana and not only lodged the first information report but also produced the blood stained sword before the police, stands amply established from the record. The testimony of Durga Shankar Sharma PW 17, Asstt. Sub-Inspector, police station Dablana, discloses that at the instance of the appellant himself report Ex. P-42 was lodged and crime case No. 40 of 1988 under Section 302 I.P.C. and under Section 4/25 of the Indian Arms Act was registered. The blood stained sword produced by the appellant at the time of lodging of the first information report was seized by him vide seizure memo Ex. P-9. The blood stained shirt and dhoti of the appellant were also seized vide seizure memo Ex. P-14 and since the appellant had some injuries on his index finger of the left hand and on the proximal part of middle finger, he was got medically examined by the Medical Officer Incharge of Govt.

A Primary Health Centre, Dablana. The injury report in respect of the appellant was proved by the said medical officer as Ex. P-18. On reaching the place of occurrence, Durga Shankar Sharma PW 17 found the head of Kajodbai lying severed from the rest of the body and a sheath of the sword was also lying nearby. It was seized vide seizure memo Ex. P-16 and the inquest reports of the dead bodies of Kajodbai, Nand Kanwar, Manrajbai, Hansabai, Bahadur Singh and Nathu Singh were prepared by him. During the investigation PW 17 also seized blood stained clothes of the deceased persons and took sample of the sand which was blood stained from near the place where the dead bodies were found lying. The seized articles were sent for chemical examination to the State Forensic Science Laboratory and report Ex. P-12 was submitted by the Serologist.

D 10. After the investigation was over, chargesheet was submitted and on commitment the learned Sessions Judge Bundi tried the appellant. The learned Sessions Judge accepted the prosecution case and found the appellant guilty of an offence under Section 302 I.P.C. for murdering his wife Smt. Kajodbai and for each of his five children and passed the sentence of death against him. He submitted the proceedings to the High Court for confirmation of the sentence of death.

E 11. The Division Bench of the High Court relying on the ocular testimony of PW 11 and the report of the Serologist Ex. P-12 as also the retracted confession of the appellant Ex. P-2 and other evidence on the record upheld the conviction of the appellant for the offence under Section 302 I.P.C. and noticing the gruesome nature of the murders not only of his wife but also of five innocent children by the appellant for no rhyme or reasons, it dismissed his appeal and confirmed the sentence of death.

G 12. Learned counsel for the appellant (A.C.) argued that the first information report Ex. P-42 cannot be looked into much less relied upon or accepted in view of the provisions of Section 25 of the Evidence Act and that the same should have been ruled out of consideration by the courts below. Learned counsel then submitted that Ratnabai PW 11 is not a reliable or truthful witness because she stands to gain by the conviction of the appellant. Learned counsel leastly submitted that no credence can be placed on the retracted confessional statement of the appellant Ex. P-2, since necessary precautions had not been taken by the learned Magistrate before recording the confessional statement of the appellant and that if all

this evidence is excluded, the appellant was entitled to an order of acquittal. Lastly, learned counsel prayed for mercy and sympathetic consideration by not confirming the sentence of death and awarding the lesser punishment of life imprisonment.

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13. Learned counsel for the State on the other hand submitted that the group of the blood stain on the clothes of the deceased tallied with the group of blood of the deceased as also with the blood stains on the sword which was admittedly produced by the appellant at the police station before PW 17 and that evidence coupled with the testimony of PW 11 and the voluntary confessional statement, Ex. P-2 had established the case against the appellant beyond a reasonable doubt and considering that the appellant has committed a cold blooded gruesome murder of six innocent persons, it is the rarest of the rare cases, which warranted the confirmation of the sentence of death by this Court.

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14. We have given our anxious consideration to the contentions raised at the bar.

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15. In this case the first information report Ex. P-42 was admittedly lodged by the appellant himself at the police station and was recorded by Sh. Durga Shankar Sharma PW 17. A perusal of the report shows that to a large extent it is confessional in nature. Can it, as a whole or any part of it, be admitted into evidence against the appellant?

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16. A confession or an admission is evidence against the maker of it so long as its admissibility is not excluded by some provision of law. Provisions of Sections 24 to 30 of the Evidence Act and of Section 164 of the Code of Criminal Procedure deal with confessions. By virtue of the provisions of Section 25 of the Evidence Act, a confession made to a police officer under no circumstance is admissible in evidence against an accused. The section deals with confessions made not only when the accused was free and not in police custody but also with the one made by such a person before any investigation had begun. The expression "accused of any offence" in Section 25 would cover the case of an accused who has since been put on trial, whether or not at the time when he made the confessional statement, he was under arrest or in custody as an accused in that case or not. Inadmissibility of a confessional statement made to a police officer under Section 25 of the Evidence Act is based on the ground of public policy. Section 25 of the Evidence Act not only bars proof of admission of

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- A an offence by an accused to a police officer or made by him while in the custody of a police officer but also the admission contained in the confessional statement of all incriminating facts relating to the commission of an offence. Section 26 of the Evidence Act deals with partial ban to the admissibility of confessions made to a person other than a police officer
- B but we are not concerned with it in this case. Section 27 of the Evidence Act is in the nature of a proviso or an exception, which partially lifts the ban imposed by Sections 25 and 26 of the Evidence Act and makes admissible so much of such information, whether it amounts to a confession or not, as relates to the fact thereby discovered, when made by a person accused of an offence while in police custody. Under Section 164 Cr. P.C.
- C a statement or confession made in course of an investigation, may be recorded by a Magistrate, subject to the safeguards imposed by the section itself and can be relied upon at the trial.

- D 17. Where the first information report is given by an accused himself to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. No. part of the confessional statement can be proved or received in evidence, except to the extent it is permitted by Section 27 of the Evidence Act. The first information report recorded under Section 154 Cr. P.C. is not a substantive piece of evidence. It may be used to corroborate the informant under
- E Section 157 of the Evidence Act or to contradict him under Section 145 of the Evidence Act in case the information appears as a witness at the trial. Where the accused himself lodges the first information report, the fact of his giving the information to the police is admissible against him as evidence of his conduct under Section 8 of the Evidence Act and to the extent it is non-confessional in nature, it would also be relevant under
- F Section 21 of the Evidence Act but the confessional part of the first information report by the accused to the police officer cannot be used at all against him in view of the ban of Section 25 of the Evidence Act.

- G 18. Keeping in view the aforesaid principles of law, we shall first peruse and consider the first information report as lodged by the appellant. The first information report reads thus:

- H "Just before 4-5 days earlier to the Panchayat election some people of village taunted me that a Rajput woman would be elected as 'Panch' in the election of this term.

There is only Rajput home in our village and me a my elder brother reside there. I suspected that something was wrong. On that very night I enquired this with my wife Kajurbai but she denied about any illegitimate relationship but I was not satisfied and I kept on asking. In the last night she confessed that she liked Bhojna Gujar of Fazalpura and the illegitimate relationship developed with him. At this I was very much disturbed in the last night. Today when my wife was adjusting the stones of the wall of the house, I went there with sword and cut her head from the throat by giving a single blow of the sword. My children Raj Bahadur aged 2 years, Nand Kanswar aged 14 years, Hansa aged 7 years were playing there I also killed them by sword. Then I found my 8 years children Nathu who was standing near the tree of Reua. I ran towards him and also killed him by sword as soon as he reached near the house of Chhotu Maharaj. The 4 years child Manraj cried out and ran towards the hand pump but I followed her and also killed her by the sword. My sister-in-law Ratan Kanwar came at that time and she tried to stop me but the devil was on my head; my wife deceived me and here children must also have been procured by others. I have killed all of them and now I submit my sword".

The police proceedings after the said first information report Ex. P-42 was recorded, read as follows:

"Bhairu Singh S/o Kalyan Singh Caste Rajput r/o Fadalpura has produced the sword with this information. This sword is stained with the blood. The half of its' blood became dried. Some hair stained with blood are also attached with it. The handle of it is made of iron and the sword is 37 inches at length alongwith the handle of it and 1¼ inches is at width. On the finger nearest of the thumb of the left hand of Bhairu Singh there are two inside-bones and the fresh blood is melted on it. He is wearing the long sleeve shirt and white shirt. The spots of blood are also seen on it. On the basis of the above information the case

A was registered as number 40 dated 3.6.1988, section 302 I.P.C. read with 4/25 Arms Act and the proceeding was initiated".

B 19. From a careful perusal of this first information report we find that it discloses the motive for the murder and the manner in which the appellant committed the six murders. The appellant produced the blood stained sword with which according to him he committed the murders. In our opinion the first information report Ex. P-42, however is not a wholly confessional statement, but only that part of it is admissible in evidence which does not amount to a confession and is not hit by the provisions of C Section 25 of the Evidence Act. The relationship of the appellant with the deceased; the motive for commission of the crime and the presence of his sister-in-law PW 11 do not amount to the confession of committing any crime. Those statements are non-confessional in nature and can be used D against the appellant as evidence under Section 8 of the Evidence Act. The production and seizure of the sword by the appellant at the police station, which was blood stained, is also saved by the provisions of the Evidence Act. However, the statement that the sword had been used to commit the murders as well as the manner of committing the crime is clearly inadmissible in evidence. Thus, to the limited extent as we have noticed above and save to that extent only the other portion of the first information report Ex. E P-42 must be excluded from evidence as the rest of the statement amounts to confession of committing the crime and is not admissible in evidence.

F 20. Before proceeding further, it would at this stage be also proper to deal with the confessional statement of the appellant recorded under Section 164 Cr. P.C., Ex. P-2 on 14.6.1988. In this connection, before G advertng to the analysis of the statement made by the appellant Ex. P-2, it would be desirable to examine the statement of the learned Judicial Magistrate who recorded the confessional statement Ex. P-2, Shri Tara Chand Soni, Judicial Magistrate recorded the confessional statement under Section 164 Cr. P.C. Appearing as PW 1, he stated that on 8.6.1988 while H he was posted as Munsif and Judicial Magistrate 1st Class, Surajmal Constable submitted an application before him to record the statement of the appellant under Section 164 Cr.P.C. The application was produced at the residence of the learned Magistrate since the duty hours of the court were over. The learned Magistrate affixed the case for 9.6.1988 in the court and directed the police to produce the production warrant of the appellant

to show that he was in judicial custody. On 9th June, 1988, the appellant was remanded to judicial custody and directed to be kept separately from other accused persons and the case was fixed for 13.6.1988, on which date the appellant appeared in his Court and stated that he wanted to make a statement. PW 1 went on to depose that he disclosed his status as 1st Class Magistrate and cautioned the appellant that "he is free to give or not give the statement and in case he gives the statement, it may be read against him". The appellant was also told that his statement would be recorded only if he wanted to make it voluntarily and of his own free will. The appellant was given 24 hours time and the Jailor was directed in writing by the Magistrate that the appellant may be allowed to stay in the jail in a place of his own choice so as to enable him to reflect and give a cool thought as to whether he wanted to make a confession or not. He assured the appellant that he would not be sent to the police custody in case he did not want to make the statement. The appellant was produced before him on 14.6.1988 and on being asked by the Magistrate, the appellant expressed his desire to make the statement. The learned Magistrate took all steps to remove any trace of fear from the appellant and observed the formalities envisaged by Section 164(3) Cr.P.C. before recording the statement Ex. P-2 under Section 164 Cr. P.C. The Magistrate went on to depose that the statement was given by the appellant voluntarily and in Hindi and that Ex. P-2 was recorded in the manner given by the appellant.

21. In the confessional statement Ex. P-2 the record reveals that before it was recorded, certain specific questions were put to the appellant to assure him that he was making the statement before a first Class Magistrate and that he need not be afraid of any one and that he was at liberty to give the statement without any fear. He was asked whether he was under threat from anyone to make the statement and the appellant replied in the negative. He was cautioned that he is not bound to make any confessional statement but that if he did make one, it could be read against him. Thereafter, he made the statement which revealed the manner in which he was taken from his house to the well in the jeep alongwith Ram Bilas Mahajan and Girraj and the conversation which he had with them at the well. He went on to add that during the conversation "Girraj told me pointing his men, I have given them Rs.50,000 to kill you and your family. So if you want to save your life you yourself kill the members of your family I agreed to kill my children. Girraj also told me. You have to say in the court that your wife was bad character" He went on to add that,

A thereafter, he killed his wife and children with the sword which belonged to him. He stated that he first murdered his wife and thereafter the children and then went to the police station and after giving the information regarding commission of murders, produced the sword before the police, with which murders had been committed by him.

B 22. The High Court relied upon the confessional statement recorded under Section 164 Cr.P.C. and found that the same was voluntary and had been made by the appellant without any threat or fear and that it contained a full confession of the crime and also disclosed the manner in which the crime had been committed. The High Court also relied upon the report of
C the Serologist Shri V.N. Mathur, who had stated in the chemical report that the seized articles including the blood stained sword produced by the appellant and the clothes of the appellant were stained with human blood of 'B' group, which tallied with the blood group with which the clothes of the deceased persons were stained. The High Court treated this as sufficient corroboration of the retracted confessional statement Ex. P-2 and
D further relying upon the testimony of the sister-in-law of the appellant PW 11, as well as other material on the record, found that the retracted confession of the appellant had received ample corroboration both from direct and other circumstantial evidence and agreeing with the Sessions Judge, upheld the conviction of the appellant for the offence under Section
E 302 I.P.C.

23. We have considered the retracted judicial confession of the appellant carefully and analysed the statement of the learned Judicial Magistrate Shri Tara Chand Soni PW 1. We have referred to the confessional statement in some details in the earlier part of this judgment. We
F are satisfied that the learned Magistrate had taken all necessary precautions to ensure that the appellant had sufficient time to reflect before he made his confessional statement and that he was under no fear or threat or allurement before appearing in the Court to make the statement. The various questions put by the learned Magistrate to the appellant indicate
G that he had taken all reasonable precautions to remove any trace of fear from the appellant before he made the confessional statement. The caution envisaged by Section 164 Cr.P.C. was properly administered to him and he was told in no uncertain terms that he was not bound to make the statement and that if he did make one, it could be used against him. Learned counsel
H for the appellant was unable to point out any circumstance from which it

could be inferred that the confessional statement Ex. P-2 was not a voluntary one. No infirmity whatsoever was pointed out either in the manner in which the statement was recorded or in the statement itself. Report of the Serologist Shri V.N. Mathur which established that the sword belonging to and produced by the appellant as well as the clothes of the accused were stained with human blood of 'B' group, which tallied with the blood group of the deceased persons, which remained unchallenged lends sufficient corroboration to the confessional statement, which the appellant tried to retract at the trial. Nothing has been pointed out to doubt the ownership and recovery of the blood stained sword from the appellant at the police station by Shri Durga Shankar Sharma, PW 17. Seizures made during the investigation have also not been doubted.

24. The testimony of the sister-in-law of the appellant, Smt. Ratnabai PW 11 who was subjected to repeated and lengthy cross-examination in the trial court has remained unshaken. Her statement has impressed us and in our opinion she had no reason to falsely implicate the appellant with such a heinous offence. Jor Singh PW 12 and Bhanwar Singh PW 13 have lent sufficient corroboration to her testimony as well as to the confessional statement of the appellant. The only discrepancy pointed out with regard to the statement of PW 11 is that whereas in her statement under Section 161 Cr. P.C. she had named Hansabai, as the child who she herself saw being murdered but at the trial she had given the name of that child as Manraj. She satisfactorily explained the discrepancy when the question was put to her and even otherwise one cannot lose sight of the fact that the witness had seen the most gruesome type of murder by her brother-in-law of his own wife and children, therefore, this minor discrepancy of the name of the child would pale into insignificance particularly when both Hansa and Manraj were murdered by the appellant alongwith the others. We find that PW 11 Ratnabai is a reliable witness and her testimony provides sufficient corroboration to the confessional statement of the appellant in all material particulars.

25. PW 14 Kanha who is related to the deceased Kajodbai deposed that he knew the deceased and on being called by Jor Singh, who told him that the appellant had slaughtered his family, he came to the spot and saw the slaughtered bodies of Kajodbai and the five children of the appellant. His thumb impression was taken when the investigation officer arrived at the spot and prepared the site plan. He deposed about the seizure of the blood

A stained earth from the place of occurrence as also the clothes of the deceased children. Nothing was brought out in his cross-examination from which any doubt could be cast on his veracity either. The bodies of the children of the appellant as also that of his deceased wife were recovered from the house and from outside in the compound of the house and the lane. There is no infirmity or suspicious circumstance available on the record which may in any way cast any doubt on the prosecution version as put forward at the trial. The ocular testimony of Ratnabai PW 11, who has since left the village suffers from no blemish and since we have found her to be a wholly reliable witness, if could by itself form the basis for conviction of the appellant for the murder of Manrajbai. Her testimony has also shown the conduct of the appellant at the time of and after committing the crime. We are satisfied that there is sufficient corroboration available on the record, both direct and circumstantial, to the voluntary confessional statement of the appellant recorded under Section 164 Cr.P.C., eventhough retracted at the trial.

D 26. Thus, from the evidence on the record and the above discussion, the conclusion is irresistible that the prosecution has established beyond a reasonable doubt that the appellant had committed the murder of his wife Smt. Kajodbai and their five children in the manner alleged by the prosecution and, therefore, the courts below rightly convicted him for the offence under Section 302 I.P.C. on each of the counts. We uphold his conviction as recorded by the courts below.

F 27. So far as the sentence is concerned, while narrating the prosecution case we have indicated the motive as given by the appellant in the admissible portion of the first information report Ex. P-42 and in his confessional statement. This needlessly suspicious husband, doubting the fidelity of his wife Smt. Kajodhai and suspecting her of having an affair with Bhojhak Gujjar did not stop short at severing the head of Kajodbai from her body and thereby slaughtering her but went on a murdering spree and murdered his five children also one after the other for no rhyme or reason. The young innocent children aged between 2 to 14 years were murdered in a most brutal manner for no fault of theirs. He chased the children and murdered them. The entreaties by his brother's wife Smt. Ratnabai PW 11, to spare at least the last child, also went unheeded by the appellant. The appellant committed a most heinous cold blooded and H gruesome murder. When even the lower species, like the animals and the

birds, would take all steps to protect their progeny, the appellant fell down to such depth of depravity as to slaughter his own wife and children, for no fault of their, only on some suspicion being planted in his mind that his deceased wife was having an affair with Bhojak Gujar. The act of the appellant in murdering his wife and five children in cold blood on hearing rumour of infidelity of his wife on one occasion, sends a chill down our spine and shocks our judicial conscience.

28. While dealing with the question of sentence in *Dhananjay Chatterjee @ Dhana v. State of West Bengal*, (Criminal Appeal No. 584 of 1992, decided on 11.1.1994), this Court observed that the rising crime rate had made the criminal sentencing by the courts a subject of concern and though it is not possible to lay down any cut and dry formula relating to imposition of sentence and went on to say:

"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 on over-all 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 consideration.

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 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 the rights of the victim of crime and the society at large while considering imposition of appropriate punishment".

29. The barbaric gruesome and heinous type of crime which the

- A** appellant committed is a revolt against the society and an affront to human dignity. There are no extenuating or mitigating circumstances whatsoever in this case nor have any been pointed out and in our opinion it is a fit case which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant.
- B** The plea of his learned counsel for mercy is unjustified and the prayer for sympathy, in the facts and circumstances of the case, is wholly misplaced. We, therefore, uphold the conviction and sentence of death imposed upon the appellant by the courts below for the offence under Section 302 I.P.C.

In the result, this appeal fails and is hereby dismissed.

R.P.

Appeal dismissed.