IN THE HIGH COURT OF ORISSA AT CUTTACK

DSREF No.2 of 2024 and JCRLA No.62 of 2024

From the judgment dated 24th April, 2024 passed by the learned Addl. Sessions Judge, Odgaon in S.T. Case No.217/39 of 2019-23 (CIS No.28/2023).

In DSREF No.2 of 2024

State of Odisha .... ***Appellant***

-versus-

Niranjan Mallik .... ***Respondent***

Advocate(s) appeared in this case:-

For Appellant : Mr. S. Mohanty, AGA

For Respondent : Mr. J.K. Panda, Amicus Curiae

In JCRLA No.62 of 2024

Niranjan Mallik .... ***Appellant***

-versus-

State of Odisha .... ***Respondent***

Advocate(s) appeared in this case:-

For Appellant : Mr. J.K. Panda, Amicus Curiae

For Respondent : Mr. S. Mohanty, AGA

CORAM: JUSTICE B.P. ROUTRAY
JUSTICE CHITTARANJAN DASH

JUDGMENT
12.08.2025

B.P. Routray, J.

1. Present death sentence reference along with the criminal appeal are arising out of out of the impugned judgment and conviction dated 24th April 2024, convicting the condemned prisoner Nanda @ Niranjan Mallik. He is convicted for commission of offence under Sections 302, 307, 325, 326, 458 of the IPC and sentenced to capital punishment along with imprisonment for different descriptions and fine. The sentencing part is classified in the following manner:

(i) Sentenced to death for committing offence of murder punishable under Section 302, IPC and to pay a fine of Rs.50,000/- and in default, to undergo rigorous imprisonment for a period of one year.

(ii) Sentenced to rigorous imprisonment till end of life and to pay a fine of Rs.50,000/- for commission of offence of attempt to murder punishable under Section 307 of the IPC. In default to pay the fine amount to undergo further rigorous imprisonment for one year.

(iii) Sentenced to rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/- for commission of offence of grievous hurt punishable under Section 325, IPC. In default to pay the fine amount to further undergo rigorous imprisonment for six months.

(iv) Sentenced to rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/- for causing grievous hurt punishable under Section 326, IPC. In default to pay the fine amount to further undergo rigorous imprisonment for six months more.

(v) Sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- of committing lurking house trespass punishable under Section 458 of the IPC. In default to pay the fine amount to further undergo rigorous imprisonment for six months more.

2. According to prosecution case, the occurrence took place in a sequence on the intervening night of 16th and 17th January 2019 started from around 2:00 AM till early morning at different places of Odagaon Town.

3. Odagaon in the district of Nayagarh is a small Sub-Divisional town and the convict, as well as all the victims are residents of said area. In a complete sequence, the convict committed murder of two persons namely, Lochan Sethi (Male) and Badani Pradhan (Female) and injured three more persons namely, Sulochana Pradhan (Female), Amulya Barik (Female) and Dambaru (Male). The deceased, Lochan, was working as a Night Watchman in the vegetable market at Odagaon. On the fateful night intervening between 16th and 17th January 2019, while Lochan was performing his night duty in the vegetable market, the convict all of a sudden appeared with a piece of wooden plank and suddenly hit on his head and other parts of the body. The other watchman (P.W.9) of adjacent Ganesh market rushed towards the spot and then Niranjan (convict) fled away from there. After some time then, when deceased Badani was sweeping front portion of his house, which situates within the compounded premises of Sanjibnee Clinic at Odagaon, the convict suddenly appeared there scaling the wall at around 3:00 PM and dealt a blow on her head. The deceased fell in a pool of blood and died at the spot. Hearing her shout, her daughter Sulochana, who was bathing nearby, rushed shouting at the convict. But she was also not spared and the convict assaulted Sulochana (P.W.13) with the same wooden plank on her

head and other parts of the body, as a result of which Sulochana also fell down at the spot in a pull of blood. The convict did not spare her with that much of assault. He stabbed her multiple times and inserted a pastry roller (Belena Kathi) into her private part, and it is to be mentioned that at that time Sulochana was pregnant carrying fetus of around seven months. Sulochana was working in Sanjibanee Clinic and residing there along with her mother (deceased Badani) in the servant quarters situated within its premises and the spot of occurrence is the front area of their house surrounded by compound wall of the clinic.

Hearing the scream of mother and daughter, some passersby entered inside the premises of the clinic climbing up the wall and seeing them the convict immediately fled away wearing a ladies night gown kept outside.

Then after some gap of this incident, when Amulya @ Amuli Barik (P.W.5), an elderly woman, was going to Raghunath temple in that fateful hours of early morning, this convict assaulted her in random on her head and other parts of the body. Due to the assault by the convict, P.W.5 fell down on road with bleeding injuries. The convict then proceeded further and saw other injured Dambaru

opening of his shop. He proceeded towards Dambaru (P.W.15) and when raised the wooden plank to assault him, P.W.15 protested the same. There was a tussle between the convict and P.W.15 and P.W.15 snatched the wooden plank from the hands of the convict. The convict bit the left hand little finger of P.W.15 so severely that the tip of finger was separated from the rest part of the finger, resulting severe bleeding injury to P.W.15. Probably the convict was captured thereafter, though the prosecution case is silent regarding the same.

4. Thus, commission of two murders, one attempt to murder and two grievous hurts with lurking house trespass have been charged against the convict under different heads prescribed in the Penal Code. The convict did not plead guilty. The convict during his examination under Section 313, Cr.P.C. has mostly replied to all such questions put to him either as falsehood or without his knowledge. So it is seen that the accused has taken the plea of innocence and false implications.

5. The prosecution in order to prove the charges against the convict has examined 27 witnesses and adduced 94 documents. Apart from this, six material objects have been marked in evidence, in course of trial. The defence did not adduce any evidence in his support.

Among the witnesses examined by the prosecution, P.W.2 is the informant. P.W.9 is stated to be the eye-witness in respect of assault on deceased-Lochana. P.W.13 (Sulochana), who was injured and one of the victims, has narrated the assault on deceased-Badani regarding her death, and said evidence of P.W.13 has been supported by P.W.6 and 17 as the eye-witnesses of the assault committed on deceased-Badani. P.W.5 (Amuli) is one of the injured and her evidence is supported by P.W.1 and 10. P.W.15 (Damodar) is another injured, who speaks of the injury caused to him by the convict. P.W.26 is the Investigating Officer and P.W.27 is the Scientific Officer. P.W.14, 22, 23, 24 and 25 are different Medical Officers relating to post-mortem examination and injuries on different victims of assault.

Ext.P-1 is the FIR, P-21, 22, 23, 24 and 32 are spot maps, P-8 and 13 are post-mortem examination reports, and P-12, 14, 15, 16, 17 and 27/2 are the medical examination reports of the injuries. P-35 is the chemical examination report.

Among material objects produced in course of trial, MO-III is the wooden plank, stated as the weapon of offence.

6. As stated supra, the series of assault on different victims was committed in a sequence one after another. It is committed in that

intervening night of 16th and 17th January 2019 between 2.30 A.M. up-to early morning. So far as the murders of deceased-Lochana Sethi and Badani Pradhan are concerned, their deaths are seen homicidal in nature from the circumstances and injuries sustained by them. The post-mortem examination report of Lochana is Ext.P-13 and the concerned Medical Officer has been examined as P.W.23. Three lacerated wounds on his left eye brow, left cheek and both legs are found during post-mortem examination corresponding to intra-cranial bleeding on the occipital region of the head along with hematoma. There was bruise on the right eye and fracture of both tibia and fibula of deceased-Lochana due to the assault. The post-mortem examining doctor, P.W.23, has unerringly stated same in the court proving his report of examination under Ext.P-13. Nothing could be elicited from the mouth of P.W.23 to disbelieve his evidence or medical report regarding the injuries sustained by deceased-Lochana and his cause of death.

7. Deceased-Badani sustained three lacerated injuries on her head with fracture of skull bone. There were also six stab injuries found on her back amongst which two are so deep in nature, piercing into the abdominal viscera. On dissection, the cranial cavity was found

ruptured with blood clotting on the occipital region of the head. The liver was found ruptured and lacerated. The post-mortem doctor, P.W.14, has vividly stated about such injuries inflicted on the body of the deceased-Badani proving his report under Ext.P-5. The evidence of P.W.14 regarding cause of death and injuries sustained by deceased-Badani could not be demolished in his cross-examination. Nothing could be exuded from his mouth during his cross-examination to doubt the veracity of his statements relating to the injuries sustained by Badani or her cause of death.

8. The circumstances as narrated by the eye-witnesses regarding assault on deceased-Lochana and Badani do support the version of the Medical Officers as to how the assault was made by the wooden plank and other weapons on them and how they fell in pool of blood at the respective spots due to the assault. The statements narrated by the eye-witnesses and post occurrence witnesses, if read cumulatively with the medical evidences, clearly and unerringly deduce the conclusion regarding homicidal nature of death of both the deceased. Having analyzed all such materials and statements of witnesses, there could be no hesitation determining that the deceased-Lochana and Badani died homicidal nature of death.

9. To see the complicity of the convict-Niranjan in the alleged murder of two deceased persons, the evidences of respective eye-witnesses are found very much useful in this regard. P.W.9 is the eye-witness with regard to assault on deceased-Lochana at the vegetable market. Said P.W.9 is one of the Watchman of Ganesh Market adjacent to the vegetable market where deceased-Lochana was performing his night duty as the Watchman. It appears from his testimony that on 16th January 2019 in the night at around 2.30 A.M., he saw the convict-Niranjan came armed with one wooden plank and suddenly dealt blow on the head of Lochana. As a result of the same, blood oozed from nostrils of Lochana and he fell down on the ground. The informant (P.W.2) is the son of deceased-Lochana and he named Niranjan as the assailant in the body of the FIR. P.W.2 and 3 both sons of Lochana are the post occurrence witnesses, who shifted deceased-Lochana to the Hospital. The evidences of P.W.2 & 3 are found supported by the circumstances. They narrated about the injuries sustained by deceased-Lochana and his death. The direct eye-witnessing of the assault by the convict as stated by P.W.9 is found corroborated from the recitals made in the FIR (P-1). A detail analysis of the statement of P.W.9, the recitals of the FIR and the statement of P.W.2 & 3 *vis-à-vis* the medical evidence, it is found that they run

parallel and corroborative to describe the role of convict as the assailant in committing assaults on deceased-Lochana.

10. Similarly, the assault on deceased-Badani has been eye-witnessed by P.W.13, 6 and 17. P.W.13 is the daughter of deceased-Badani, who sustained life threatening injuries while trying to save her mother. It is seen from the evidence of P.W.13 that in the alleged early morning at around 3.00 A.M. when she was taking bath and her mother (Badani) was sweeping the outside area of their room, this convict entered into the place and dealt a blow on the head of Badani suddenly. As her mother yelled for help, she (P.W.13) rushed there to see the convict assaulting her mother by the wooden plank mercilessly. As protested by her, the convict dealt blows on her head by the same wooden plank. Due to the assault, she fell down and lost sense. But before that, she could sense that the convict stabbed in her belly with a knife like object. The fetus in the womb, as she was pregnant for around seven months by then, died and she lost her motherhood. It was not the end, but the convict inserted a pastry roller inside her vagina. She was immediately shifted to District Headquarter Hospital and then to AIIMS at Bhubaneswar where she underwent treatment for around two months to recover.

11. P.W.17 is the doctor owning Sanjibanee Clinic where P.W.13 was working as "Attendant" and staying in the servant quarters along with her mother within the campus of said clinic. P.W.6 is the wife of P.W.17 and they are also staying within the same campus. They both have said in their evidence that hearing the noise when they came to their terrace saw the convict assaulting P.W.13, who had also assaulted Badani, the deceased. P.W.6 specifically said that she saw the convict assaulting Sulochana and her mother. Seeing this, she raised shout and by then some local public entered into their premises scaling over the boundary wall, and the convict then fled away wearing a lady night gown. P.W.13 has stated everything how the convict caused assault on her mother and herself in the wee hours of that fateful morning when she was taking bath. Before losing her sense, P.W.13 could sense the horrendous and barbaric act of the convict. Her statements made in the examination-in-chief could not be demolished or rebutted during the cross-examination. Rather her assertions have been fortified by the testimony of P.W.6 & 17, the Husband and Wife duo, who witnessed from their terrace. There is nothing to disbelieve the testimony of P.W.13, being invigorated by the statements of P.W.6 & 17 and supported by the medical evidence.

12. From afore-stated analysis of the testimony of the witnesses, the complicity of the convict in committing the death of both the deceased, Lochana and Badani, is well established beyond all reasonable doubts. It is not the case of circumstantial evidence only, but the assault committed by the convict on the deceased persons is proved through direct evidence. The death of both the deceased, Lochana and Badani has thus been proved beyond all reasonable doubt that the same is due to assault by the convict as the author of the crime.

13. Three more persons have been injured in the series of occurrence besides two deceased persons. Those three injured have been examined from the side of the prosecution as P.W.5, P.W.13 and P.W.15, namely, Amuli Barik, Sulochana Pradhan and Dambaru Sahu respectively. The assaults on Sulochana (P.W.13) including the assault on her mother (deceased Badani Pradhan) have been well described by P.W.13. It is stated by her that when she was bathing in the early hours of morning and Badani was sweeping the outside area of their house, hearing the scream of Badani she came out and found the accused was assaulting her mother. When she protested, the accused dealt a blow on her head by the same wooden plank. She fell

down on the ground and lost sense. But before that she could perceive that the accused stabbed on her belly multiple times with a knife. The accused has also inserted a pastry roller into her vagina. This statement of P.W.13 is found supported by other two eye-witnesses Viz. P.W.6 & 17 from the terrace of their house. It is to be noted here that this place of occurrence is inside the campus of Sanjibanee Clinic-cum-residence of P.W.6 and 17, where P.W.13 was working as an Attendant and staying with her mother in the servant quarters. P.W.6 & 17 have not only testified with regard to the assault on Badani and Sulochana, but also forfeited the evidence of P.W.13 to describe the brutal and barbaric assault of the accused on both of them. The medical evidence of P.W.24 & 25 along with the reports under Ext.P-16 & P-17 also speaks about the injuries of Sulochana, who sustained three lacerated injuries on the left scalp, left eye and lip with multiple stabs in the abdomen, multiple contusions on the chest and upper limb. A foreign body was also detected inserted to her vagina. Not only this but one iron rod of length of 30 cm and broken knife of length of 10 cm along with one broken tooth was recovered from the body of Sulochana during her operation in AIIMS, Bhubaneswar, where she was referred to for treatment, as per the seizure list prepared under Ext.P-26 by the Investigating Officer.

Sulochana being the injured her statement carries much credence with regard to nature of assault and the author thereof. In ***Mohar and another vs. State of U.P., (2002) 7 SCC 606***, the Supreme Court has observed that, "The testimony of an injured has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence and had seen the occurrence by himself. Convincing evidence would require to discredit an injured witness. Similarly, every discrepancy in the statement of a witness cannot be treated as fatal. The discrepancy which do not affect the prosecution case materially cannot create any infirmity." Similarly in the case of ***Haryana vs. Krishan, AIR 2017 SC 3125***, the Supreme Court has also observed that, "Deposition of an injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies for the reason that his presence on the scene stands established in the case and it is proved that he suffered the injuries during the said incident."

As stated before, there is nothing elicited from the mouth of such witnesses to disbelieve her version, rather found corroborative by the evidence of other eye-witnesses. The injuries sustained by Sulochana

and the prolonged life saving treatment suffered by her do speak for itself that the attempt was made to commit her murder and therefore, there cannot be any hesitation to conclude that the accused had the intention to commit murder of P.W.13 to attract the punishment under Section 307, I.P.C.

14. The story continues further when P.W.5 was assaulted by the accused by means of a wooden plank while she was going to the temple in that fateful early morning. The accused dealt blow on the head and left hand of P.W.5 leaving her in a pull of blood. P.W. 5 was also treated at Sum Hospital, Bhubaneswar being referred by the C.H.C., Odagaon where she underwent treatment for two days to recover. P.W.1 and 10 are two witnesses, who support the evidence of P.W.5 that they shifted her in injured condition to the Hospital for treatment. As per the evidence of P.W.24 and the medical report vide Ext.P-15, said P.W.5 sustained two lacerated injuries on the tempo parietal region and occipital region of her head along with fracture of left lateral malleous and right distal ulna. The lacerated injuries are on the vital part of the body with threat to life had she not been subjected to treatment soon. Alike P.W.13, the status of P.W.5 as an injured witness speaks itself about credibility of her statement regarding the

assault and the author thereof. There is no reason found on record to disbelieve her version or nothing could be elicited from her mouth to disbelieve her evidence. The location of the injuries on her body and the impact thereof further suggests the intention of the accused to kill her. As such taking all such circumstances including the nature of weapon, the offence punishable under Section 307, I.P.C. is definitely established against the accused.

15. The accused again attempted to assault P.W.15 (Dambaru Sahu), who had an eatery at Chudamill Chowk, Odagaon in that alleged early morning. This P.W.15 has stated in his evidence that when he was opening his shop, the accused came near him and blow the wooden plank to assault him, which was protested by him. P.W.15 could able to snatch the wooden plank from the accused in the scuffle but the accused bit his left little finger. As a result of the same, he sustained profuse bleeding and shifted to the District Headquarter Hospital, Nayagarh for treatment and also got treatment in Sum Hospital, Bhubaneswar. This evidence of P.W.15 is also left unimpeachable like the evidences of other injured persons, Viz. P.W.5 and 13. He stood confirmed to his statement about the occurrence and assault concerning him during the cross-examination and as stated earlier

such evidence of the injured eye-witness carries great trust and credence about the happenings and no reason is left to disbelieve his evidence. Therefore, the assault on him by the accused that resulted separation of the tip of his little finger attracts the offence punishable under Section 325, I.P.C.

16. It need to be mentioned here that assaults made on Sulochana and Amuli by means of wooden plank and other weapons resulting different injuries on their person attracts of offence under Section 326, I.P.C. along with the offence of attempt to murder. The entry of the accused into the campus of residence of Sulochana and Sanjibanee Clinic by scaling over the wall makes out the offence punishable under Section 458, I.P.C. against the accused.

17. An argument is advanced on behalf of the defence that there are discrepancies in the evidence of the witnesses that P.W.9 saw, as stated during his cross-examination, that the accused was wearing a lady gown at the time of assaulting deceased-Lochan and so the version of this eye-witness cannot be relied on for the reason that if Lochan was assaulted at the first instance and then Badani with Sulochana, how could it be possible on the part of the convict to be seen wearing the lady gown. It is to be explained here that as per the

prosecution there are four spots of occurrence and the relating spot maps are Ext.P-21 (Spot No.1), P-22 (Spot No.2), P-23 (Spot No.3) and P-24 (Spot No.4). But there is nothing on record that all these spots are related in sequence. Prosecution has not stated which occurrence in the sequence was committed first and thereafter one by one. This being lacking on prosecution record, nothing has also been brought on record by the defence to reveal the sequence of occurrence. Therefore it is difficult to opine on which occurrence took first and thereafter serially. Bereft of all these, such discrepancy in the evidence of P.W.9 does not take away his credibility as the eye-witness of the assault committed by the accused on deceased-Lochan. In appreciation of evidence, truth has to be separated from falsehood. A true witness is often subjected to some discrepancies because it is not possible to carry the exact memory of past events. The account of statement with regard to eye-witnessing the occurrence is to be perceived on the basis of material evidence and in the case of eye-witness it would not be prudent to discard his evidence unless his evidence is found otherwise untrustworthy through material discrepancies. In the case at hand, P.W.9 is an independent witness without having any hostility towards the accused. So such discrepancy as pointed out by the defence does not take away his

credibility of his version of accounting the assault by the accused on deceased-Lochan.

18. First to deal with offence of murder and attempt to murder, once it is established beyond all reasonable doubts that the convict (Niranjan) is the author of death of Lochana and Badani, and attempt to murder of Sulochana, by way of assault with the wooden plank (MO-III) and the other weapon, i.e. the knife like object, it falls to determine whether he had the intention and knowledge of killing the deceased and injured in order to attract the punishment under Section 302 of the IPC.

19. It is submitted before this Court in course of hearing that the convict was suffering from mental insanity or unsoundness of mind at the time of committing the offence, and he had no such intention either to kill or attempt to kill or to cause injuries. It is submitted that the convict had previously received treatment for mental unsoundness and in absence of any motive in committing the offences, it is established that the convict did such assault by unsoundness of mind, without any intention, being incapable of knowing the nature and consequence of the act.

20. Section 300 of the IPC prescribes culpable homicide amounting to murder that every culpable homicide is murder except such exceptions prescribed, if the act by which the death is caused is done with intention of causing death or causing such bodily injury as the offender knows likely to cause death or sufficient to cause death in ordinary course of nature or it is so imminently dangerous to cause death in all probability. The exceptions are regarding the circumstances of grave and sudden provocation, by good faith, in sudden fight without pre-meditation or by a public servant acting in discharge of public duty. Admittedly present facts of the case do not fall within any of the exceptions provided in Section 300 of the I.P.C. So to determine the intention and knowledge of committing culpable homicide amounting to murder or attempt to murder, the facts and circumstances of the given case are important. Intention is a mental state to be gathered from the actions and circumstances of the case.

21. In committing an act, particularly a criminal misconduct, the person who commits the act is attributed with the intention to cause natural consequences that follows from the act performed. There may be situations when the person makes the intention for performing an act known clearly by oral declaration or otherwise. In certain cases, it

can be illusive, when intention is not clearly spelt out or discernible and the same has to be gathered from the surrounding facts and circumstances coupled with the acts of the accused. In order to gather the proof of intention or conscious knowledge of what the accused had done, the set of facts in a given case need to be analyzed to attract the component of *mens rea* and establishment of the same beyond reasonable doubt.

22. It is true that nothing could be brought on record before the learned trial court in order to satisfy the contention of the convict to satisfy his unsoundness of mind either at the time of commission of offences or in course of the trial. The convict participated in trial as a normal person with sound mind taking the plea of innocence and falsehood. He did not say anything during his examination by the court under Section 313 Cr.P.C. either regarding his previous conduct or treatment relating to unsoundness of mind. It has been emphasized by the defence in course of hearing before this Court that the conduct of the convict wearing lady night gown while fleeing from the spot of murder of Badani is an unnatural conduct on the part of the convict pointing towards his insanity and in addition to that, there is absence of motive in committing the assaults.

23. But the convict did not adduce any defence evidence. Not a single medical document was produced before learned trial court to justify unsoundness of mind of the convict at any previous point of time and nothing is also produced on record regarding his insanity or unsound mind afterwards following the incident. He faced trial as a normal man with sound mind and the learned trial judge did not find anything regarding his unsoundness of mind. He faced the trial in the court like any other normal accused. It is true that the burden of proof rests on the defence to prove his insanity at the time of commission of offence. Undoubtedly nothing could be found in course of the trial to opine on the mental state of the accused either as a lunatic or his incapability of making defence due to unsound mind. The learned trial court proceeded against the convict with the satisfaction that he is of sound mind capable of understanding the consequences and making his defence. From the materials produced on record along with intelligible understanding of the questions put to the convict during his examination under Section 313, Cr.P.C. and the questions advanced during cross-examination of different witnesses, it is clear and evident that the convict was in the state of sound mind capable of understanding the procedure, charges and evidences in course of the trial. However, it is found on record that some stray suggestions were

put to the Investigating Officer (P.W.26) by recalling him for further cross-examination. The same are re-produced as follows:-

> "xx xx xx
>
> 30. xx .. xx .. xx I had made no investigation to ascertain the background fact of the accused. I had never received any information, before the incident that a person having unsound mind is roaming in Odagaon town. Neither the accused nor of his family member has informed me, during investigation, if accused was any treatment at SCB Medical College, Cuttack, prior to the incident at any point of time. After arrest I had send the accused for medical treatment."

24. Nonetheless, the burden comes on the convict to prove his claim of insanity at the time of commission of offences. The principles to be looked in to examine and determine the plea of insanity, even though the same is absent in the given facts of present case, are the circumstances of the case that;

- whether there is deliberation and preparation for the act,
- whether it was done in a manner revealing a desire for concealment,
- the conduct of the accused following the crime if shows consciousness of guilt and effort to avoid detection, and

- whether he offered false pleas or false statement after being detected.

Mere absence of motive for the crime without any corroboration with previous insanity cannot be the determinative factor to rule in favour of his insanity in committing the crime. The plea of insanity of mind is required to be proved on record beyond doubt and absence of motive is an additional factor to such materials brought on record to prove the insanity.

25. In the chapter of general exceptions envisaged under the Indian Penal Code, Section 84 postulates that nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of act, or that he is doing what is either wrong or contrary to law.

26. In ***Hari Singh Gond vrs. State of Madhya Pradesh*, *(2008) 16 SCC 109***, it is observed that:

> "11. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was

either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. Stephen in `*History of the Criminal Law of England*, Vo. II, p.166 has observed that if a person cuts off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognizes nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section.

This Court in *Sherall Walli Mohammed v. State of Maharashtra, (1973) 4 SCC 79*, held that

> '….The mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken open, would not indicate that he was insane or that he did not have necessary *mens rea* for the offence.

12. Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 as the law contained in that section is still squarely based on the outdated *M'Naughton* rules of 19th Century England. The provisions of Section 84 are in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords, in *M'Naughton's* case (1843) 4 St. Tr. NS 847 (HL). Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is

not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or prefect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act, but merely a cessation of the violent symptoms of the disorder is not sufficient.

13. The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited, odd irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section."

27. In a recent decision of the Hon'ble Supreme Court in ***Chunni Bai vrs. State of Chhattisgarh, 2025 SCC OnLine SC 955***, it is explained that,

> "XX .. XX .. There is a difference between medical insanity and legal insanity. What Section 84 IPC provides is legal insanity as distinguished from medical insanity. A person is said to be of unsound mind on whom criminal liability cannot be fastened if at the time of commission of the act, he is incapable of knowing the nature of the act, or that what he was doing was either wrong or contrary to law. It may also be noted that the expression "unsoundness of mind" or the word "insanity" has not been defined in the Penal Code, 1860, though these have been used interchangeably. In the absence of a precise definition of these terms, insanity or unsoundness of mind has been variously understood by courts in varying degrees of mental disorder and the courts have applied this attribute to give the benefit of doubt or otherwise, depending on the facts and circumstances of the cases. However, mere odd behaviour or certain physical or mental ailments affecting the emotions or capacity to think and act properly have not been construed to be "unsound mind" within the scope of Section 84 of the IPC. All

> kinds of insanity as are understood are not covered under Section 84 of IPC but only such acts, when committed by a person who was incapable of knowing the nature of the act or that he was doing which is either wrong or contrary to law are concerned. As a consequence, only such mental or medical condition which affects or disturbs the faculty of the person which renders him unable to know the nature of act committed or that he was doing which he did not know that it was wrong or contrary to law can be given the benefit of insanity under Section 84 IPC, and thus escape criminal liability."

28. As stated earlier, the burden of proof to prove existence of such circumstance to attract the exception as per Section 84 of the IPC is on the accused and of course, the standard of proof required for accused by law in such cases is preponderance of probability as is adopted in civil cases. (See : *Satyavir Singh Rathi, Assistant Commissioner of Police* v. *State*, (2011) 6 SCC 1 : AIR 2011 SC 1748; *Munshi Ram* v. *Delhi Admn.*, AIR 1968 SC 702; *State of U.P.* v. *Mohd. Musheer Khan*, (1977) 3 SCC 562 : AIR 1977 SC 2226).

29. In ***Dahyabhai Chhaganbhai Thakkar vrs. State of Gujarat,*** AIR 1964 SC 1563, it is observed as follows:

> "7. The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite *mens rea*, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Penal Code, 1860 : the accused may rebut it by placing before the court all the relevant evidence oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including *mens rea* of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

30. In the case at hand, nothing has been brought on record either by the prosecution or the defence to suggest mental illness of the convict

prior to commission of the offences. The general suggestions given to the I.O. (P.W.26) upon his recall for further cross-examination, is without any supporting material. No such medical paper could be produced by the convict nor any oral evidence through the witnesses could be brought on record despite elaborate cross-examinations are being faced by them. The convict has participated in the trial as a normal person and the trial court did not find anything with him to be incapable of understanding the nature of proceedings and its consequence, and he did not bring anything towards his past conduct with a view to suggest his legal insanity or mental instability. What is emphasized on behalf of the convict to bring the factum of unsoundness of mind is the submission regarding absence of motive in committing the offences. It is also stated that committing of such offences serially one after another within a short span of time is itself an abnormal conduct suggesting mental instability of the convict and that apart wearing of a lady night gown by the convict is a factor to strengthen such mental unsoundness of the convict.

31. So far as motive is concerned, absence of same in a case of homicide is immaterial where there are direct evidence of eyewitnesses supported by medical evidences. Motive is a mental factor hidden in a

deep recess of the mind. It is explained in ***Chunni Bai*** *(supra)* as follows:

> "47. Motive is usually the basis for causing the "intention" to commit any crime, but it is highly elusive and difficult to prove as it remains hidden in the deep recesses of the mind and is not comprehensible to others, unless disclosed by the perpetrator. Though under the law, it is absolutely not necessary that to prove an offence, motive is also required to be established if the intention or the *mens rea* can be safely inferred from the surrounding facts. But where the motive which can provide the basis for the intention appears to be totally missing, the court has to be very circumspect in drawing the inference of the proof of the presence of *intention*.
>
> 48. For committing a serious crime like homicide, there could be various motivating factors. One may commit the crime of homicide propelled by anger or motivated by insult, humiliation or jealousy. Other motivating factors may be to exact revenge or by way of retribution or to hide certain crimes already committed. One may also commit homicide to gain undue pecuniary benefit or otherwise. One may commit such a crime out of sheer frustration and dejection with life channelising through violent acts.

> One may commit such crime because of superstitious beliefs.
>
> There could be numerous factors, and it may not be possible to contemplate and mention all such situations that motivates a person to commit violent crime like homicide. While proof of motive of the crime may strengthen the prosecution's case in proving the guilt of the offender, failure to prove motive is not fatal if the offence is otherwise proved through direct and incontrovertible evidence. At the same time, absence of any motive may benefit the accused under certain circumstances, for the ingredient of intention which constitutes the *mens rea* has also to be proved."

32. It is true that failure to unravel the true motivating factor for committing the crime cannot lead to the inference that the Appellant is innocent. In the instant case, the act of commission of offences by the convict though lead towards the presumption of unstable mind, but the same in absence of other supporting materials is not sufficient to arrive the conclusion regarding unsoundness of mind in order to attract the exception as per Section 84 of the IPC. Because in law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act. The burden of proof is on the accused.

The onus has to be discharged by producing evidence as to the conduct of the accused prior to the offence, at the time or immediately after the offence with reference to his mental condition by production of medical evidence and other relevant factors. In order to ascertain that, it is imperative to take into consideration the circumstances and the behaviour preceding, attending and following the crime. Behaviour of the accused pertaining to a desire for his fleeing from the spot, may be in disguise, and his conduct to avoid detection from the eyes of public go a long way to ascertain as to whether he knew the consequences of the act done by him. Here the entire sequence of crime is committed in the dead of night till early morning hours. The Appellant attacked all the victims coming inconspicuously. The weapons of offence used is the deadly wooden plank and knife. The assault on the deceased, Badani and injured, Sulochana (P.W.13) is barbaric and gruesome. The convict does not offer any excuse for such violent acts committed by him. With regard to the submission that he wore the lady nightgown is a circumstance to suggest his mental instability is not accepted by this Court for the reason that the same also indicates the clever mind of convict to get rid of the spot unidentified. According to the evidences of witnesses, he used the lady nightgown for fleeing away from the spot after arrival of locals hearing the hulla of deceased Badani and

P.W.13. So it cannot be said that the intention of the accused was not to hide himself from the eyes of the witnesses and as such, the submission advanced by the defence is denied. It is not that the accused (convict) had not done anything on his part to conceal himself after commission of each crime. But it is the consistent evidence of the witnesses that after assault on each victim he immediately fled away noticing presence of the witnesses approaching towards the scene of crime. In the last crime of the sequence, when he assaulted on Dambaru (P.W.15), Dambaru was swift in defending himself from deadly assault of the accused though has lost his finger in the tussle. A close circumspection of the events with reference to the conduct of convict reveals his preparedness and swift escape from the scene. Therefore, taking note of the circumstances, timing and the manner of commission of the assaults particularly on deceased Badani and P.W.3, it is not suggestive of anything in favour of the convict to be without intention or without knowledge of consequences to commit murder and grievous hurts. Therefore, the intention or *mens rea* on the part of convict is found established from the circumstances and the actions narrated by the witnesses. As such, the conviction rendered by the trial court on the accused is found justified and thus confirmed.

33. Here a technical aspect is raised by learned Amicus Curiae for the convict with regard to joinder of charges. As per him, the joinder of charges of all such offences admittedly committed in respect of five different persons in four different occurrences could not be charged jointly.

Section 218 read with section 220 of the Cr.P.C. speaks of joinder of charges that includes the power of the court to try such offences together if in the opinion of the court such person is not likely to be prejudiced thereby. Admittedly the accused (convict) has not raised any objection with regard to joinder of such charges at the time of framing of charge or in course of trial. Undoubtedly, mis-joinder of charges is curable under Section 464 & 465 of the Cr.P.C. provided no failure of justice has in fact been occasioned thereby. It is true that there is a distinction between same transaction and similar transaction. Where the series of acts are so connected together by proximity of time with community of same criminal intention, the continuity of action and purpose may amount to one prosecution subject to exception that doing similar things continuously would not amount to same transaction. Moreover, taking note of the fact that no objection was raised by the accused (convict) before learned trial court and the

curative effect of Section 464 & 465 of the Cr.P.C., this Court does not find any prejudice caused to the accused by such joinder of charges together or to allow any benefit thereof to the convict at this stage.

34. Now coming to sentencing aspect, the trial court has imposed death sentence on the convict for commission of murder punishable under Section 302 I.P.C. along with payment of fine of Rs.50,000/-. The convict is further awarded with sentences for life imprisonment and different other descriptions of punishment as stated in the beginning of this judgment. It is well settled that before awarding death sentence on a convict, the aggravating and mitigating circumstances are to be balanced. Such circumstances of mitigating and aggravating nature have been well stated in ***Bachan Singh -Vrs.- State of Punjab***, ***(1980) 2 SCC 684*** and ***Machhi Singh -Vrs.- State of Punjab, (1983) 3 SCC 470*** and reaffirmed in catena of decisions pronounced by the Hon'ble Apex Court.

35. In ***Ravi -Vrs.- State of Maharashtra, (2019) 9 SCC 622,*** it is held (as per majority view) that;

> "62. In the light of above discussion, we are of the considered opinion that sentencing in this case has to be judged keeping in view the parameters

originating from Bachan Singh and Machhi Singh cases and which have since been strengthened, explained, distinguished or followed in a catena of subsequent decisions, some of which have been cited above. Having said that, it may be seen that the victim was barely a two-year old baby whom the appellant kidnapped and apparently kept on assaulting over 4-5 hours till she breathed her last. The appellant who had no control over his carnal desires surpassed all natural, social and legal limits just to satiate his sexual hunger. He ruthlessly finished a life which was yet to bloom. The appellant instead of showing fatherly love, affection and protection to the child against the evils of the society, rather made her the victim of lust. It is a case where trust has been betrayed and social values are impaired. The unnatural sex with a two-year old toddler exhibits a dirty and perverted mind, showcasing a horrifying tale of brutality. The appellant meticulously executed his nefarious design by locking one door of his house from the outside and bolting the other one from the inside so as to deceive people into believing that nobody was inside. The appellant was thus in his full senses while he indulged in this senseless act. The appellant has not shown any remorse or repentance for the gory crime, rather he opted to remain silent in his

313 Cr.P.C. statement. His deliberate, well-designed silence with a standard defence of 'false' accusation reveals his lack of kindness or compassion and leads to believe that he can never be reformed. That being so, this Court cannot write of the capital punishment so long as it is inscribed in the statute book."

36. In ***Laxman Naik -Vrs.- State of Orissa, (1994) 3 SCC 381,*** it has been stated that extreme penalty can be inflicted only in gravest cases of extreme culpability and in making choice of sentence, in addition to the circumstances of the offender also.

37. The Supreme Court has observed in ***Dhananjoy Chatterjee -Vrs.- State, (1994) 2 Supreme Court Cases 220,*** that 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 consideration. It is further held that the measure of punishment in a given case must depend upon

the atrocity of the crime, the conduct of the criminal and the defenseless 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.

38. In ***Santosh Kumar Satishbhushan Bariyar -Vrs.- State of Maharashtra, (2009) 6 SCC 498,*** it is stated that life imprisonment can be said to be completely futile only when the sentencing aim of reformation can be said to be unachievable.

39. In the case at hand the trial court has not made any effort calling for such data in respect of getting aggravating and mitigating circumstances. This court had directed the jail authority for collection of detailed information with reports on the past life, psychological condition and post conviction conduct of the Appellant along with such other materials and also granted opportunity to the Appellant (convict) to file affidavit producing any material on mitigating circumstances. In

, it has been observed as follows:-

> "77. The law laid down in Bachan Singh requires meeting the standard of 'rarest of rare' for award of the death penalty which requires the Courts to conclude that the convict is not fit for any kind of reformatory and rehabilitation scheme. As noted in Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, this requires looking beyond the crime at the criminal as well:
>
> "66. The rarest of rare dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case? As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare doctrine, the Court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the Court focuses on the circumstances relating to the

criminal, along with other circumstances. This is not an easy conclusion to be deciphered, but Bachan Singh sets the bar very high by introduction of the rarest of rare doctrine." xx xxx xxxxx

81. The duty of the Court to enquire into mitigating circumstances as well as to foreclose the possibility of reformation and rehabilitation before imposing the death penalty has been highlighted in multiple judgments of this Court. Despite this, in the present case, no such enquiry was conducted and the grievous nature of the crime was the only factor that was considered while awarding the death penalty.

82. During the course of the hearing of the review petition, this Court had passed an order directing the counsel for the state to get instructions from jail authorities on the following aspects: (i) the conduct of the petitioner in jail; (ii) information on petitioner's involvement in any other case; (iii) details of the petitioner acquiring education in jail; (iv) details of petitioner's medical records; and (v) any other relevant information."

40. Pursuant to the direction of this court, the Senior Superintendent of Circle Jail, Berhampur, where the convict is lodged, has filed the affidavit dated 2nd August, 2024 appending the reports relating to his

past life, conduct in the jail, his psychological condition examined by a team of doctors along with the present health condition of the convict.

As per the report submitted, the father of the convict was a farmer and the convict initially assisted his father in cultivation. He has read up to Class-X and in the year 1999 he moved to Surat in Gujurat and worked there in a spinning mill as a labourer to earn good money. In the year 2004 the Appellant married and has been blessed with two children but he did not pull well with the wife in marital life and again went to Surat. He returned after some days from Surat and started his business in the locality of selling biometric bracelets and was earning good profit. But he left that business and started selling Chhenapoda (Baked Sweet Paneer) at Jamsedpur, Jharkhand and met with an accident in the year 2012. Thereafter his economic condition became poor and he returned to village where he started selling different sweets in and around the nearby locality. During last part of 2016 he had some psychiatric problems and underwent treatment at MKCG Medical College and Hospital, Berhampur and after recovery there-from he again started his business in 2018 staying in his village under Odagaon Police Station. As per the report everyone in the village spoke well of him and no adverse report is there against the convict. His behavior

towards the public was quite cordial and impressive without having any animosity in the village or outside. He has no criminal antecedent before the present incident. Presently his wife is staying at Bhubaneswar with children and maintaining her livelihood by working as a maid servant. According to the wife of convict he used to take alcohol during night hours and she also supported the fact of psychiatric treatment of the convict at MKCG Medical College and Hospital and his recovery in the year 2018 and thereafter he discontinued the medicines due to financial issues.

As per the medical report submitted by the team of doctors the convict is having stable psychological condition without any adversity observed in his conduct. His short term and long term memory is intact excluding the morbidity period where he was not able to remember the past events of psychotic episode. Further his social and personal judgment are intact and no abnormality is detected upon his examination.

41. According to the report of the medical officer of the jail, the behavior and attitude of the convict towards other inmates and staff is good and he performs daily routine work in a normal manner. Presently

his health condition is good and stable and as per advice of the team of doctors he is taking regular medicines for bipolar disorder.

So in the opinion of the Senior Superintendent of Circle Jail, Berhampur the convict's behavior is quite normal. He prays to God and reads Holy Gita regularly and other daily newspapers and his behavior towards others is very normal.

42. In ***Allauddin Mian and Others -Vrs.- State of Bihar, (1989) 3 SCC 5***, the Supreme Court has held that since the choice is between capital punishment and life imprisonment, the Legislature has provided a guideline in the form of Sub-section (3) of Section 354 of Cr.P.C. and as a general rule the antecedents, social and economic background, mitigating and extenuating circumstances are vital to be considered by the sentencing court.

43. In ***Manoj and others -Vrs.- State of Madhya Pradesh, (2023) 2 SCC 353***, it is observed as follows:-

> "248. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.

249. To do this, the trial Court must elicit information from the accused and the State, both. The State must for an offence carrying capital punishment at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh. Even for the other factors of (3) and (4), an onus placed squarely on the State conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate Courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

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

(a) Age;

(b) Early family background (siblings, protection of parents, any history of violence or neglect);

(c) Present family background (surviving family members, whether married, has children, etc.);

(d) Type and level of education;

(e) Socio-economic background (including conditions of poverty or deprivation, if any);

(f) Criminal antecedents (details of offence and whether convicted, sentence served, if any);

(g) Income and the kind of employment (whether none, or temporary or permanent, etc.);

(h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

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

251. Lastly, information all mitigating regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail,

etc.). If the appeal is heard after a long hiatus from the trial Court's conviction, or High Court's confirmation, as the case may be, a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post conviction mental illness, if any.

252. It is pertinent to point out that this Court in ***Anil - Vs.- State of Maharashtra : (2014) 4 Supreme Court Cases 69,*** has in fact directed criminal courts to call for additional material: (SCC p. 86, para 33)

> "33.…Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the Court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a

> conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like section 302 I.P.C., after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case."
>
> We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence."

44. It is true that the criminal is also a human being and is entitled to a life of dignity notwithstanding his crime. However, it is for the prosecution and the court to determine whether such a person can be reformed and rehabilitated. As to aggravating factors in the case at hand, commission of murder of two persons with such brutality to the lady deceased along with injuries to others is undoubtedly a significant aggravating factor where the enormity of crime and number of victims are critical factors. The emotional and psychological impacts on the families of the deceased persons also constitute an aggravating factor. In ***Bachan Singh*** (supra), it is observed that pre-planned, calculated, cold-blooded murder has always been regarded as one of an aggravated

kind. It is also stated by the Supreme Court in said case that if there is a probability that the accused can be reformed and rehabilitated, the same can be considered as mitigating circumstance and the State shall by evidence prove that the accused does not satisfy this condition. It is further held that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy. As stated in Section 354 (3) of Cr.P.C. it is imperative for the court to state special reasons for death sentence. For persons convicted for commission of murder, life imprisonment is the rule and death sentence is an exception. In ***Santosh Kumar*** (supra) it has been highlighted that the possibility of reform and rehabilitation should be a pivotal consideration, stressing that the death penalty should not be imposed if the convict shows potential for reformation.

45. In ***Rajendra Prasad –Vrs.- State of Uttar Pradesh, A.I.R. 1979 S.C. 916***, which is a case of triple murder, the Supreme Court has observed that reasonable prospect of reformation and absence of any conclusive circumstance that the assailant is a habitual murderer or given to chronic violence are the circumstances tearing on the offender to call for a lesser sentence.

46. It is well settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death. Upon thorough examination of socio-economic background of the convict in the present case, it appears that he hails from the poor economic strata of society without having any criminal antecedent and adverse report against his conduct. As per the report of the Jail authority submitted before this court he is cordial to others and no one spoke evil of him in his village, his conduct inside the jail is normal and cordial to other inmates. Nothing on his conduct as per the report of the jail authority would constitute an aggravating factor against him to confirm the death sentence. Regardless of the heinous of crime committed by him, his conduct inside jail is quite satisfactory as per the report of the Superintendent of Jail and he had also no other antecedent than the present one to be counted against him to justify his death sentence. He was and is a normal man except committing the offence prior to and after the occurrence. Taking into consideration of the report of the jail authority in entirety, it cannot be said that there is no possibility of the convict being reformed and rehabilitated, foreclosing the alternative of lesser sentence. We are therefore inclined to convert the sentence imposed on the Appellant from death to life,

but taking note of the severity of the offences including murder of two persons we are of the view that the convict deserves life imprisonment for rest of his life.

47. With regard to victim compensation, we affirm the views and finding of learned trial Judge in this regard.

48. In the result the conviction of the Appellant (convict) for commission of offences punishable under Section 302, 307, 325, 326, 458 of I.P.C. are confirmed. So far as the sentences imposed in respect of the offences under Section 307, 325, 326 and 458 of I.P.C. are also confirmed being found justified in the given circumstances. It goes without saying that all such sentences shall run concurrently, subject to set off, if any, under Section 428 of Cr.P.C.

49. The DSREF as well as the jail criminal appeal are disposed of accordingly.

(B.P. Routray)
Judge

I agree,

(Chittaranjan Dash)
Judge

C.R. Biswal/A.R.-cum-Sr.Secy.