GYASUDDIN KHAN @ MD. GYASUDDIN KHAN

v.

THE STATE OF BIHAR

NOVEMBER 7, 2003

[S. RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]

Penal Code, 1860—Section 302—Murder—Death sentence—Justification for—Mental condition of the accused—Held, a relevant factor for determining sentence—Accused police personnel killing three fellow police personnel—Murder committed because one of the deceased had reprimanded him and had made adverse entries against him in register—No motive to kill the other two police personnel—Death sentence converted into life imprisonment considering his mental condition—Penology—Death Sentence.

The appellant was a constable in police force. He was aggrieved by the action of his superior, R, who had reprimanded him on various occasions for negligence and lack of devotion to duty. R had also made certain adverse remarks in the Guards' register against him. When R was meditating, the appellant took his sten-gun and shot him dead. He thereafter killed another colleague, C, who challenged him. Another police personnel, B, witnessing all this ran for his safety. The appellant chased him to the nearby field and shot him dead. After exhausting the magazine of the sten-gun, the appellant took the sten-gun of B and started firing indiscriminately. Thereafter, he threw the gun and tried to escape when he was over-powered by the police constables.

The appellant was charged for commission of offences under Section 302 I.P.C. and Section 27 of the Arms Act, 1959. The appellant pleaded not guilty and took a plea that the police station was attacked by extremists who killed the deceased persons.

The Trial Court convicted the petitioner under Section 302 I.P.C. and Section 27 of the Arms Act and sentenced him to death. The appeal of the appellant to the High Court was dismissed and the death reference was accepted by the High Court. Hence the appeal.

Allowing the appeal on the question of sentence, the Court

A **HELD:** *On conviction under Section 302 I.P.C.*

1.1. The conviction of the appellant under Section 302 I.P.C. is upheld. The version of eyewitnesses who were all present at the camp at the crucial time is quite consistent and reliable. They have given an account of the incident lasting for a few minutes leading to the death of three police
B **personnel. They have also spoken to the motive, viz., the reprimand and adverse entries made in the register. There was no reason for the fellow policemen to invent a story to implicate the accused against whom none of them had any animosity. [376-E; 373-E, F]**

1.2. If, according to the accused, some armed outsiders were
C **responsible for this incident, the fellow policemen would not have gone to the extent of suppressing that incident and conspiring together to implicate the accused. The defence witnesses never came forward to give their version before the police. There is no explanation as to why they should, as law abiding citizens, withhold the important information. [376-B]**

D *On conviction under Section 27 of the Arms Act*

2. The conviction of the appellant under Section 27 of the Arms Act, 1959 is set aside. There was no discussion whatsoever either by the trial Court or by the High Court in regard to offence under Section 27 of the
E **Arms Act. There is no evidence to the effect that the weapon used, namely sten-gun, answers the description of 'prohibited arms' within the meaning of Section 2 (1) (i) of Arms Act though, in all likelihood, it maybe. It is not appropriate to convict the appellant under Section 27 (3) in which the extreme punishment of death is provided for. [380-F, G; 381-A]**

F *On death sentence*

3.1. The death sentence is not the appropriate sentence in the instant case. [380-D]

3.2. Capital punishment ought to be imposed only in very rare and
G **exceptionally grave cases of murder. The number of persons killed, though a factor to be taken into account, should not be the sole consideration to condemn the criminal to death. A delicate balancing of various factors such as those which give an insight into the state of mind, motivation, attitude and propensities of the accused has to be done while at the same time,**
H **keeping in view the larger societal interests. The principle that in case of**

murder, life imprisonment is the normal rule and the death sentence should be handed down in rarest of rare cases should of course be uppermost in the mind of the Judge. [376-G-H; 377-A] A

3.3. Though no hard and fast rules can be laid down, *prima facie,* a dangerous criminal who has indulged in the killing spree in an extremely brutal and horrendous manner to achieve his own selfish gains or to satisfy his physical lust or to disrupt the public order and peace should be considered to be a menace to the society and he be subjected to the extreme punishment of death. However, even in such cases, mitigating circumstances are not out of place. [377-A, B] B

3.4. While death sentence ought to be imposed in the rarest of rare cases, so long as the law provides for it and such law has withstood the judicial scrutiny, the Court cannot make it a dead letter and refuse to impose death sentence where nothing short of it would be appropriate and adequate. The justification behind death sentence is to respect the collective conscience of the society in relation to crimes of extreme brutality and terrorism and to impart security to the society. The element of deterrence is of course inherent in it. Death sentence serves a threefold purpose (i) punitive (ii) deterrent and (iii) protective. [377-C-D] C D

Ediga Anamma v. *State of Andhra Pradesh,* [1974]4 SCC 443; *Bachan Singh* v. *The State of Punjab,* [1980] 2 SCC 684; *Sheikh Ishaque* v. *State of Bihar,* [1995] 3 SCC 392 and *Allauddin Mian* v. *State of Bihar,* [1989]3 SCC 5, referred to. E

3.5. The nature of crime, the circumstances of the criminal and the impact of the crime on the community are broadly the considerations that ought to be kept in view by a Court called upon to choose between the death sentence and the life imprisonment. At the same time, the circumstances in which the death sentence can be imposed cannot be placed in pigeon holes. A holistic view has to be taken on the facts presented in each case. [377-E, F] F

Bachan Singh v. *The State of Punjab,* [1980] 2 SCC 684 and *Machhi Singh* v. *State of Punjab,* [1983] 3 SCC 470 referred to. G

3.6. The mental condition or state of mind of the accused is one of the factors that has been legitimately taken into account in various cases and that can be taken into account in considering the question of sentence. There are various cases in which the court having regard to the disturbed H

A **or imbalanced state of mind of the accused at the time of commission of offence, thought it fit not to impose the death sentence. [379-E, F]**

Shamhul Kanwar **v.** *State of U.P.,* **[1995] 4 SCC 430;** *Lehna* **v.** *State of Haryana,* **[2002] 3 SCC 76;** *Om Prakash* **v.** *State of Haryana,* **[1999] 3 SCC 19 and** *Francis* **v.** *State of Kerala,* **[1975] 3 SCC 825, referred to.**

B

3.7. This act of killing R with no apparent motive to derive an advantage or gain out of it reveals the mental state of the appellant. Such an abnormal and desperate behaviour on the part of the appellant unfolds his attitude and personality. The picture of the appellant which emerges is of an over-sensitive, over-emotional, self-centred and hot headed person C **utterly lacking in restraint and foresight. It seems that he had almost a paranoid tendency, which had driven him to the extreme step of taking away the life of his superior official without thinking of the obvious consequences that would befall on him and his family. The feelings of humiliation, mental tension, indignation and retribution towards his officer** D **have apparently overtaken him. The result was that he acted in a state of extremely perturbed and imbalanced mind. The killing of two of the policemen without premeditation and without any motive whatsoever further reveals that these acts were done out of panic reaction and in a state of frenzy. It is not the case where it can be said with certitude that the murderous attacks were 'diabolical in conception and cruel in** E **execution'. Nor can it be said that "the nature of the crime and the circumstances of the offender revealed that the criminal is a menace to the society" or that the "collective consciousness of the community would be shocked" if the death sentence is not inflicted in the instant case. Above all, the sentence of death has been haunting him for considerable time.**

F **[379-B-D; 380-A-C]**

Bachan Singh **v.** *The State of Punjab,* **[1980] 2 SCC 684;** *Allauddin Mian* **v.** *State of Bihar,* **[1989] 3 SCC 5 and** *Randhir Basu* **v.** *State of West Bengal,* **[2000] 3 SCC 161, referred to.**

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 190 of 2002.

From the Judgment and Order dated 25.9.2001 of the Patna High Court in Crl.A. No. 165 of 2000(DB).

H Amrendra Sharan and Krishnanand Pandeya for the Appellant.

H.L. Aggarwal and Kumar Rajesh Singh for the Respondent. A

The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J. In the morning hours of 9th April, 1996, in the precincts of a police camp stationed near a village in Bihar, a macabre incident similar to a terrorist operation happened. The accused-a B policeman deployed in the police picket to contain the terrorist activities, unleashed terror by indulging in a firing spree killing three of his colleagues instantaneously. After trial, he has been condemned to death. He is now before this Court contesting the conviction and sentence.

The prosecution case is as follows: C

The appellant was one among the police personnel deployed at Narhi police camp, close to Chakardah village, Bhojpur district of Bihar. He was a Constable who was also trained as Black Commando. He was aggrieved by the action of Hawaldar Ram Pandey reprimanding him on one occasion for D his carelessness in leaving the rifle on the ground floor while sleeping on the terrace and on another occasion for listening to radio while on duty and for making adverse entries in the Guards' register for these lapses. At about 8 a.m. on 9th April, 1996 when Shri Ram Pandey was sitting on a cot and meditating, the appellant suddenly took the sten-gun of Ram Pandey which was kept on the cot and shot him dead. Shri Chandrashekhar Singh, S.I. who E was taking bath at that time near the water pump questioned him. He too was not spared. The accused fired the shots from his sten-gun and at that juncture, his other colleagues including Hawaldar Bhagirath Singh ran for safety. The appellant fired the shots at the fleeing Bhagirath Singh, chasing him upto the nearby onion field separated by a mud wall. After firing at him, the magazine F of the sten-gun which the accused was handling got exhausted. He took out the sten-gun of Bhagirath Singh and resorted to 'burst' firing. All the three persons succumbed to the gunshot injuries instantaneously. Thereafter, when the appellant threw away both the sten-guns and wanted to escape with his SLR, he was overpowered by the police Constables.

G

On information, the company Commander (PW7) and the S.I. of police, Udwantnagar Police Station (CW1) rushed to the police picket and recorded the statement of PW3 on the spot and the same was treated as F.I.R. He took up investigation, recorded the statements of other witnesses, prepared the inquest report and sent the three dead bodies to the hospital for postmortem examination. He seized five numbers of empty shells of cartridges from a H

A spot close to the place where Ram Pandey was shot and 18 numbers of empty shells of cartridges on the road adjoining the police picket. He also seized bloodstained earth. The ballistic expert, to whom sten-guns of the deceased Ram Pandey and Bhagirath Singh were sent for examination, opined that they were in working order and to that effect sent a report to the I.O. Charges were laid under Section 302 IPC read with Section 27 of the Arms Act.
B

The appellant took the defence that some extremists made their way into the police picket on 9th April, 1996 and indiscriminately fired at the police personnel, as a result of which the victims died. In support of this plea, the accused examined five defence witnesses. The defence version was not
C accepted by the trial Court as well as the High Court. Both the Courts relied on the account of the eyewitnesses who were present at the picket on the fateful day and returned the finding of guilt. The appellant was convicted under Section 302 IPC and also under Section 27 of the Arms Act and was sentenced to death. The conviction and sentence was upheld and the reference made by the trial Court was accepted by the High Court at Patna. The appeal
D filed by the accused was dismissed. This court granted special leave to appeal and stayed the execution of the death sentence.

Before proceeding further, we shall briefly refer to the postmortem reports (Exhibits 5 to 5/2) and the evidence of P.W.6-the Medical Officer attached to Sadar hospital who held the postmortem on the very day of
E occurrence. He noticed eight injuries which were in the nature of lacerated wounds on the dead body of Ram Pandey. According to him, all the injuries were caused by firearm. He found a bullet in the chest wall in the back portion. He described the wounds of entry on the left side of the neck, upper part of the back and chest and corresponding wounds of exit. On dissection
F of the skull, he noticed brain and meninges damaged and lacerately wounded on the left side of the scalp and medulla. Right lung was also severely damaged. PW6 opined that the death occurred by reason of damage to brain, lungs and chest caused by the shots of the firearm.

On the dead body of Chandrashekhar Singh, PW6 found as many as
G nine injuries caused by the firearm. The most serious amongst them were a lacerated wound on the right side of front parietal scalp which was the wound of entry and a lacerated wound of exit on the left side of occipital scalp through which brain substance was protruding. Another serious wound was a round wound on right side of chest which was the wound of entry. He
H stated that the death occurred on account of damage to vital organs, namely,

brain, neck, spinal chord and right lung. A

PW6 found five injuries on the dead body of Bhagirath Singh which were in the nature of round piercing wounds and round lacerated wounds. He gave description of the various wounds of entry and exit. The wounds of entry were on the right shoulder and behind the right ear etc. On dissection, he found brain matter and meninges torn and lacerately wounded along the B passage of the firearm. Chest was found damaged on both sides. The heart was found pierced and damaged. The doctor opined that the damage to vital organs, namely, brain, heart and lungs caused by firearm led to his death. PW6 clarified that from the nature of entry wounds, it can be said that firing took place from close range. C

The death on account of serious injuries on vital parts inflicted by the firearm has thus been established by medical evidence. Four eyewitnesses to the occurrence are the Constables—PWs 1 to 3 and 5. PW7 was the Company Commander of the police picket who on hearing the sounds of firing and receiving information through PW1, came to the scene of occurrence D immediately in the company of Sub-Inspector. The Station House Officer in charge of Udwant Nagar police Station who also reached the spot immediately and took up investigation, was examined as Court Witness No.1.

We find, just as the High Court did, that the version of the eyewitnesses who were all present at the camp at the crucial time is quite consistent and E reliable. They have given an account of the incident lasting for a few minutes leading to the death of three police personnel. They have also spoken to the motive, viz., the reprimand and adverse entries made in the register. There was no reason for the fellow policemen to invent a story to implicate the accused against whom none of them had any animosity. If, according to the F accused, some armed outsiders were responsible for this incident, the fellow policemen would not have gone to the extent of suppressing that incident and conspiring together to implicate the accused. Some discrepancies in regard to the position from which the accused aimed his firearm at the victims were pointed out. It was then pointed out that no one else was injured, though according to the prosecution, the accused resorted to indiscriminate firing. It G was further commented that PW3 who was on sentry duty with a gun should have fired at the appellant if he was the real culprit. Then, it was contended that no witness from the village was examined by the prosecution, though the incident took place in the vicinity of the village. Similar contentions were negatived by the High Court. We do not think that by any reasonable standards, H

these factors would make a dent on the overwhelming prosecution evidence. So also, certain omissions of the investigating officer have been projected to attack the prosecution version. For instance, it was pointed out that the ballistic expert was not examined to elicit the fact that the empty cartridges recovered could have been fired from the particular sten-gun and the pellets found in the bodies of Ram Pandey and Bhagirath singh were traceable to the particular sten-gun. Moreover, the bloodstained earth and the shirt of accused should have been sent for chemical analysis and the reports obtained. These lapses in the investigation, for whatever reason it be, do not, to any material extent, affect the veracity of the most natural eyewitnesses who have given a consistent version and who came forward with this version at the earliest opportunity.

Amongst the eyewitnesses, it appears that PW2 could not have been in a position to see the attack on the first victim, namely, Ram Pandey because he was cooking meal at the mess—a little away from the scene. He stated that after hearing the sound of firing, he and two others (not examined) hid themselves behind the wall. So also PW5, who was urinating at a corner could not have witnessed Ram Pandey being shot by the accused. He stated that the place where Ram Pandey was sitting was not visible from the place he was urinating. However, it was stated that after hearing the sound of firing from the guard room, he looked towards that direction and observed that Ram Pandey was killed by the accused and thereafter he aimed at Chandrashekhar Singh and after shooting him dead the accused targeted Bhagirath Singh who was running away. It may be that some of the witnesses could not have seen Ram Pandey being shot and they would have realized it soon after the firing. But they would have certainly seen the gun-wielding accused on the offensive and his further acts of shooting. They found dead bodies of the three victims within minutes after the firing stopped. Even though they may not be direct eyewitnesses in that sense, their evidence about hearing the sound of gunfire and noticing the action-packed movements of the accused with the gun in his hand immediately thereafter lends strong support to the other eyewitnesses' account. It also serves as clinching circumstantial evidence to fix up the responsibility for the ghastly act on the accused and accused alone.

It was contended that nothing was mentioned in the F.I.R. given by PW3 about the attack on Bhagirath Singh. However, he did mention that soon after the appellant was nabbed, they saw the dead body of *Hawaldar* Bhagirath Singh on the field situate towards the north of the camp. May be, he would not have actually seen the accused firing at Bhagirath Singh because

he (PW3) hid behind the wall after the assassin's bullets fell on Chandrashekhar Singh and therefore omitted to mention the same in the F.I.R. Even then, the prosecution case does not suffer. PW3's evidence unfolds the inextricable link between the death of Bhagirath Singh and the firing resorted to by the appellant. Moreover, there is other evidence which supports the prosecution case of the attack on Bhagirath Singh by the appellant. We have the evidence of PWs 1 and 4 who were sitting on a cot along with the deceased Bhagirath Singh just before the incident. PW1 stated that when they were running away for safety, Bhagirath Singh—who was behind, received gunshot injury and he hid himself behind the mango tree. PW4 also gave almost the same version. Elaborating the details of attack on Bhagirath Singh, PW4 stated that the accused shot at him at the ridge of the onion field and he fell down at that place. He also clarified that he took shelter behind the wall situated towards east of the onion field and he was able to see the occurrence though the accused could not see. Above all, there is the evidence of all the witnesses-PWs 1 to 5 that they found the dead body of Bhagirath Singh on the onion field immediately after the firing from the assassin's gun stopped and he was overpowered. The evidence therefore establishes beyond reasonable doubt that none other than the appellant killed *Hawaldar* Bhagirath Singh with the shots fired form the sten-gun. The probability of Bhagirath Singh, even after receiving one or two shots by then, scaling the low mud wall and reaching the onion field cannot be ruled out.

The learned counsel for the appellant next contended that according to the eyewitnesses' account, Bhagirath Singh was shot while he was running away, but there was a lacerated wound on the front of the body i.e., chest. As pointed out by the High Court, there was every possibility of Bhagirath Singh facing towards the accused at one stage or the other. It is not reasonable to expect that the scared eyewitnesses would be able to give a meticulous and precise account of the details of shots that landed on Bhagirath Singh. It was then contended that the charring at the entry wounds 1,3 & 5, found on the dead body of Bhagirath Singh indicated that the firing was done from close range as stated by the doctor. But, the dead body of Bhagirath Singh was found in the onion field which was at some distance from the police picket. According to the learned counsel, it indicated that the firing could not have been done from a close range. From the mere fact that Bhagirath Singh collapsed after reaching the adjacent fields does not mean that he did not receive bullet injuries from a close range. The Court cannot expect the panic-stricken eyewitnesses to come forward with a vivid account of the distance

A from which each one of the shots was fired at. The possibility of firing from close range cannot be ruled out.

The defence witnesses' account was rightly disbelieved by the trial Court and the High Court. First of all, it must be noted that these witnesses never came forward to give their version before the police. There is no B explanation as to why they should, as law abiding citizens, withhold the important information. The defence witnesses 1 to 5 came forward with an omnibus version that ten to fifteen persons armed with rifles and guns came from the east of the police picket and began firing after surrounding the picket. Some of them stated that they noticed some persons inside the camp C falling to ground after receiving the shots and further stated that they noticed some policemen running away. According to the witnesses, none of those alleged miscreants could be identified by them. The trial Court at paras 18 and 19 discarded their evidence on a critical analysis and probabilities. The discussion of the High Court is at paragraph 22. We are in agreement with the trial Court and the High Court that the defence evidence is not trustworthy. D

In the light of the overwhelming and unimpeachable evidence, it has been established beyond shadow of doubt that the appellant killed the three policemen, namely, Ram Pandey (*Hawaldar*), Chandrashekhar Singh (*S.I.*) and Bhagirath Singh (*Hawaldar*) with the sten-gun picked up from the 'chowki' of Ram Pandey. The conviction of the appellant under Section 302 E IPC is therefore upheld.

"Guilt once established, the punitive dilemma begins" per Krishna Iyer J. in [1974] 4 SCC 443 and this dilemma reaches its peak when the magnitude of the crime is enormous, viewed from the angle of number of casualties F inflicted by the offender. In *Bachan Singh's* case [1980] 2 SCC 684, death sentence has passed the test of constitutional validity. It has come to stay as part of our law of penology. At the same time, it hardly needs to be emphasized that the capital punishment ought to be imposed only in very rare and exceptionally grave cases of murder. 'Scrupulous care and humane concern' should inform the approach of Court. The view held by this Court in *Sheikh* G *Ishaque* v. *State of Bihar,* [1995] 3 SCC 392 apart from other cases is that the number of persons killed, though a factor to be taken into account, should not be the sole consideration to condemn the criminal to death. A delicate balancing of various factors such as those which give an insight into the state of mind, motivation, attitude and propensities of the accused has to be while H at the same time, keeping in view the larger societal interests. The principle

that in case of murder, life imprisonment is the normal rule and the death sentence should be handed down in rarest of rare cases should of course be uppermost in the mind of the judge. Though no hard and fast rules can be laid down, *prima facie*, a dangerous criminal who has indulged in the killing spree in an extremely brutal and horrendous manner to achieve his own selfish gains or to satisfy his physical lust or to disrupt the public order and peace should be considered to be a menace to society and he be subjected to the extreme punishment of death. However, even in such cases, mitigating circumstances are not out of place. While death sentence ought to be imposed in the rarest of rare cases, so long as the law provides for it and such law has withstood the judicial scrutiny, the Court cannot make it a dead letter and refuse to impose death sentence where nothing short of it would be appropriate and adequate. The justification behind death sentence is to respect the collective conscience of the society in relation to crimes of extreme brutality and terrorism and to impart security to the society. The element of deterrence is of course inherent in it. As pointed out in *Allauddin Mian*'s case [1989] 3 SCC 5 death sentence serves a three fold purpose (i) punitive (ii) deterrent and (iii) protective.

The nature of the crime, the circumstances of the criminal and the impact of the crime on the community are broadly the considerations that ought to be kept in view by a Court called upon to choose between the death sentence and the life imprisonment. At the same time, the circumstances in which the death sentence can be imposed cannot be placed in pigeon holes. The enumeration of aggravating and mitigating circumstances in the case of *Bachan Singh* v. *State of Punjab,* [1980] 2 SCC 684 is not exhaustive and is not intended to fetter the judicial discretion. This Court guardedly said that they are broad indicators or guidelines and that it did not propose to formulate rigid standards *vis-a-vis* sentencing process. Each one of the enumerated factors cannot be viewed in isolation. A holistic view has to be taken on the facts presented in each case. In this context, we may quote the pertinent observations made by Sarkaria J. speaking for the Constitution Bench in *Bachan Singh's* case:

> "As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, *the Court must pay due regard both to the crime and the criminal.** What is the relative weight to be given to

*Emphasis supplied.

A the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the B perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the C proportion of extreme depravity that "special reasons" can legitimately be said to exist."

(emphasis supplied)

It was then pointed out that:

D "No exhaustive enumeration of aggravating circumstances is possible. But this much can be said that in order to quality for inclusion in the category of "aggravating circumstances" which may form the basis of 'special reasons' in Section 354 (3), circumstances found on the facts of a particular case, must evidence *aggravation of an abnormal* E *or special degree*".

(emphasis supplied)

In *Machhi Singh* v. *State of Punjab,* [1983] 3 SCC 470, this Court after referring to the guidelines adverted to in *Bachan Singh's* case applied the following working test to reach the conclusion whether a particular case F warrants death sentence:

"(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

G (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?"

Now, we shall turn our attention to the relevant facts and circumstances having a bearing on the question of sentence. The appellant was aggrieved H

by the action of *Hawaldar* Ram Pandey in taking him to task for his lapses or indisciplined behaviour. Even then, no sensible person caring for his own future and the future of his family would risk to avenge the alleged wrong done to him by taking recourse to the extreme step of killing the Hawaldar openly in the presence of all his colleagues. This act of killing Ram pandey with no apparent motive to derive an advantage or gain out of it reveals the mental state of the appellant. Such an abnormal and desperate behaviour on the part of the appellant unfolds his attitude and personality. We get a picture of the appellant as an over-sensitive, over-emotional, self-centred and hot headed person utterly lacking in restraint and foresight. In fact, PW7's evidence does throw light on these characteristics of the appellant, when he describes the accused as '*Manbhadhu*' and '*Manshokh*'. It seems to us that he had almost a paranoid tendency which had driven him to the extreme step of taking away the life of his superior official without thinking of the obvious consequences that would befall on him and his family. The feelings of humiliation, mental tension, indignation and retribution towards his officer have apparently overtaken him. The result was that he acted in a state of extremely perturbed and imbalanced mind. In fact, one of the witnesses, namely PW4 spoke to the fact that the accused was very much disturbed after the action initiated by the deceased Ram Pandey.

The mental condition or state of mind of the accused is one of the factors that has been legitimately taken into account in various cases and that can be taken into account in considering the question of sentence. There are various cases in which the Court having regard to the disturbed or imbalanced state of mind of the accused at the time of commission of offence, thought it fit not to impose the death sentence vide: *Shamshul Kanwar* v. *State of U.P.*, [1995] 4 SCC 430, *Lehna* v. *State of Haryana,* [2002] 3 SCC 76 and *Om Prakash* v. *State of Haryana,* [1999] 3 SCC 19.

In *Francis* v. *State of Kerala,* [1975] 3 SCC 825, The following pertinent observations were made:

> "Nevertheless, in deciding whether the case merits the less severe of the two penalties prescribed for murder a history of relations between the parties concerned, the background, the context, or the factual setting of the crime, and the strength and nature of the motives operating on the mind of the offender, are relevant considerations. The state of feelings and mind produced by these, while insufficient to bring in an exception may suffice to make the less severe sentence

A more appropriate."

The killing of two other police men without premeditation and without any motive whatsoever further reveals that these acts were done out of panic reaction and in a state of Frenzy. It is not a case where it can be said with certitude that the murderous attacks were "diabolical in conception and cruel B in execution' as pointed out in *Bachan Singh's* case (supra). Nor can it be said that "The nature of the crime and the circumstances of the offender reveal that the criminal is a menace to the society"* or that the "collective conscience of the community would be shocked" if the death sentence is not inflicted in the instant case. Above all, the sentence of death has been haunting C him for considerable time.

In conclusion we would like to say that the facts of the case on hand are quite close to the facts of *Randhir Basu* v. *State of Bengal,* [2000] 3 SCC 161 and *Alauddin Mian* v. *State of Bihar,* [1989] 3 SCC 5 in which the Court did not choose to impose death sentence in multiple murder cases. The D indiscriminate killing of fellow-policemen resorted to by a member of disciplined force is no doubt an aggravating factor but it is offset by other mitigating circumstances discussed above and we are, therefore, inclined to hold that death sentence is not the appropriate sentence in the instant case. We, therefore, set aside the judgment under appeal insofar as it has confirmed the sentence of death while maintaining the conviction under Section 302 E IPC. The appellant is hereby sentenced to life imprisonment and a fine of Rs. 1,000 and in default of payment of fine to undergo imprisonment for a period of six months.

The conviction under Section 27 of the Arms Act cannot however be F sustained. The gravamen of the second charge framed against the appellant is that he used the sten-gun and SLR for the unlawful purpose of killing the three persons. There is no evidence to the effect that the weapon used, namely Sten-gun, answers the description of 'prohibited arms' within the meaning of Section 2(1)(i) of the Arms Act. The report of the Sergeant Major to whom the weapons were sent was only to the effect that they were in working G condition. There was no discussion whatsoever either by the trial Court or by the High Court in regard to the offence under Section 27. We are not inclined at this stage to probe further and address the question whether the sten-gun of Ram Pandey which was used in the commission of the crime is a prohibited

H * *vide* Allauddin Mian v. State of Bihar, [1989] 3 SCC 5.

arm within the meaning of Section 2(1)(i) though, in all likelihood, it may be.it is not appropriate to convict the appellant under Section 27(3) in which the extreme punishment of death is provided for. Hence the conviction of the appellant under Section 27 of the Arms Act, 1959 is hereby set aside. A

Resultantly, the appeal is allowed to the extent set out above.

B.K.M. Appeal allowed.