STATE OF U.P.
v.
OM PRAKASH
(Criminal Appeal No. 1187 of 2006)

JANUARY 13, 2015

[SUDHANSU JYOTI MUKHOPADHAYA AND N.V. RAMANA, JJ.]

Penal Code, 1860: ss.302/149 – Brutal murder of 5 persons and grievous injury by sharp edged weapons/lathis to 7 persons – All the accused related to each other heavily armed with deadly weapons attacked the victims to retaliate their defeat in the village elections – When the victims tried to save themselves by taking shelter in a hut, it was set on fire – Victims who tried to run away were also assaulted – Incident occurred at 5 P.M. in sufficient light – Evidence of injured eye witnesses was corroborated by independent witness and medical evidence – Presence of witnesses and identification of accused by victims not disputed – The nature of injuries and the recovery of weapons from the accused showed that it was a massive untoward incident and the accused actively participated in the crime – Prosecution proved guilt of accused beyond reasonable doubt – Conviction upheld – As regards sentence, the accused were on a rampage and running berserk with the only sense triggered by the thrust of avenge – The brutality of the murder must be seen along with all mitigating factors – Though the incriminating circumstances proved by the prosecution unerringly led to the guilt of the appellant but after balancing all the mitigating and aggravating circumstances of the case, the case does not fall under the category of the rarest of the rare cases – There is hope for their reformation and rehabilitation – Also, the repetition of such criminal acts at their hands making the society further vulnerable is also not *apparent – Considering the nature of offence, the High Court was right in modifying the death sentence awarded by the trial court to that of imprisonment for life – Sentence/Sentencing.*

Dismissing the appeals of the State and the accused, the Court

HELD: 1. The criminal intention of the accused was proved beyond reasonable doubt. When wife of accused No. 7 fought the election of Gram Pradhan in which she lost, the group of accused persons alleged that no voting has been made by the victim side in favour of wife of accused No. 7 and threatened the victim side with dire consequences. Accordingly, to take revenge of that failure in elections, the accused party felt it a suitable occasion to attack the complainant party on the day of Holi, in which process five innocent persons were done to death mercilessly besides injuring several others. The depositions of prosecution witnesses showed accused No. 7 was throughout instigating the accused party to assault the victim party, other accused participated in the crime. When the helpless victims took shelter in a Kothari (small room), the accused, in pursuit of their avenge, tried to cut the doors of Kothari and having failed to do so, they poured kerosene oil on the chappar and burnt the Kothari leading to the burnt injuries and death of victims. The nature of injuries and the recovery of weapons from the accused make it clear that it was a massive untoward incident and the accused had actively participated in the crime. All the accused were related to each other forming a strong group heavily armed with deadly weapons and attacked the victims to retaliate their defeat in the village elections. The plea taken by the accused that it is difficult to identify the accused at the spot when there was participation of about 35 persons in the crime as alleged, cannot be accepted for the reason that admittedly the incident occurred at 5.00 p.m. in the month of March in sufficient light and undisputedly, the accused and the

victims knew each other very well. PW1, PW2, PW4 were A
injured eyewitnesses whose depositions were corroborated with the evidence of PW3, another independent eyewitness. These witnesses in clear and categorical terms explained the way in which the accused persons committed the crime. Thus the presence of B
witnesses at the time of occurrence and identification of accused by the victims cannot be disputed. The recovery of deadly weapons from the possession of the accused strongly affirmed the role played by each of them in the deadly act. Therefore, the prosecution proved the guilt of C
the accused beyond all reasonable doubts. [Paras 10, 19, 21, 22] [676-C-E; 682-D-E; 683-B-E, F-H]

Machhi Singh v. State of Punjab (1983) 3 SCC 470: 1983 (3) SCR 413; *Bachan Singh v. State of Punjab* (1980) 2 SCC 684; *Ram Pal v. State of U.P.* (2003) 7 SCC 141 – D
relied on.

2. Before opting for the death penalty, the circumstances of the offender require to be taken into consideration along with the circumstances of the crime E
for the reason that life imprisonment is the rule and death sentence is an exception. The penalty of death sentence may be warranted only in a case where the court comes to the conclusion that imposition of life imprisonment is totally inadequate having regard to the relevant F
circumstances of the crime. The balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating G
circumstances before the option is exercised. The prosecution has alleged that to take revenge on the villagers for not casting their votes in favour of the wife of accused No. 7 who had lost the election, the accused party attacked the victims. The elections to the post of H

Gram Pradhan were held about ten months before the date of incident. Considering the long time gap between the time of elections and the date of incident, it cannot be said that the accused attacked the victims with the clear motive of taking revenge for not voting in their favour in the elections. The clash between two groups of a village cannot be ascribed as enormous in proportion. Though the incriminating circumstances proved by the prosecution unerringly lead to the guilt of the appellant/ accused, but after balancing all the mitigating and aggravating circumstances of the case, this case does not fall under the category of the rarest of the rare cases. There is a ray of hope for their reformation and rehabilitation. The High Court was right in modifying the death sentence awarded by the trial judge to that of imprisonment for life. [Paras 28, 33 to 35] [685-D-F; 687-B-D; 688-B-E]

Neel Kumar v. State of Haryana **(2012) 5 SCC 766: 2012 (5) SCR 696;** *Harish Mohandas Rajput v. State of Maharashtra* **2011 (12) SCC 56: 2011 (14) SCR 921;** ***R. Rajagopal v. State of Tamilnadu*** **AIR 1995 SC 264: 1994 (4) Suppl. SCR 353;** *Santosh Kumar Singh v. State* **(2010) 9 SCC 747: 2010 (13) SCR 901 – relied on.**

Case Law Reference :

1983 (3) SCR 413	**Relied on**	**Para 12**
(1980) 2 SCC 684	**Relied on**	**Para 18**
(2003) 7 SCC 141	**Relied on**	**Para 18**
2012 (5) SCR 696	**Relied on**	**Para 28**
1983 (3) SCR 413	**Relied on**	**Para 28**
(1980) 2 SCC 684	**Relied on**	**Para 28**
2011 (14) SCR 921	**Relied on**	**Para 29**

1994 (4) Suppl. SCR 353	**Relied on**	**Para 30**
2010 (13) SCR 901	**Relied on**	**Para 31**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1187 of 2006.

From the Judgment and Order dated 23.09.2005 of the High Court of Judicature at Allahabad in Criminal Appeal No.713 of 2004.

WITH

Crl. A. Nos. 1186 of 2006 and 773 of 2007

Raj Singh Rana, Anurag Singh, Anil Kumar Mishra, Narendra Singh Yadav, K. L. Janjani, Harbans Lal Bajaj for the Appellant.

Gaurav Bhatia, AAG, Ameet Singh, Alka Sinha, U. Jaiswal, Anuvrat Sharma for the Respondent.

The Judgment of the Court was delivered by

N.V. RAMANA, J. 1. These appeals arise out of a common impugned judgment dated 23rd September, 2005 of the Division Bench of High Court of Judicature at Allahabad in various criminal appeals arising from the judgment and order dated 23rd January, 2004 passed by the Additional District & Sessions Judge (Special Judge, SC/ST Act), District Pilibhit, Uttar Pradesh.

2. An FIR was lodged by the Complainant Lalta Prasad at the PS Bukhera, District Pilibhit, U.P. on 10th March, 2001 alleging that while he along with Hem Raj, Moti Ram Kundan, Shiv Charan Lal S/O Hai Shankar and his father Devi Ram were sitting at his crusher and celebrating the festival of Holi along with relatives and friends, the accused No. 7 Ram Swaroop S/O Hori Lal appeared there with the company of other accused carrying different types of arms and attacked them. The motive

A behind their attack was that about ten months prior to the incident, Imarati Devi, wife of accused No. 7 (Ram Swaroop) had contested and lost the election for the post of Gram Pradhan and Ram Swaroop (accused No. 7) had threatened the villagers to bear the brunt for not getting his wife elected to
B the post. He, therefore, wanted to take revenge on the villagers. Other accused who accompanied Ram Swaroop were Jagan Lal (accused No. 2) armed with a gun, Ram Bharosey (accused No. 32) carrying Pauniya, Ashok Kumar (accused No. 31), Kunwar Sen (accused no.26), Lala Ram (accused no.22) and
C Ram Swaroop s/o Dal Chand (accused no.2) all armed with Country made pistols. Pati Ram (accused no.12), Hori lal (accused no.28), Om Prakash (accused no.1), Ram Chandra (accused no.11), Bhagwan Swaroop (accused no.13) , Lalta Prasad (accused no.8), Bhagirathi (accused no.3), Budhsen
D (accused no.9), Baljeet (accused no.10) and Nanhey Lal (accused no.14) were armed with *banka*. Other accomplices were Dal Chand (accused no.29) armed with Suja, Shree Krishna (accused no.18), Mahesh (accused no.17), Dharamveer (juvenile), Lalman (accused no.15), Chetram
E (accused no.24), Kalicharan (accused no. 23), Gaya Deen (juvenile, died during trial), Nanhoo Lal (accused no. 21), Kanhai Lal (accused no.27), Nokhey Lal S/O Ram Dayal (accused no.19) and Om Prakash (accused No. 16) who were carrying lathis in their hands.

F 3. According to the complainant, Ram Swarup (accused No. 7) exhorted other accused to kill the complainant party. Out of fear, the complainant with his family and friends ran helter skelter to save their lives. The accused party chased them assaulted them indiscriminately and opened fire. When some
G of the members of the complainant party entered into a *kothari* (a small room in the field) to save themselves from the ruthless firing of accused party, the women accused Maya Devi (accused No. 4), Amriti Devi (accused No. 5) and Sunita Devi (accused No. 6) carrying kerosene oil with them, poured the
H same on the *khaprail* of the *Kothari* and Ram Swaroop

(accused no. 7) set it ablaze from the front side and Uma A
Shankar (accused No. 34) set the fire from back side. Moti Ram, a victim, tried to jump from the roof of the *Kothari* but he was shot by Ram Swaroop (accused No. 7) resultantly he fell in the fire. Similarly, other victims Hem Raj, Chunni Lal and Mahendra Pal tried to come out of the Kothari, but they too were B
shot. When the accused left the place, the complainant found Mahendra Pal lyind dead in a drain, Moti Ram was lying in the Kothari in a burnt condition. The dead bodies of Hem Raj and Chunni Lal were found in the fields.

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4. Having registered the case, SHO P.K. Sharma (PW-14) rushed to the place of occurrence, recorded statements and prepared site plan. The police then recovered 3 empty cartridges, prepared recovery memo (Ext. Ka. 109), prepared inquest reports of the deceased, collected blood stained and plain earth and sent the bodies for postmortem. He then D
arrested the accused Dharamveer (juvenile), Maya Devi and Mahesh. Seven other accused Jangan Lal, Narain, Ram Bharose, Budhsen, Bhagirath, Baljeet and Nanhey Lal were also arrested immediately and weapons were recovered from their possession. On 17th March, 2001 police arrested seven E
more accused persons, namely, Lalman, Kali Charan, Gaya Deen, Nanhoo Lal, Kanhai Lal, Nokhey Lal and Rambhadur and lathis and ballams were recovered from them. On the next day, ten more accused including accused No. 7 (Ram Swaroop) were arrested and a 12 bore No. 4236 (gun) with three live F
cartridges were recovered from his possession. One 12 bore country made Pauniya and one live cartridge were reovered from Uma Shankar. A country made pistol and one live cartridge were recovered from the possession of Ashok Kumar. From the possession of Pati Ram, Ram Chandra, Bhagwat G
Swaroop and Lalta Prasad bankas were recovered. Lathis were recovered from Chet Ram, Om Prakash S/O Hira Lal. While accused Lala Ram was arrested on 20th March, 2001, Ram Swaroop S/O Dal Chand, Kunwar Sen, Shree Krishna and Om Prakash S/O Mansha Ram surrendered in Court. Some H

more weapons were recovered at the instance of Ram Swaroop S/O Dalchand, Kunwar Sen and Shree Krishna. Charge-sheet (Ext. Ka. 120) was submitted after investigation and the case was committed to the Court of sessions.

5. One juvenile accused, namely, Gayadin was stated to be dead and other accused Dharamvir was being tried by the Juvenile Court as he was also found to be Juvenile on the date of incident. The other accused were tried under Sections 302/149 IPC, Sections 148, 436/149 IPC, 307/149 IPC, 506 IPC, Section 7 of the Criminal Law Amendment Act and Section 4 read with Section 25 of the Arms Act. In order to prove its case, the prosecution examined 15 witnesses out of whom Lalta Prasad (PW 1), Leelawati (PW 2), Ved Prakash (PW 3) and Hari Shankar (PW 4) are ocular witnesses.

6. Learned Trial Judge after full-fledged trial came to the conclusion that accused Ram Swarup, Jaganlal, Ram Bharose, Uma Shankar, Tulsi, Narayan, Ashok Kumar, Kunwarsen, Lalaram, Ram Swarup, Pati Ram, Hori Lal, Om Prakash S/O Mansharam, Ram Chandra, Bhagwat Swarup, Lalta Prasad, Bhagirath, Budh Sen, Baljit, Nanhe Lal, Dalchand, Sri Krishna, Mahesh, Dharamvir, Lalman, Chetram, Kalicharan, Gayadin, Nanhulal, Kanhailal, Nokhelal, Ram Bhadur, Om Prakash, Ram Swarup S/O Kanhai Lal, Smt. Maya Devi, Smt. Imrati Devi and Smt. Sunita Devi are guilty for the offences under Sections 147, 148, 436/149, 302/149, 307/149 and Section 506, IPC, Section 7 of the Criminal Law Amendment Act and Section 4 read with Section 25 of the Arms Act. They were accordingly sentenced with 2 years R.I. for the offence under Section 148 IPC, 10 years R.I. under Section 436/149 IPC, 10 years R.I. under Section 307/149 IPC, 2 years R.I. for the offence under Section 506 IPC, 6 months R.I. and one year R.I. for the offences punishable under Sections 7 of the Criminal Law Amendment Act and Section 4/25 of the Arms Act, respectively. Accused Ram Swarup S/O Horilal, Jagan, Pati Ram, Om Prakash S/O Mansha Ram, Ram Chandra, Bhagwat Swarup, Lalta Prasad, Bhagirath, Budhsen, Baljit, Nanhey Lal, Ram Swarup S/O

Kanhai Lal were held guilty of the offence under Section 302/ 149, IPC. The trial Court thus imposed death penalty against those 12 accused. All the sentences awarded to the accused were however directed to run concurrently.

7. Against their conviction and sentence, the accused approached the High Court in various Criminal Appeals while the State preferred Criminal Reference for confirmation of death sentence. The Division Bench of the High Court affirmed the conviction of the accused and upheld the sentence awarded by the Trial Court against all the accused except accused Nos. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14 and 20. The High Court modified the sentence of death to these accused (12 in number) to the imprisonment for life opining that the offence committed by them does not fall under the category of rarest of rare cases. Not satisfied with the judgment of the High Court, the State as well as accused filed appeals before this Court. While the State preferred its appeal for confirmation of death sentence against those 12 accused, the accused filed appeals against their conviction.

8. We have heard Mr. Gaurav Bhatia, learned Additional Advocate General for the State of U.P. and Mr. Anurag Singh, learned counsel for the accused.

9. Learned Additional Advocate General appearing for the State strongly contended that the High Court has utterly failed to take into consideration the magnitude of the offence committed by the accused and without justification commuted the death sentence correctly imposed by the Trial Judge into imprisonment for life. He submitted that the learned Trial Judge awarded death sentence to the accused after hearing the counsel for both sides elaborately and after assessing the facts and circumstances of the case in a proper perspective upon reaching to the conclusion that the prosecution has proved the case beyond all reasonable doubts. The High Court could not assess the nature and gravity of the crime in its true magnitude and erred in modifying the death sentence into life

imprisonment. In the light of the law well settled by this Court, giving regard to the magnitude, gruesome and heinous nature of the offence and the manner in which the perpetrators committed the crime, it can be said without any hindrance of doubt that the crime falls in the category of 'rarest of rare' inviting death penalty to the offenders. But, the High Court acted in complete disregard to the law settled by this Court and shown lenience in the matter of sentence which will give rise and foster a feeling of private revenge among the people leading to destabilization of the society.

10. The criminal intention of the accused was proved beyond reasonable doubt. When Imarti Devi, wife of accused No. 7 Ram Swaroop fought the election of Gram Pradhan against Som Wati in which wife of accused No. 7 lost, the group of accused persons alleged that no voting has been made by the victim side in favour of wife of accused No. 7 and threatened the victim side with dire consequences. Accordingly, to take revenge of that failure in elections, the accused party felt it a suitable occasion to attack the complainant party on the day of festival of Holi, in which process five innocent persons were done to death mercilessly besides injuring several others. The inhuman behavior adopted by the accused by creating mayhem in the village and then chasing each of the victims and targeting them to death cannot be pardonable and no less punishment than death is warranted.

11. Learned AAG further contended that the incident did not occur suddenly or at a spur of moment. Instead, it has been established before both the Courts below that respondents committed the offence in a planned manner. When the innocent victims were running to save their lives, the accused chased them by assaulting and firing indiscriminately. The accused threatened the villagers that if any one came to the rescue of the victims, he too will face the same consequences. On account of fear, the villagers had shut their doors and the public life was disturbed. It is thus an exceptional case, an offence against the society where the collective conscience of the

community was shattered by the diabolical acts of the accused exhibiting extreme brutality. It is the duty of the Court to impose ultimate punishment of death sentence in such grave cases.

12. Placing reliance on this Court's Judgment in *Machhi Singh* Vs. *State of Punjab* (1983) 3 SCC 470, learned counsel submitted that the case on hand fulfills the decisive factors specified by this Court viz., (i) motive for commission of murder (ii) anti-social or socially abhorrent nature of the crime (iii) magnitude of crime and (iv) personality of victim of murder. Learned counsel submitted that the existence of rule of law and the fear of imposing capital punishment operates as a deterrent for those who have no scruples in killing others if it suits their ends and insisted that the imposition of death sentence is the only remedy when the acts of the accused are a challenge to the society and the circumstances of the case reveal that it was a cold-blooded murder and the victims were helpless and undefended. In the present case the accused committed the crime in an extremely brutal, gruesome, diabolical and dastardly manner and the acts of perpetrators were extreme indignation of the community. The medical evidence clearly indicates that how brutally the victims were done to death and their body parts were cut down mercilessly. Therefore, imposition of a sentence less than death upon the accused will be a mockery of justice. Learned Additional Advocate General finally submitted that the High Court committed an error in modifying the death sentence into life imprisonment and the same needs to be interfered by this Court so as to restore death penalty on the accused.

13. Learned counsel for the accused advanced the plea that the Trial Court as well as the High Court took a wrong note of the incident and went on sentencing the accused believing the statements of prosecution witnesses. The depositions of prosecution witnesses are entirely tutored and they are not witnesses of truth as it is highly unlikely that an unlawful assembly of about 35 persons joining together carrying deadly weapons and kerosene oil with the sole object of killing

members of one particular family, for the simple reason that they did not vote in favour of their candidate. Generally, when a concerted attack is made by a large number of persons, it is often difficult to determine the actual part played by each of the accused. The entire story of prosecution is based on flimsy grounds so as to implicate political rivals by cooking up a false case against them. Given the importance to the theory of 'common object' in order to attract punishment under Section 149, IPC the Courts below have committed an error in appreciating the fact that the prosecution has failed to establish the role that was actually played by each of the accused which is fatal to the case of the prosecution.

14. Prosecution story is highly improbable for another reason that the 'motive' has not been established beyond doubt to justify the sentences awarded to the accused. It is a sound presumption that every criminal act is done with a motive. The entire incident had occurred on the spur of moment involving many villagers running helter skelter fanatically out of fear of gunshots in which process some of the villagers got injured. In such a situation, it is not possible for anyone to take note of what exactly had happened. Considering the chaotic situation in which the alleged incident was occurred, it is ludicrous and inconceivable that a detailed report could be filed with the police by 8.10 p.m. on the same day that too when the police station is situated at about 7 ½ kilometers from the place of occurrence. Hence the prosecution story is totally unbelieavable.

15. In the first information report, it was alleged that the dead body of Moti Ram was lying in burnt condition inside the Kothari. Later on the same was determined as the dead body of Kundan Lal and not that of Moti Ram. If the eyewitnesses were in a position to recognize the assailants, they would not have committed mistake in identifying the dead body of Kundan Lal. The act of indiscriminate firing was alleged against ten accused persons, but according to the postmortem reports of

Moti Ram and Hem Raj, there was only one firearm injury on each of their bodies. Apart from these two deceased, no other person had received firearm injury. Similarly, the prosecution has alleged that accused Shree Krishna and Gaya Deen had carried Ballams, but there was no ballam injury on the bodies of deceased or injured. Hence, the statements of eyewitnesses are not trustworthy. Based on the statements of those eyewitnesses who could not even identify the dead bodies correctly, a large number of persons were falsely implicated.

16. Another contention advanced by learned counsel for the accused is that the participation of Maya Devi (accused No. 4), Amriti Devi (accused No. 5) and Sunita Devi (accused No. 6) in the crime is not proved beyond reasonable doubt. The prosecution has alleged that these three accused carried kerosene oil with them and poured it on the *chappar* of the Kothari when other accused set it on fire. The allegation cannot be accepted for the reason that when allegedly a number of other accused were holding deadly weapons, carrying of kerosene oil tin by these lady accused on a day of holi festival is highly doubtful. Lalta Prasad (PW 1), prime witness, did not state in his statement under Section 161, Cr.P.C. about these women sprinkling kerosene oil on the chappar of the Kothari. Moreover, some other accused namely Nanhoo Lal, Kanhai Lal, Dal Chand, Hori Lal, Nokhey Lal and Ram Bahadur are very old in age and their participation in such a crime is also doubtful. Hence the learned counsel submitted that the Courts below were wrong in sentencing the accused without extending them the benefit of doubt.

17. Before forming an opinion on the merits of these appeals, it would be apposite to look into the main observations of the Courts below. The Trial Court has, while awarding death penalty after hearing the accused passed the following order:

"Heard accused persons on the point of sentence.

A It has been argued by the learned counsel for the prosecution that in the instant case, five persons have been brutally and gruesomely murdered and burnt by the accused persons and seven persons have been grievously injured by sharp edged weapons and lathis. As many as B 35 accused persons armed with deadly weapons played a bloody and gory holi with the complainant party to avenge defeat in the election of Pradhan in the village. So far as it is clear from the injuries on the persons of the deceased persons that parts of their bodies have been C mercilessly severed and when the victims tried to save themselves by hiding in a *khaprail*, the accused persons set fire to the said *khaprail* and when the helpless victims tried to run to save themselves, the accused persons indiscriminately fired upon them and cut them with the D bankas. In this manner, the instant case comes in the category of rarest of rate cases and hence all the accused deserve capital punishment. In support of his contention, he has relied upon the judgments reported as 1999 Cr.L.J. Page 2873 and 201 Cr.L.J. Page 1462.

E Contrary to above, the learned counsel for the defence has argued that all the accused persons belong to same caste and are poor cultivators. Out of the accused persons, Holi Lal, Dal Chand, Nanu Lal age 70 years, Kanhai Lal aged 90 years, Nokhey Lal aged 80 years and Ram Bahadur F aged 65 years. Hence their cases should be considered sympathetically while awarding any sentence to them.

It is correct that all the accused persons armed with deadly weapons like rifles, paunias, country made pistols, G ballams, sooja and lathis had attacked helpless and innocent persons to avenge defeat in the elections of the village and had attacked them at the time when they were celebrating the holi festival and when the poor victims tried to save themselves and hid in a *khaprail* and shut the doors from inside, the accused persons first tried to break

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the doors and when they failed to break the doors, the accused persons poured kerosene oil on the *khaprail* and set the same on fire. As a result whereof Kundan Lal was burnt to death and when other persons came out of the Khaprail and ran to save themselves, the accused persons cut them with bankas and as a result whereof Mahindra Pal, Moti Ram, Hem Raj and Chunni Lal were murdered and killed brutally. Not only this, Lalta Prasad, Hari Shankar, Lilawati, Ganga Ram, Devi Ram, Smt. Kishori Devi and Smt. Atar Kali also received grievous injuries on their persons. It was their sheer luck that they saved themselves, otherwise, the accused persons had left no stone unturned to kill them too. Hence I fully agree with the argument of the prosecution that the instant case comes in the category of rarest of rare cases. All the deceased as well as injured persons have been brutally attacked with rifles and bankas and grievous injuries were inflicted upon them. Therefore, in my opinion, accused Ram Swarup S/O Hori Lal, Jagan Lal, Patiram S/O Mansha Ram, Ram Chandra, Bhagwat Swarup, Lalta Prasad, Bhagirath, Budhsen, Baljit, Nanhey Lal and Ram Swarup S/O Kanhai Lal are entitled to be awarded death penalty. Out of these accused persons, Ram Swarup S/O Hori Lal and Jagan Lal possessed licensed rifles whereas the remaining accused persons possessed bankas with them."

18. The Trial Court has accordingly awarded extreme penalty of death to twelve accused. The High Court after considering the judgments of this Court in *Bachan Singh* Vs. *State of Punjab* (1980) 2 SCC 684 and *Ram Pal* Vs. *State of U.P.* (2003) 7 SCC 141 came to the conclusion thus:

"Compassion in sentencing is also a key factor. It allows the scars to heal. Longevity of incarceration may make them see reason. Passage of time may make them ponder over the crime they had committed. This might arouse in them a feeling of remorse and repentance.

A Considering the overall circumstances of the case, this case does not fall within the category of rarest of rare cases and it cannot be said that imprisonment for lesser sentence of life term was altogether foreclosed and we are of the view that a sentence of imprisonment for life to the B appellants would meet the ends of justice".

19. We have heard learned counsel for the parties. In the light of submissions made by the counsel on either side, the point that arises for consideration in the present appeal is whether the prosecution could establish the guilt of the accused C beyond all reasonable doubt for the offences for which they were charged? And if so, whether the case falls in the category of "rarest of rare cases" inviting the capital punishment of death sentence. There is no dispute as to the fact that the brutal occurrence resulted in the death of five villagers besides D several others getting grievously injured. From the depositions of prosecution witnesses it is forthcoming that Ram Swaroop (accused No. 7) was throughout instigating the accused party to assault the victim party, other accused participated in the crime. When the helpless victims took shelter in a Kothari, the E accused, in pursuit of their avenge, tried to cut the doors of Kothari and having failed to do so, they poured kerosene oil on the chappar and burnt the Kothari leading to the burnt injuries and death of victims.

F 20. Dr. A.P. Sharma (PW 5) who conducted postmortem examination on the dead body of deceased Moti Ram opined that the cause of death was shock, hemorrhage, asphyxia as a result of ante mortem injuries. Similar opinions were given by Dr. Vimal Srivastava (PW 6) who had conducted G postmortem on the dead bodies of other victims. Dr. R.S. Sone, Medical Officer, Incharge, P.H.C. Barkhera, District Pilibhit (PW 7) who had medically examined the injured persons found incised wounds, multiple abrasions and contusions on the bodies of victims. The nature of injuries and the recovery of weapons from the accused make it clear that it was a massive

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untoward incident and the accused had actively participated in the crime.

21. From the depositions of prosecution witnesses, it is evident that all the accused are interrelated to each other forming a strong group heavily armed with deadly weapons and attacked the victims to retaliate their defeat in the village elections. The plea taken by the accused that it is difficult to identify the accused at the spot when there was participation of about 35 persons in the crime as alleged, cannot be accepted for the reason that admittedly the incident occurred at 5.00 p.m. in the month of March in sufficient light and undisputedly, the accused and the victims know each other very well. Lalta Prasad (PW 1), Lilawati (PW 2), Hari Shankar (PW 4) are injured eyewitnesses whose depositions were corroborated with the evidence of Ved Prakash (PW 3), another independent eyewitness. These witnesses in clear and categorical terms explained the way in which the accused persons committed the murder of Mahender Pal, Hem Raj, Chunni Lal, Moti Ram and Kundan Lal and caused injuries to Ganga Ram, Devi Ram, Kishori Devi and Attar Kali. Thus the presence of witnesses at the time of occurrence and identification of accused by the victims cannot be disputed.

22. The statements of prosecution witnesses corroborated by the medical evidence assessed with the facts and circumstances of the case, we find no reason to disbelieve the participation of the accused in the criminal offence of killing five villagers besides causing injuries to several others. The recovery of deadly weapons from the possession of the accused strongly affirms the role played by each of them in the deadly act. We, therefore, see no reason to interfere with the judgments of the Courts below as far as the conviction of the accused is concerned, and we are of the considered opinion that the prosecution proved the guilt of the accused beyond all reasonable doubts. In the result, the appeals preferred by the accused against their conviction stand dismissed and

accordingly, the issue is answered.

23. Now the point that falls for consideration is whether the offence committed by the accused falls within the rarest of the rare cases, which warrants imposition of death penalty and whether there is any illegality in the judgment passed by the High Court in converting the sentence of death to that of life imprisonment.

24. It is settled proposition of law that imposing sentence of death penalty is an exception and it should be awarded only in the rarest of the rare cases. Under the old Criminal Procedure Code, ample discretion was given to the Courts to pass death sentence as a general rule and the alternative sentence of life could be awarded only in exceptional circumstances and that too after recording special reasons for making the departure from the general rule. The Code of Criminal Procedure, 1973 has reversed the said rule. Sentence of imprisonment for life is now the rule and capital sentence is an exception. It has also made obligatory on the Courts to record special reasons, if ultimately, death sentence is to be awarded.

25. The question as to whether death sentence has to be imposed has been a vexed question engaging the attention of the Courts considerably and consistently since a long time. No fixed yardstick or formula has been evolved for the same and its imposition is dependant upon the facts and circumstances of each case, vision and understanding of the Judge, has been found to be inseparable. The phrase "rarest of the rare cases" still remains to be defined while the concern for human life, the norms of a civilized society and the need to reform the criminal has engaged the attention of the Courts. It has equally been the view that sentence of death has to be based on the action of the criminal rather than the crime committed. The doctrine of proportionality of sentence vis-à-vis the crime, the victims and the offender has been the greatest concern of the Courts.

26. This Court in ***Bachan Singh's*** case has formulated A certain guidelines while stating that they are only instructive and not exhaustive. This Court held that rarest of the rare case is when the collective conscience of the community is so shocked that it will expect the holders of judicial power to inflict death penalty, irrespective of their personal opinion as regards B desirability or otherwise of retaining death penalty.

27. This Court in several cases reiterated the guidelines laid down in ***Bachan Singh's*** and ***Machhi Singh's*** cases and dealt with extensively about the cases that fall under the rarest C of the rare cases.

28. This Court in *Neel Kumar Vs. State of Haryana* (2012) 5 SCC 766, *Machhi Singh* Vs. *State of Punjab* (1983) 3 SCC 470 and *Bachan Singh* Vs. *State of Punjab* (1980) 2 SCC 684, held that the extreme penalty of death need not be inflicted D except in gravest cases of extreme culpability. Before opting for the death penalty the circumstances of the offender also require to be taken into consideration along with the circumstances of the crime for the reason that life imprisonment is the rule and death sentence is an exception. The penalty of E death sentence may be warranted only in a case where the court comes to the conclusion that imposition of life imprisonment is totally inadequate having regard to the relevant circumstances of the crime. The balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing F so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before the option is exercised.

29. This Court in *Harish Mohandas Rajput* Vs. *State of* G *Maharashtra* 2011 (12) SCC 56, held that 'the rarest of the rare case' comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of 'the rarest of the rare case'. There must be no reason to H

believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society.

30. In *R. Rajagopal* Vs. *State of Tamilnadu,* AIR 1995 SC 264, this Court considered what is the rarest of rare cases and when death sentence can be imposed and observed that the choice as to which of the punishment provided for murder is the proper one in a given case will depend upon the particular facts and circumstances of that case and the Courts have to exercise their discretion judicially on well recognized principles after balancing all the mitigating and aggravating circumstances of the case. The Court should also see whether there is something unknown about the crime which renders the sentence of imprisonment of life inadequate and calls for imposition of death sentence.

31. In *Santosh Kumar Singh* Vs. *State* (2010) 9 SCC 747, it was observed by this Court that undoubtedly, the sentencing part is a difficult one and often exercises the mind of the Court but where the option is between a life sentence and a death sentence, the options are indeed extremely limited and if the Court itself feels some difficulty in awarding one or the other, it is only appropriate that the lesser sentence should be awarded. This is the underlying philosophy behind "the rarest of the rare" principle.

32. Coming to the facts of the present case, heavily relying on the parameters set out by this Court in *Machhi Singh's* case (supra) learned counsel for the State demanded for restoration of death sentence on the accused. Considering the facts and circumstances of these cases, weighed with the evidence advanced by the prosecution witnesses, there is no doubt that

the accused had tried to kill the victims. When the victims tried to save themselves by taking shelter in a Kothari, it was set on fire and the victims who tried to run away were assaulted.

33. As far as the motive of the accused is concerned, the prosecution has alleged that to take revenge on the villagers for not casting their votes in favour of the wife of accused No. 7 who had lost the election, the accused party attacked the victims. It has come on record that the incident took place on 10th March, 2001 and the elections to the post of Gram Pradhan were held much before the date of occurrence i.e. about ten months before the date of incident. Considering the long time gap between the time of elections and the date of incident, it cannot conveniently be said that the accused attacked the victims with the clear motive of taking revenge for not voting in their favour in the elections.

34. The question of magnitude of the offence raised by the learned Additional Advocate General for affording death penalty to the accused, it was a clash between two groups of a village and cannot be ascribed it as enormous in proportion. In a criminal trial when the prosecution seeks to make out a case for imposition of death sentence, the prosecution undoubtedly has to discharge a very onerous burden. The prosecution must discharge this burden by demonstrating the existence of aggravating circumstances and the consequential absence of mitigating circumstances. In discharging such burden, the prosecution has to not only establish its case beyond all reasonable doubt, but also has to prove the commission of the crime and the aggravating circumstances leading to an inference that the case falls within the category of "the rarest of the rare cases", warranting imposition of death penalty.

35. However, so far as the sentence part is concerned, the death penalty is now confined to the narrowest region in view of the law referred to hereinabove. We have no hesitation to say that the accused indulged themselves in acts of the most

gruesome nature. At the same, it is to be borne in mind that the accused were on a rampage and running berserk with the only sense triggered by the thirst of avenge. The brutality of the murder must be seen along with all mitigating factors in order to come to the conclusion whether the case falls within the ambit of the rarest of the rare cases. Though the incriminating circumstances proved by the prosecution unmistakably and unerringly lead to the guilt of the appellant/accused, but having regard to the observation made by this Court in *Machhi Singh's* case, after balancing all the mitigating and aggravating circumstances of the case, we are of the view that this case does not fall under the category of the rarest of the rare cases. Further the repetition of such criminal acts at their hands making the society further vulnerable are also not apparent. There is a ray of hope for their reformation and rehabilitation. Hence, we find no fault in the impugned judgment that the case does not fall within the ratio of rarest of rare cases as envisaged by this Court. While considering the nature of offence we are of the considered opinion that the accused can be awarded a lesser punishment than death penalty. Therefore, in our view, the High Court was right in modifying the death sentence awarded by the Trial Judge to that of imprisonment for life.

36. For the aforesaid reasons, we uphold the judgment passed by the Division Bench of the High Court. Resultantly, the appeals preferred by the State and the accused/appellants stand dismissed.

Devika Gujral — Appeals dismissed.