**IN THE HIGH COURT OF ORISSA, CUTTACK**

**DSREF No.01 of 2023**

From judgment and order dated 07.08.2023/09.08.2023 passed by the Additional Sessions Judge, Kuchinda in S.T. Case No.25 of 2020.

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State of Odisha

-Versus-

Nabin Dehury ..... Condemned Prisoner/ Accused

For Condemned Prisoner/Accused: - Mr. Debasis Sarangi
Amicus Curiae

**JCRLA No.118 of 2023**

Nabin Dehury ..... Appellant

-Versus-

State of Odisha ..... Respondent

For Appellant: - Mr. Debasis Sarangi
Amicus Curiae

**CRLA No.693 of 2024**

Hemananda Dehury ..... Appellant

-Versus-

State of Odisha ..... Respondent

For Appellant: - Mr. Pranaya Kumar Dash
Advocate

For State of Odisha: - Mr. Janmejaya Katikia
Addl. Govt. Advocate
Mrs. Susamarani Sahoo
Addl. Standing Counsel
Ms. Gayatri Patra
Advocate

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P R E S E N T:

**THE HONOURABLE MR. JUSTICE S.K. SAHOO**

**AND**

**THE HONOURABLE MR. JUSTICE CHITTARANJAN DASH**

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Date of Hearing: 30.07.2024 Date of Judgment: 28.08.2024

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**By the Bench**: The reference under section 366 of the Code of Criminal Procedure, 1973 has been submitted to this Court by the learned Additional Sessions Judge, Kuchinda (hereinafter 'the trial Court') in S.T. Case No.25 of 2020 for confirmation of death sentence imposed on condemned prisoner/accused Nabin Dehury (hereinafter 'the appellant Nabin Dehury') by the judgment and order dated 07.08.2023/09.08.2023 and accordingly, DSREF No.01 of 2023 has been instituted.

JCRLA No.118 of 2023 and CRLA No. 693 of 2024 have been filed by the appellant Nabin Dehury and appellant

Hemananda Dehury respectively challenging the self-same judgment and order of conviction passed by the learned trial Court.

Appellant Nabin Dehury along with his son appellant Hemananda Dehury faced trial in the trial Court for commission of offence under section 302/34 of the Indian Penal Code (hereinafter 'the I.P.C.') on the accusation that on 21.10.2020 at about 2.30 p.m. in village Lapada under Mahulpali police station, they committed murder of Giridhari Sahu, Pirobati Behera and Sabitri Sahu in furtherance of their common intention.

The learned trial Court vide impugned judgment and order dated 07.08.2023/09.08.2023 found the appellants guilty under section 302/34 of I.P.C. and sentenced appellant Hemananda Dehury to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- (rupees one lakh), in default, to undergo further R.I. for one year. The appellant Nabin Dehury was sentenced to death with a further direction that he be hanged by neck till he is dead and he was also directed to pay a fine of Rs.1,00,000/- (rupees one lakh), in default, to undergo further R.I. for one year.

Since the DSREF, JCRLA and CRLA arise out of the same judgment, with the consent of learned counsel for both the


parties, those were heard analogously and are disposed of by this common judgment.

**Prosecution Case**:

2. The prosecution case, as per the first information report (hereinafter F.I.R.) (Ext.P-1) lodged by P.W.1 Manikya Pruseth, in short, is that the deceased Pirobati Behera was her mother, deceased Sabitri Sahu was her elder sister and deceased Giridhari Sahu was her brother-in-law (being the husband of deceased Sabitri Sahu). On 21.10.2020 at about 3.00 p.m., the deceased Giridhari, Pirobati and Sabitri proceeded to the paddy field for reaping paddy crops. After a while, P.W.1 came out of the house and found the deceased Pirobati was pressing the handle of the tube well and deceased Sabitri was collecting water in a bottle from that tube well. At that time, all on a sudden, both the appellants assaulted the deceased Pirobati by 'tangia'. Hearing the cries of the two lady deceased, P.W.1 came out to the village road and noticed that both the appellants were chasing the deceased Sabitri and dealing 'tangia' blows on her. Both the appellants were also telling loudly to have killed 'Kiramiria' (deceased Giridhari) on the way. At that time, the wife of appellant Nabin was also following the two appellants. On being frightened, P.W.1 came inside her house, bolted the door

and shouted for help. Hearing her outcry, villagers came and congregated and then P.W.1 came out of her house and she along with the villagers searched for the deceased Giridhari and found his dead body was lying in the field with cut injuries. It is further stated in the F.I.R. that Sachin Sahu (P.W.3) and Sapna Sahu (P.W.4) were the minor son and daughter of the deceased Giridhari and Sabitri respectively.

P.W.8 Kalyan Behera scribed the written report as per the version of P.W.1 which was read over and explained to her and on the written report, P.W.1 put her signature which was presented to P.W.20 Jyotchna Rani Behera, Inspector in-charge of Mahulpali police station at the spot who had arrived there on receiving telephonic communication from one unknown person regarding commission of murder of three persons at village Lapada while she was on patrolling duty.

Without waiting for the formal registration of the F.I.R. at the police station, P.W.20 commenced investigation of the case. She examined P.W.1, the informant and other witnesses and also called for the scientific team from D.F.S.L, Sambalpur to visit the spot for collection of physical clues. She conducted inquest over the three dead bodies and prepared the inquest reports. The scientific officials arrived at the scene of

occurrence on the same day i.e. 21.10.2020 at about 8.15 p.m. and collected material objects from the spot. In the intervening night of 21/22.10.2020, P.W.20 dispatched all the three cadavers to S.D.H, Kuchinda for post-mortem examination. She also took the custody of both the appellants from their house and brought them to Mahulpali police station. After arrival at the police station, P.W.20 registered Mahulpali P.S. Case No.175 dated 22.10.2020 under section 302/34 of I.P.C.

During interrogation of appellant Nabin Dehury by the I.O. (P.W.20), he not only confessed his guilt but also stated to have concealed the weapon of offence i.e. 'tangia' inside a straw heap of his house and accordingly, his statement was recorded under section 27 of the Evidence Act vide Ext.P-14 in presence of two independent witnesses and thereafter, appellant Nabin Dehury led the police party and the witnesses to his house and gave recovery of 'tangia', which he had concealed, from inside the straw heap and accordingly, P.W.20 seized the same as per seizure list Ext.P-15. P.W.20 returned to the police station with the appellant Nabin Dehury and seized the wearing apparels of both the appellants under separate seizure lists. She sent them for medical examination to S.D.H., Kuchinda. The police staff also returned to the police station with the biological

samples of the three deceased in sealed envelopes and their wearing apparels, which were seized by P.W.20 as per seizure list Ext.P-20. S.I. Dillip Kumar Behera of Mahulpali police station, who had taken the appellants to S.D.H., Kuchinda also returned with the biological samples of the appellants in sealed envelopes which were seized as per seizure list Ext.P-19 and then the appellants were forwarded to Court.

P.W.20 revisited the spot on 23.10.2020, prepared three spot maps where the three dead bodies were lying separately and also sent the wearing apparels of the appellants and the weapon of offence (tangia) to D.F.S.L, Sambalpur for necessary test, which were examined on the very day by the Scientific Officer & Asst. Chemical Examiner, D.F.S.L, Sambalpur. After examination, the exhibits were dried, sealed and packed properly and handed over to P.W.20, the I.O. on 24.10.2020 with instruction to send all the exhibits to the R.F.S.L., Sambalpur through Court. P.W.20 sent requisition to Tahasildar, Bamra on 24.10.2020 for demarcation of the spot. The documents relating to the land dispute between the parties were seized as per the seizure list Ext.P-5 on the production of Udaya Chandra Pruseth (P.W.2), which were also left in his zima. After receipt of the post mortem reports of the three deceased, on


03.11.2020 P.W.20 produced the weapon of offence (tangia) before the Medical Officer, who conducted post mortem examination to ascertain regarding possibility of the injuries sustained by the three deceased with such weapon and received the opinion on the very day in affirmative. On 09.11.2020 she also sent the material objects, the weapon of offence, the biological materials of the deceased so also that of the appellants to R.F.S.L., Sambalpur for necessary examination. She received the spot demarcation report from the Tahasildar, Bamra.

On 19.11.2020 on completion of investigation, P.W.20 submitted charge sheet against the appellants under section 302/34 of the I.P.C.

**Framing of Charge**:

3. After submission of charge sheet, the case was committed to the Court of Session after complying due formalities. The learned trial Court framed charge against the appellants as aforesaid and since the appellants refuted the charge, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute them and establish their guilt.

**Prosecution Witnesses, Exhibits & Material Objects**:

4. During the course of trial, in order to prove its case, the prosecution examined as many as twenty witnesses.

P.W.1 Manikya Pruseth is the sister-in-law, younger sister and daughter of the deceased persons Giridhari, Sabitri and Pirobati respectively. She is the informant of the case. She narrated the facts as the incident unfolded on the date of occurrence and supported the prosecution case.

P.W.2 Udaya Chandra Pruseth is the husband of the informant (P.W.1). He stated to have received a telephonic call from P.W.4 who informed him that the appellants have committed the murder of the three deceased. Upon receiving such information, he rushed to the village of the deceased and saw a huge gathering. He was told about the incident by P.W.1. He also stated to have seen severe cut injury on the neck of the deceased Pirobati and many cut injuries on different parts of the body of the deceased Sabitri. He was also informed by P.W.1 that the appellants were telling that they had killed the deceased Giridhari. He proceeded to the paddy field and found the dead body of the deceased Giridhari lying with marks of injuries on his head, neck and hand. He is a witness to the preparation of the

inquest reports vide Exts.P-2, P-3 and P-4. He is also a witness to the seizure of the original R.O.R. and the copies of the decrees of the cases as per seizure list Ext.P-5.

P.W.3 Sachin Sahu and P.W.4 Sapna Sahu are the son and daughter of the deceased Giridhari and Sabitri respectively and they are eye witnesses to the occurrence.

P.W.5 Prafulla Kumar Nayak is a co-villager who is also an eye witness to the assault on the deceased Giridhari. He is also witness to the preparation of the inquest reports vide Exts.P-2, P-3 and P-4.

P.W.6 Dr. Satya Prakash Dora was working as the Medicine Specialist at S.D.H., Kuchinda, who on police requisition, conducted post-mortem examination over the three dead bodies of the deceased and he proved his reports vide Exts.P-7, P-8 and P-9. He examined the weapon of offence produced before him by the I.O. regarding possibility of injuries sustained by the three deceased with such weapon and gave his opinion.

P.W.7 Dibyaraj Naik is a co-villager who is a post occurrence witness, who noticed the dead bodies of Pirobati and

Sabitri lying at two different places. He is a witness to the preparation of the inquest reports vide Exts.P-2, P-3 and P-4.

P.W.8 Kalyan Behera is the uncle of the deceased Giridhari who is a post occurrence witness and came to the spot on receipt of information regarding the death of the deceased and noticed the three dead bodies with injuries at three different places. He is the scribe of the written report, which was prepared as per the version of P.W.1 and the same was subsequently treated as F.I.R.

P.W.9 Gobinda Naik is a co-villager and a post occurrence witness. He came to the spot on hearing the shout and noticed three dead bodies lying at three different places. He is a witness to the preparation of the inquest reports vide Exts.P-2, P-3 and P-4. He is also a witness to the seizure of the land records and documents relating to the cases over the landed property as per seizure list Ext.P-5.

P.W.10 Bijayalaxmi Tirkey was the Scientific Officer at D.F.S.L., Sambalpur who visited the spot with her team as per the direction of the Superintendent of Police, Sambalpur. She collected blood of the three deceased persons by means of gauge clothes which were marked as A, B and C respectively and

handed over same to the I.O. which were seized as per seizure list Ext.P-11. She also proved the chemical examination report vide Ext.P-13.

P.W.11 Alekha Sahu is the uncle of the informant (P.W.1) who on receipt of telephonic call from P.Ws.3 & 4 came to the spot and found three dead bodies lying at three different places with bleeding injuries. He is also a witness to the seizure of land records of the deceased Pirobati as per seizure list Ext.P-5.

P.W.12 Sanjaya Kumar Nayak is a co-villager who is a witness to the recording of the statement of appellant Nabin Dehury under section 27 of the Evidence Act and recovery of 'tangia' (M.O.I) at his instance, which was seized by the I.O. as per seizure list Ext.P-15.

P.W.13 Parameswar Khadia is a co-villager who is also a witness to the recording of the statement of appellant Nabin Dehury under section 27 of the Evidence Act and leading to discovery of 'tangia' and its seizure as per seizure list Ext.P-15.

P.W.14 Cicilia Zina Lakra was working as a constable attached to Mahulpali police station on the date of occurrence.


She is a witness to the seizure of the wearing apparels of the appellants as per seizure lists Exts.P-16 and P-17.

P.W.15 Sunita Patel was posted as a constable at Mahulpali police station. She, as per the direction of the I.O., proceeded to the Court and collected the exhibits and deposited the same in R.F.S.L., Sambalpur for chemical examination.

P.W.16 Dillip Kumar Behera was working as the Sub-Inspector of Police at Mahulpali police station. He took the appellants to S.D.H., Kuchinda for collection of the biological samples of the appellants, which were accordingly collected and produced before the I.O. and seized as per seizure list Ext.P-19.

P.W.17 Jayadeb Majhi was posted as a constable attached to Mahulpali police station who took the dead bodies of three deceased to S.D.H., Kuchinda for post-mortem examination. After the post-mortem examination, the wearing apparels of the deceased along with their nail clippings, blood samples and hairs were collected by the Medical Officer and were handed over to him in three separate packets and he produced the packets before the I.O., which were seized as per the seizure list Ext.P-20.

P.W.18 Petrus Xalxo was posted as the Assistant Sub-Inspector of Police at Mahulpali police station. He is a witness to the seizure of the biological samples of the three deceased and their wearing apparels as per the seizure list Ext.P-20. He is also a witness to the seizure of biological samples of the appellants as per seizure list Ext.P-19.

P.W.19 Suchit Topno was working as a constable at Mahulpali police station who is a witness to the seizure of four sealed envelopes containing sample of blood stained earth and one blood stained cloth, on production by the Scientific Officer, D.F.S.L., Sambalpur, as per seizure list Ext.P-11.

P.W.20 Jyotchna Rani Behera was posted as the Inspector-in-Charge of Mahulpali police station and she is the investigating officer of the case.

The prosecution exhibited thirty one documents. Ext.P-1 is the F.I.R., Ext.P-2 is the inquest report of deceased Pirobati, Ext.P-3 is the inquest report of deceased Sabitri, Ext.P-4 is the inquest report of deceased Giridhari, Exts.P-5, P-11, P-15, P-16, P-17, P-19 and P-20 are the seizure lists, Ext.P-6 is the zimanama, Ext.P-7 is the post mortem report of deceased Sabitri, Ext.P-8 is the post mortem report of deceased Pirobati,

Ext.P-9 is the post mortem report of deceased Giridhari, Ext.P-10 is the requisition along with opinion on query, Ext.P-12 is the spot visit report, Ext.P-13 is the Chemical Examination Report, Ext.P-14 is the statement of appellant Nabin Dehury recorded under section 27 of the Evidence Act, Ext.P-18 and Ext.P-21 are command certificates, Ext.P-22, Ext.P-23 and Ext.P-24 are the dead body challans, Ext.P-25 is the crime detail form, Ext.P-26 is the spot map, Ext.P-27 is the requisition to Tahasildar, Bamra for demarcation of the spot, Ext.P-28 is the exhibit forwarding report for the chemical examination, Ext.P-29 is the prayer made by the I.O. to the Court for dispatching the exhibits for chemical examination, Ext.P-30 is the spot demarcation report received from Tahasildar, Bamra and Ext.P-31 is the chemical examination report of R.F.S.L., Sambalpur.

The prosecution also proved seventeen material objects. M.O.I is the tangia, M.O.II is the lungi, M.O.III is the ganjee, M.O.IV is the half pant, M.O.V is the t-shirt, M.O.VI is the saree of deceased Sabitri, M.O.VII is the saree of deceased Pirobati, M.O.VIII is the lungi of deceased Giridhari, M.O.IX is the pant of deceased Giridhari, M.O.X is the T-shirt of deceased Giridhari, M.O.XI is the vest of deceased Giridhari, M.O.XII is the chapal of deceased Pirobati, M.O.XIII is the saya of deceased

Sabitri, M.O.XIV is the blouse of deceased Sabitri, M.O.XV is the blood stained napkin of deceased Giridhari, M.O.XVI is the blue colour blouse of deceased Pirobati and M.O.XVII is the black colour panty of deceased Sabitri.

**Defence Plea**:

5. The defence plea of the appellants is one of complete denial and it is stated that the two lady deceased died coming in contact with a machine which was used to cut paddy crops and deceased Giridhari died during fighting with bullocks as the horn of bullocks pierced inside his body and due to long standing civil dispute between the parties, they have been falsely implicated. The defence did not examine any witness nor proved any document.

**Findings of the Trial Court**:

6. The learned trial Court after analysing the oral as well as the documentary evidence on record came to hold that the prosecution has successfully established that the three deceased persons met with homicidal death.

The evidence of P.W.1 Manikya Pruseth, the informant as an eye witness to the occurrence, was found to be

quite clear, elaborate and corroborating to the prosecution case and it is held that there was no reason to cast doubt over the truthfulness in her evidence.

The evidence of P.W.3 and P.W.4, who are the two minor children of deceased Giridhari and Sabitri, as eye witnesses to the occurrence, was also accepted.

It was further held that the prosecution case on leading to discovery of weapon of offence i.e. tangia at the instance of appellant Nabin Dehury in application to section 27 of the Evidence Act is quite clear, specific and corroborative, which has been proved through the evidence of two independent witnesses i.e. P.W.12 and P.W.13 and the I.O. (P.W.20). The learned trial Court also held that the injuries sustained by the three deceased were possible by the seized weapon. It was held that the chemical examination report, which has been marked as Ext.31 without any objection from the side of the defence, immensely corroborates not only the evidence of the eye witnesses but also the prosecution case against appellant Nabin Dehury.

It was further held that there is no infirmity in the evidence of the eye witnesses and the prosecution case finds

absolute corroboration from the experts examined in the case as well as scientific investigation to that effect and the Court came to the final opinion that the appellant Nabin Dehury committed murder of all the three deceased and is liable for the commission of offence under section 302 of I.P.C.

The Court further analysed the evidence on record relating to the role played by the appellant Hemananda Dehury in the commission of murder of the deceased and held that he restrained deceased Sabitri while she was going to rescue her mother (deceased Pirobati) and taking advantage of the same, the appellant Nabin dealt three to four blows on the neck and other parts of the body of the deceased Sabitri, who died at the spot and that he had never prevented or discouraged the appellant Nabin for committing such terrible crime. The appellant Hemananda joined appellant Nabin after the latter committed the murder of deceased Giridhari and he not only shared common intention with appellant Nabin, but also actively participated in the crime and therefore, he is liable for the commission of offence under section 302/34 of the I.P.C.

On the quantum of sentence, the learned trial Court held that the case against the appellant Nabin Dehury is an act

of extreme brutality and the magnitude of cruelty thrust in committing the crime brought it to the category of 'rarest of rare' case and accordingly, imposed death sentence on him while imposing life imprisonment on the appellant Hemananda Dehury.

**Submission of Parties**:

7. Mr. Debasis Sarangi, learned Amicus Curiae appearing for the appellants being ably assisted by Mr. Pranaya Kumar Das, learned counsel for the appellant Hemananda Dehury contended that from the inception, the prosecution has tried to implicate the appellant Hemananda Dehury in the actual assault of the deceased Pirobati Behera and Sabitri Sahu. It is not mentioned in the F.I.R. that P.W.3 and P.W.4, the two minor children of the deceased Giridhari and Sabitri were the eye witnesses to the occurrence and therefore, there is every possibility of introducing those two witnesses at a later stage and tutoring them to depose against the appellants. There is doubt whether the F.I.R. was lodged at the time when it was shown to have been lodged. The role played by the appellant Hemananda Dehury as deposed to by the witnesses during trial is completely different from the F.I.R. story. He emphasised that even though as per the version of P.W.5, who is the solitary eye witness to the assault on the deceased Giridhari, it was appellant Nabin

Dehury who assaulted the deceased Giridhari with a tangia and the presence of appellant Hemananda Dehury has not been deposed to at that point of time, however in the inquest report of deceased Giridhari vide Ext.P-4, in which P.W.5 is a signatory, in column no.9, it is mentioned that both the appellants Nabin Dehury and Hemananda Dehury assaulted the deceased Giridhari by 'tangia' and 'knife' which creates doubt as to whether P.W.5 is an eye witness to the assault on deceased Giridhari. Similarly P.W.5 stated to have come to the second spot after seeing the assault on deceased Giridhari where he found the dead bodies of deceased Pirobati Behera and Sabitri Sahu and he was present there when the police arrived and held inquest over the three dead bodies. In spite of that the name of P.W.5 is not mentioned in the F.I.R. as an eye witness to the assault on the deceased Giridhari. He urged that the version of the eye witnesses are full of material contradictions and P.Ws.1, 3 & 4 are related to the deceased persons and therefore, they are interested witnesses and the learned trial Court was not justified in placing reliance upon their evidence to convict the appellants. Reliance was placed on the decisions of the Hon'ble Supreme Court in the case of **Krishnegowda & others -Vrs.- State of Karnataka reported in (2017) 13 Supreme Court Cases 98** and **A.**

**Shankar -Vrs.- State of Karnataka reported in (2011) 6 Supreme Court Cases 279.** It was argued that though the weapon of offence i.e. tangia was seized on 22.10.2020, but there is no evidence as to where it was kept after its seizure and in what condition and who was its custodian and therefore, no importance can be attached to the finding of blood of human origin on tangia and the learned trial Court should not have utilized the C.E. report findings against the appellants, more particularly when it was not shown to the eye witnesses for the purpose of identification. It is argued that the conviction of the appellant Hemananda Dehury with the aid of section 34 of the I.P.C. is quite unjustified inasmuch as not only the prosecution changed its initial story of the appellant Hemananda Dehury being a direct assailant of both the deceased Pirobati and Sabitri to that of only restraining deceased Sabitri when she proceeded to rescue her mother Pirobati, but also even restraining the deceased Sabitri cannot be a factor to come to the conclusion that he shared common intention with the appellant Nabin Dehury as his mere presence with the appellant Nabin Dehury in the scene of occurrence without any specific overt act or aiding or abetting the appellant Nabin Dehury cannot attract his common intention with the appellant Nabin Dehury and


therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant Hemananda Dehury. Reliance was placed on the decisions of the Hon'ble Supreme Court in the cases of **Idrish Bhai Daudbhai -Vrs.- State of Gujarat reported in A.I.R. 2005 Supreme Court 1067**, **Tapan Sarkar etc. -Vrs.- State of West Bengal reported in (2018) 72 Orissa Criminal Reports 255 and Jasdeep Singh @ Jassu -Vrs.- State of Punjab reported in (2022) 2 Supreme Court Cases 545.** It is argued that even if for the sake of argument, it is held that on account of property dispute, the appellant Nabin Dehury committed the murder of all the three deceased but in absence of any criminal antecedents against the appellant Nabin Dehury so also the reports which have been received from the Jail Superintendent and the Probation Officer and the medical documents relating to his psychological disorder, it cannot be said that only the death sentence is justified for him in the facts and circumstances of the case and therefore, even though this Court holds him guilty under section 302 of the I.P.C., the death sentence may be commuted to life imprisonment.

Mr. Janmejaya Katikia, learned Additional Government Advocate, being ably assisted by Mrs. Sushamarani

Sahoo, learned Additional Standing Counsel and Ms. Gayatri Patra, Advocate, on the other hand, supported the impugned judgment and argued that F.I.R. is not an encyclopaedia of the entire prosecution case. When the F.I.R. was lodged promptly after the commission of three ghastly murder of near and dear ones, the state of mind of an eye witness like P.W.1, who is the informant in the case, must have been in a disturbed condition and therefore, it was not expected of her to mention all the details of what she had seen at the spot or what she came to know from others and she was likely to commit mistakes. When the witnesses during trial have consistently deposed regarding the role played by each of the appellants and the same has not been shaken in the cross-examination except bringing some minor discrepancies and trifling contradictions, the learned trial Court cannot be said to have committed any mistake in relying upon the version of such eye witnesses. It is further argued that the evidence of the eye witnesses gets corroboration not only from the medical evidence but also there is recovery of tangia at the instance of the appellant Nabin Dehury and after examining the weapon, the doctor (P.W.6) has opined that the injuries sustained by the deceased were possible by such weapon. It is further argued that the motive behind the commission of crime is

the civil dispute between the parties and the manner in which the ghastly crime was committed by the appellant Nabin Dehury and he dealt blows after blows to the deceased persons, who were defenceless and out of them, two were ladies, the imposition of death sentence on him is quite justified. Similarly, the role played by the appellant Hemananda Dehury at the second spot near the tube well in joining his father and not preventing him to assault the two lady deceased rather restraining the deceased Sabitri while she was proceeding to rescue her mother deceased Pirobati is sufficient to hold that he shared common intention with his father Nabin Dehury and therefore, the learned trial Court is quite justified in holding him guilty under section 302/34 of the I.P.C. and therefore, the appeals preferred by the appellants should be dismissed and the death sentence imposed on the appellant Nabin Dehury should be confirmed. He placed reliance in the cases of **Bachan Singh -Vrs.- State of Punjab reported in (1980) 2 Supreme Court Cases 684, Machhi Singh & others -Vrs.- State of Punjab reported in (1983) 3 Supreme Court Cases 470, Surja Ram -Vrs.- State of Rajasthan reported in (1996) 6 Supreme Court Cases 271** and **Muthuramalingam & others -Vrs.- State reported in (2016) 8 Supreme Court Cases 313**.

**Whether the three deceased met with homicidal deaths**?:

8. Adverting to the contentions raised by the learned counsel for the respective parties, we have to examine the materials available on record to see whether prosecution has successfully established the homicidal death of the three deceased. Apart from the inquest reports of deceased Giridhari Sahu (Ext.P-4), deceased Pirobati Behera (Ext.P-2) and Sabitri Sahu (Ext.P-3), the prosecution examined P.W.6 Dr. Satya Prakash Dora, the Medicine Specialist at S.D.H., Kuchinda, who on 22.10.2020 on police requisition conducted post mortem examination over the three dead bodies.

So far as deceased Giridhari Sahu is concerned, P.W.6 noticed the following injuries:-

> "On external examination, he found one chop wound of size 4 cm x 3 cm x 1.5 cm over the base left scapula, 1 cm lateral to mid line; one chop wound of size 4 cm x 3 cm x 1 cm on posterior base of neck at cervical vertebra at no.6 level; one chop wound of size 4 cm x 3 cm x 1 cm over left temporal lobe of head 4 cm above left ear; one chop wound of size 5 cm x 4 cm x 2 cm over left side of neck. All the above injuries were antemortem in nature.

On internal examination, he found skull fractured at left temporal region 4 cm above left ear. The membrane lacerated at temporal region, one chop wound over brain of size 2 cm x 1 cm at temporal region, one haematoma of size 1 cm x 1 cm x 1 cm present at temporal region, bilateral lungs were intact and congested, heart was intact and filled with clotted blood, stomach intact and filled with partially digested food, large intestine were intact and filled with gas and fecal matter, liver and kidneys were intact and filled with urine.

Cause of death was due to multiple chop wounds over head and neck by heavy sharp weapon and nature of death is homicidal. The post mortem report is marked as Ext.P-9."

So far as deceased Pirobati Behera is concerned, P.WS.6 noticed the following injuries: -

"On external examination, he found a stout female dead body bilateral eyes opened, mouth closed, rigor mortis had developed in all four limbs and neck muscles, one chop wound of size 6 cm x 4 cm x 4 cm on back of neck at cervical vertebra no.4 level. The above injury was antemortem in nature.

On internal examination, he found the brain was intact and congested, spinal cord

incised completely at cervical vertebra no.4 level, bilateral lungs intact and congested, heart intact and filled with clotted blood, stomach intact and filled with partially digested food, small intestine intact, large intestine intact and filled with gas and fecal, urinary bladder intact and filled with urine, genital organs were intact.

Cause of death was due to chop wound on back of neck by heavy sharp weapon and nature of death homicidal. The post mortem report is marked as Ext.P-8."

So far as deceased Sabitri Sahu is concerned, P.W.6 noticed the following injuries: -

"On external examination, he found a stout female dead body, bilateral eyes closed, mouth opened, rigor mortis had developed in all four limbs and neck muscles, one chopped wound of size 6 cm x 3 cm x 3 cm over right cheek one cm in front of right ear. One chopped wound of size 4 cm x 3 cm x 3 cm over left cheek, one chopped wound of size 6 cm x 3 cm x 3 cm over base of right side of neck.

On internal examination, he found the skull was intact, brain and spinal cord intact, right lung intact and congested, left lung was intact and congested, heart intact and filled with clotted blood, stomach intact and filled with

partial digested food, small intestine intact, large intestine filled with gas and fecal matter, liver, spleen and kidneys were intact, bladder was intact and filled with urine, genital organs were intact. All the injuries were antemortem in nature.

Cause of death was due to multiple chop wound over head and neck by sharp and heavy weapon. Nature of death was homicidal. The post mortem report is marked as Ext.P-7."

The learned Amicus Curiae so also the learned counsel for the appellant did not challenge the evidence of the doctor (P.W.6) so also the findings of the post mortem reports (Exts.P-7, P-8, P-9). After perusing the evidence on record, the inquest reports (Exts.P-3, P-4 and P-5), the post mortem reports and the evidence of the doctor (P.W.6), we are of the view that the prosecution has successfully proved the death of the three deceased to be homicidal in nature.

**Murder of deceased Giridhari Sahu**:

9. P.W.5 Prafulla Kumar Nayak is the sole eye witness to the commission of murder of the deceased Giridhari Sahu by the appellant Nabin Dehury.

In the examination-in-chief, he has stated that on 21.10.2020 in between 2.30 p.m. to 3.00 p.m. while he had been to his cultivable land to harvest paddy crops, he noticed the appellant Nabin Dehury coming from his land towards village carrying a tangia on his shoulder and at that time deceased Giridhari Sahu was coming from the village towards his land. He further stated to have heard an unusual sound and when he turned to his back, he found the appellant Nabin giving blows after blows by means of a tangia to the deceased Giridhari. He further stated that out of fear, he took another route and reached near puja mandap and found Manikya Pruseth (P.W.1) and Sachin Sahu (P.W.3) and two to three villagers there and told them about the incident of assault on the deceased Giridhari Sahu. He also stated about the preparation of the inquest report of deceased Giridhari Sahu which has been marked as Ext.P-4.

In the cross-examination, P.W.5 has stated that he could not say how many tangia blows were given by appellant Nabin Dehury to the deceased Giridhari Sahu and on which parts of the body. He further stated that since he had not met any person on the way to Jatra mandap, he did not disclose the incident before anyone and on reaching near Jatra mandap, he

found the deceased Sabitri Sahu and Pirobati Behera were lying dead.

It is the contention of Mr. Sarangi, learned Amicus Curiae that P.W.5 has not whispered anything in his evidence regarding presence of the appellant Hemananda Dehury at the spot when the appellant Nabin Dehury assaulted the deceased Giridhari Sahu. However, in the inquest report of the deceased Giridhari Sahu marked as Ext.P-4, in which he is a signatory, it is mentioned in column no.9 that the deceased Giridhari Sahu was assaulted by the appellants Nabin Dehury and Hemananda Dehury by tangia and knife and therefore, in all probability P.W.5 had got no idea as to how the deceased Giridhari Sahu died and there is every possibility of him being planted as an eye witness to the occurrence afterwards.

We are not able to accept such a contention. The purpose of inquest has been discussed in the case of **Brahm Swaroop & another -Vrs.- State of U.P. reported in (2011) 6 Supreme Court Cases 288**, wherein it is held as follows:-

> "9. The whole purpose of preparing an inquest report under Section 174 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') is to investigate into and draw up a report of the apparent cause of death, describing

such wounds as may be found on the body of the deceased and stating as in what manner, or by what weapon or instrument such wounds appear to have been inflicted. For the purpose of holding the inquest it is neither necessary nor obligatory on the part of the Investigating Officer to investigate into or ascertain who were the persons responsible for the death. The object of the proceedings under Section 174 Cr.P.C. is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and, if so, what was its apparent cause. The question regarding the details of how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of such proceedings i.e. the inquest report is not the statement of any person wherein all the names of the persons accused must be mentioned.

10. *Omissions in the inquest report are not sufficient to put the prosecution out of court*. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or by some machinery etc. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. Evidence of eyewitnesses cannot be discarded if their


names do not figure in the inquest report prepared at the earliest point of time. The inquest report cannot be treated as substantive evidence but may be utilized for contradicting the witnesses of inquest. (**See Pedda Narayana and Ors. -Vrs.- State of Andhra Pradesh** : **AIR 1975 SC 1252**; **Khujji -Vrs.- State of M.P. : AIR 1991 SC 1853**; **George -Vrs.- State of Kerala : (1998) 4 SCC 605**; **Sk. Ayub -Vrs.- State of Maharashtra: (1998) 9 SCC 521**; **Suresh Rai -Vrs.- State of Bihar : (2000) 4 SCC 84**; **Amar Singh -Vrs.- Balwinder Singh : (2003) 2 SCC 518**; **Radha Mohan Singh -Vrs.- State of U.P. : (2006) 2 SCC 450**; and **Aqeel Ahmad -Vrs.- State of U.P.: AIR 2009 SC 1271**).

11. In **Radha Mohan Singh** (supra), a three judge bench of this Court held:

> "11……No argument on the basis of an alleged discrepancy, overwriting, omission or contradiction in the inquest report can be entertained unless the attention of the author thereof is drawn to the said fact and he is given an opportunity to explain when he is examined as a witness in court."
>
> (Emphasis added)

> 12. Even where, the attention of the author of the inquest is drawn to the alleged discrepancy, overwriting, omission or contradiction in the inquest report and the author in his deposition has also admitted that through a mistake he omitted to mention the crime number in the inquest report, this Court has held that just because the author of the report had not been diligent did not mean that reliable and clinching evidence adduced by the eyewitnesses should be discarded by the Court. (Vide: **Krishna Pal (Dr.) -Vrs.- State of U.P. : (1996) 7 SCC 194**)."

It appears that P.W.2 Uday Chandra Pruseth has filled up the column no.9 of the inquest report Ext.P-4 and put his signature thereon and he is not an eye witness to any of the three murders. On receipt of phone call from P.W.4 Swapna Sahu regarding the murder of deceased Pirobati Behera and deceased Sabitri Sahu, P.W.2 came to village Lapada where he was apprised of the occurrence by his wife (P.W.1). He further stated to have heard from P.W.1 that the appellants were shouting that they had killed the deceased Giridhari Sahu and then he went to the paddy field and found the dead body of Giridhari lying there with injuries. Therefore, even though P.W.2 is a post-occurrence witness, mentioning the names of both the


appellants in column no.9 to be the assailants of the deceased Giridhari by him on the basis of information supplied to him by his wife (P.W.1) cannot be ruled out particularly when he has stated that besides his wife (P.W.1), no other person had told him about the occurrence. No question has been put to P.W.2 as to how he mentioned the names of both the appellants in column no.9 of the inquest report as he was the best person to answer the same. Since P.W.5 has not made any such endorsement except signing at the end of the inquest report (Ext.P-4) and it was P.W.2 who had filled up column no.9, the same cannot be a ground to disbelieve the evidence of P.W.5 as an eye witness to the occurrence.

It is pertinent to note that though confrontation has been made to P.W.5 in the cross-examination by the learned defence counsel relating to his previous statement recorded under section 161 Cr.P.C. that he had not stated to have found the appellant Nabin Dehury giving blows after blows by means of a tangia to deceased Giridhari, but such contradiction has not been proved through the Investigating Officer (P.W.20). In fact, in the interest of justice, when we perused the 161 Cr.P.C. statement of P.W.5 to know the correct state of affairs, we found that he had in fact stated to have seen the assault on the

deceased Giridhari by the appellant Nabin Dehury with tangia repeatedly.

It is surprising as to how the learned trial Court allowed such confrontations to be made to P.W.5 by the learned defence counsel particularly when the statement under section 161 Cr.P.C. indicates P.W.5 to be an eye witness to the occurrence and that he has stated specifically about the assault on the deceased Giridhari Sahu by appellant Nabin Dehury with tangia repeatedly. The Public Prosecutor so also the learned trial Court is required to remain alert when the trial is being conducted particularly in a case of this nature. In the case of **Sister Mina Lalita Baruwa -Vrs.- State of Orissa and Ors. reported in (2013) 16 Supreme Court Cases 173**, it is held as follows:-

> "19. In criminal jurisprudence, while the offence is against the society, it is the unfortunate victim who is the actual sufferer and therefore, it is imperative for the State and the prosecution to ensure that no stone is left unturned. It is also the equal, if not more, duty and responsibility of the Court to be alive and alert in the course of trial of a criminal case and ensure that the evidence recorded in accordance with law reflect every bit of vital information placed before it.


> Neither the prosecution nor the Court should remain a silent spectator……"

Therefore, a trial Judge is not expected to be a mute spectator or a recording machine during trial. He has to be active and dynamic so that errors can be minimized and justice can be done to the parties concerned. He has to monitor the proceedings in the aid of justice. He has got power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth and check irrelevant questions to be put to the witnesses by the counsel as it is more often seen that the defence counsel adopt unnecessary lengthy cross-examination to impress the client and to play to the gallery and in that process, the valuable time of the Court is lost. Even if the Public Prosecutor is remiss or lethargic in some ways, the trial Court should control the proceedings effectively so that the ultimate objective, i.e. the truth is arrived at. Witnesses attend the Court to discharge the sacred duty of rendering aid to justice. When the Prosecutor or the defence counsel confront the previous statement of a witness to that witness which might have been recorded under section 161 Cr.P.C. or 164 Cr.P.C., it is nonetheless the duty of the

Court to peruse such previous statement at the time of confrontation so that error is minimized.

Mr. Sarangi, learned Amicus Curiae argued that if P.W.5 had seen the occurrence of assault on deceased Giridhari and disclosed the same before P.W.1 and P.W.3, his name should have been mentioned in the F.I.R. as an eye witness to the occurrence as P.W.1 is the informant in the case and at least those two witnesses (P.W.1 and P.W.3) would have stated about the disclosure being made by P.W.5. According to him, the non-mention of the name of P.W.5 as an eye witness in the F.I.R. creates doubt that he has been subsequently planted as an eye witness. We are not able to accept such contention. It is rightly argued by Mr. Katikia, learned Addl. Govt. Advocate that the F.I.R. is not an encyclopedia which must disclose all facts and details relating to the offence reported. Even if the information report does not furnish all the details, it is for the Investigating Officer to find out those details during the course of investigation and collect necessary evidence. The information disclosing commission of a cognizable offence only sets the law in motion and then it becomes the duty of the investigating machinery to collect necessary evidence and to take action in accordance with law. Omission on the part of the informant to mention the name

of an eye witness in the F.I.R. cannot be a factor to hold that such witness was deposing falsehood and he has been subsequently planted as such. Similarly, the mention of a name of a person as eye witness is not a guarantee that he is a truthful witness. The learned trial Court is to assess the evidence of the witness in accordance with law and come to the conclusion whether in the factual scenario, a particular witness is a truthful one or not. It is also not expected from P.W.1 to remain in a stable mind and mention all the details in the F.I.R. including the names of eye witnesses within a short period after seeing the murder of two lady deceased who were closely related to her. P.W.1 and P.W.3 though have not stated about the disclosure being made by P.W.5 to corroborate the version of P.W.5, but the same cannot be a ground to doubt the veracity of P.W.5.

Where the statement of an eye witness is found to be reliable, trustworthy and consistent with the course of events, the conviction can be based on his sole testimony. There is no bar in basing the conviction of an accused on the testimony of a solitary witness as long as the said witness is reliable and trustworthy. Where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on

the touchstone of evidence tendered by other witnesses or evidence otherwise recorded.

After carefully considering the submission made from both the sides, we found that the version of P.W.5 is very clear, consistent and trustworthy and nothing has been brought out in the cross-examination to dislodge his testimony. Therefore, in our humble view, the learned trial Court has rightly placed reliance on his evidence.

**Murder of deceased Pirobati Behera and Sabitri Sahu**:

10. Three witnesses i.e. P.W.1, P.W.3 and P.W.4 have deposed about the assault on the deceased Pirobati Behera and Sabitri Sahu.

P.W.1, the informant has stated that while her mother Pirobati was pumping the tube well and her sister Sabitri was collecting water in a bottle, at that time both the appellants came there and appellant Nabin suddenly dealt a blow by means of a tangia on the neck of her mother and when her sister went to rescue her mother, appellant Hemananda restrained her sister by dragging her hairs. Appellant Nabin gave consecutively three to four blows on the neck of her mother and she died at the spot. Similarly, blows were given by means of tangia on different parts of the body of her sister by both the appellants and she


also died at the spot and then both the appellants told loudly that they had killed the deceased Giridhari.

Though in the cross-examination, the learned defence counsel has tried to bring out some contradictions and accordingly, confronted the 161 Cr.P.C. statement through the Investigating Officer but such contradictions could not be proved as after perusal of the previous statement, the Investigating Officer categorically stated that there were no contradictions in the statement of P.W.1 given in Court vis-à-vis her statement recorded under section 161 Cr.P.C. In the interest of justice, we also perused the 161 Cr.P.C. statement of P.W.1 keeping side by side her evidence in Court and found that there are no such material contradictions in her evidence.

Law is well settled that if the statement before the police officer and the statement in the evidence before the Court are so inconsistent or if irreconcilable with each other that both of them cannot co-exist, it may be said that one contradicts the other. If the police record becomes suspect or unreliable on the ground that it was deliberately perfunctory or dishonest, it loses much of its value and the Court in judging the case of a particular accused has to weigh the evidence given against him in Court keeping in view the fact that the earlier statements of


the witnesses as recorded by the police are tainted record and were not as great a value as it otherwise could have in weighing all the materials on record as against each individual accused. There are no materials on record that there was any kind of perfunctory investigation and in fact there are no material contradictions and we are of the view that it was neither proper on the part of the learned defence counsel to put such questions in the cross-examination which should have been objected to by the learned Public Prosecutor and the learned trial Court also should not have allowed such confrontations to be made to P.W.1 by the learned defence counsel.

Mr. Sarangi, learned Amicus Curiae contended that though in the F.I.R. as well as in the examination-in-chief, P.W.1 has stated that both the appellants assaulted the deceased Sabitri Sahu, but in the cross-examination, P.W.1 has stated that it was only appellant Nabin Dehury who assaulted the deceased Sabitri Sahu and the appellant Hemananda Dehury only restrained the deceased Sabitri when she was proceeding to rescue her mother deceased Pirobati who was assaulted first by appellant Nabin Dehury. Similarly, in the F.I.R., it is stated that both the appellants assaulted deceased Pirobati with 'tangia' whereas in Court, P.W.1 has stated that it was only appellant

Nabin Dehury who assaulted the deceased Pirobati with tangia. According to Mr. Sarangi, such contradictions are not expected from a truthful witness, rather it suggests that P.W.1 has no idea as to who were the actual assailants of the deceased Pirobati and Sabitri and being a related witness, she implicated the appellants falsely.

We are not able to accept the contentions of the learned Amicus Curiae. The mere fact that a witness is related, the same would not by itself be sufficient to discard her evidence straightaway unless it is proved that the evidence suffers from serious infirmities which raises considerable doubt in the mind of the Court. A close relative who is a very natural witness cannot be regarded as an interested witness. Such witness would normally be most reluctant to spare the real assailants and falsely mention the name of an innocent person as the one responsible for causing injuries to the deceased. A witness who is closely related and who could be expected to be near about the place of occurrence and could have seen the incident, cannot be held unreliable on the ground of his close relationship. Of course, it is incumbent on the part of the Court to exercise appropriate caution when appraising his evidence and to examine its probative value with reference to entire mosaic of facts

appearing from the record. Even if it is found that a closely related witness has exaggerated his version which he had not stated previously to the police or even to the Magistrate in his statements recorded either under section 161 or under section 164 Cr.P.C., but the Court after examining such evidence with great care and caution has a duty to separate the grain from the chaff and to extract the truth from the mass of evidence. After separating the chaff, the Court can seek further corroboration from reliable testimony, direct or circumstantial in cases where the evidence is partly reliable and partly unreliable.

P.W.1 has no doubt stated in the F.I.R. that both the appellants assaulted the deceased Pirobati Behera by means of 'tangia'. However, in her evidence in Court, she has stated that it was only appellant Nabin Dehury who dealt blows on the neck of the deceased Pirobati by means of a tangia. F.I.R. is not considered as a substantive piece of evidence. It can only be used to corroborate or contradict the informant or as a previous statement. P.W.1 has not been confronted with the recital in the F.I.R. with respect to the assault on the deceased Pirobati, particularly with reference to the inclusion of the name of appellant Hemananda as an assailant of deceased Pirobati in the F.I.R. which has been omitted in the evidence in Court.

Therefore, we cannot give much emphasis on such omission in Court relating to the assault made by the appellant Hemananda to deceased Pirobati.

As it appears from the cross-examination of P.W.1, she had seen the occurrence from a distance of 20 cubits. She specifically stated that she had read up to Class-X and since she was in shock and was trembling, she could not scribe the F.I.R. and requested P.W.8 to scribe the same.

So far as the contention of Mr. Sarangi, learned Amicus Curiae that P.W.1 could have raised hullah then and there drawing the attention of the co-villagers to come forward and rescue the two deceased persons from the assault of the appellants, we are of the humble view that the assault on both the deceased took place in quick succession and it must have taken a very little time and it was afternoon around 3 O'clock and therefore, it was not expected for most of the villagers to be on the village street. Moreover, P.W.1 has stated that after seeing the assault, out of fear, she along with P.W.3 and P.W.4 entered inside the house and closed the door, which was very natural as she might have apprehended that after killing three persons of the family, the appellants might proceed towards her house to assault her as well as P.W.3 and P.W.4, who were just

aged about thirteen years and seven years respectively. P.W.1 has categorically stated that at the time of incident, no other person was present near her house. She further stated that after closing the door, they raised hullah for which the villagers came to the spot and when the villagers came, she came outside and narrated the entire incident before the villagers.

In the case of **A. Shankar** (supra), it is held as follows:-

> "22. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.


23. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. "*Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions*." The omissions which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

In the case of **Krishnegowda and Ors.** (supra), it is held as follows:-

"27. Generally in the criminal cases, discrepancies in the evidence of witness is bound to happen because there would be considerable gap between the date of incident and the time of deposing evidence before the Court, but if these contradictions create such serious doubt in the mind of the Court about the truthfulness of the


witnesses and it appears to the Court that there is clear improvement, then it is not safe to rely on such evidence."

We are of the humble view that even if there are some minor contradictions in the evidence of P.W.1 as adduced during trial vis-à-vis what she had narrated in the F.I.R. relating to the involvement of appellant Hemananda Dehury in the assault of both the deceased Pirobati and Sabitri, but since the attention of P.W.1 has not been drawn to such parts available in the F.I.R. to explain and moreover, the evidence of P.W.1 is found to be very natural, clear and cogent, the learned trial Court has rightly placed reliance on the evidence of P.W.1.

11. P.W.3 Sachin Sahoo has stated in the examination-in-chief that while his grandmother (deceased Pirobati) was pumping the tube well and his mother (deceased Sabitri) was collecting water in a bottle to take to the field, at that time both the appellants came to that place and appellant Nabin was holding a 'tangia' and he dealt blows to deceased Pirobati and when deceased Sabitri went to protest him, appellant Hemananda Dehury restrained her by dragging her hair and appellant Nabin also assaulted the deceased Sabitri by means of a 'tangia' and at that time, appellant Nabin Dehury was telling

loudly that they had also killed 'Kirmiria' (deceased Giridhari). He further stated that out of fear, his mausi (P.W.1) took him and P.W.4 inside the house and closed the door and when they raised hullah, many villagers congregated at the spot.

In the cross-examination, it has been confronted to P.W.3 and proved through the I.O. (P.W.20) that he had not made any statement that while the deceased Sabitri went to rescue the deceased Pirobati, the appellant Hemananda dragged her hair and did not allow to proceed. In fact, in the 161 Cr.P.C. statement, P.W.3 has stated that after the assault on the deceased Pirobati, while his mother (deceased Sabitri) was proceeding to rescue, appellant Hemananda restrained her. The words used 'chheki dela', is a local word which as per 'Saraswata Odia Bhasha Abhidhan' means 'atakaiba', in other words 'restrained'. Of course the manner in which the restrain was made is not mentioned in the 161 Cr.P.C. statement, which is there in the evidence in Court, but the same may be on account of non-extracting the details by the I.O. while recording the statement of the concerned witness or may be elaborately describing the occurrence in Court. P.W.3 further stated that no outsider was present when the assault took place. He specifically

stated that the appellant Hemananda was not armed with any weapon and he had not assaulted anyone. However, he was assisting his father (appellant Nabin).

A peculiar suggestion has been given by the learned defence counsel to P.W.3 that his father (deceased Giridhari) died during fighting of bullocks as the horn of the bullocks pierced inside his body and that his mother (deceased Sabitri) and maternal grandmother (deceased Pirobati) died by coming in contact with harvesting machine. Neither any such suggestion has been given to P.W.1 nor has any such plea been taken in the accused statement of both the appellants.

In view of the foregoing discussions, we find P.W.3 to be a reliable and trustworthy witness and we are of the view that the learned trial Court has rightly placed reliance on his evidence.

12. P.W.4 Swapna Sahoo has stated in her examination-in-chief that while her grandmother (deceased Pirobati) was pumping the tube well and his mother (deceased Sabitri) was collecting water in a bottle, appellant Nabin Dehury came and dealt a blow on the head of deceased Pirobati by means of a 'budia', for which she fell down on the ground and then he dealt

three blows on her neck. She further stated that when her mother (deceased Sabitri) went to the rescue of deceased Pirobati, appellant Hemananda @ Mantu restrained deceased Sabitri by dragging her hairs and appellant Nabin assaulted her mother (deceased Sabitri) by means of 'budia'. She further stated that she herself along with her aunt (P.W.1) and brother (P.W.3) saw the occurrence standing near their door and while she was trying to proceed to her mother (deceased Sabitri), P.W.1 restrained her and took her and P.W.3 inside the house and closed the door. She further stated that when they raised hullah, hearing the same, some villagers came to the spot.

In the cross-examination, it has been confronted to P.W.4 and proved through the I.O. (P.W.20) that she had not specifically stated in the 161 Cr.P.C. statement that appellant Nabin dealt three blows on the neck of the deceased Pirobati, the appellant Hemananda @ Mantu dragged the hair of her mother. After verification of the 161 Cr.P.C. statement of P.W.4, we found that though she had stated about the assault made by appellant Nabin Dehury on deceased Pirobati with 'tangia', but the number of blows has not been stated by her. Similarly, she has also stated in the 161 Cr.P.C. statement that appellant Hemananda @ Mantu restrained deceased Sabitri when she

came forward to rescue her mother (local language used as 'chheki dela', which means 'obstructed'/'restrained'), of course the manner of restrain by holding the hairs has not been stated in the 161 Cr.P.C. statement.

P.W.4 specifically stated in the cross-examination that the appellant Hemananda was not armed with any weapon and no assault was given by appellant Hemananda and he had only restrained the deceased Sabitri. Thus, we find the evidence of P.W.4 to be clear, cogent and trustworthy and it also corroborates the evidence of P.W.1 as well as P.W.3.

In view of the discussions of the evidence of P.W.1, P.W.3 and P.W.4, we are of the view that their evidence relating to the assault on deceased Pirobati Behera and Sabitri Sahu by both the appellants are reliable and there are no such major contradictions so as to create doubts in their evidence and the learned trial Court has rightly placed reliance on their evidence.

**Premeditation on the part of appellant Nabin Dehury to commit the crime**:

13. It appears from the evidence on record that there was civil dispute between the parties. P.W.3 has stated that there was a long-standing dispute between his maternal uncle's family and family of the appellants relating to their landed

properties. P.W.5 has also stated that there was land dispute between both the parties since long and two to three civil suits were instituted in which deceased Pirobati got the decree.

Specific details of premeditation can be established from the following facts:-

(i) The appellant carried/chose a weapon of offence which was heavy and deadly in nature and commonly carried by villagers for agricultural purposes. He carried tangia to the paddy field and assaulted the deceased Giridhari Sahu and caused multiple chop wounds on the left scapula, base of his neck at cervical vertebrae, left temporal lobe of head and left side neck.

(ii) Calculation was so imminently found in the mind of the appellant Nabin Dehury that he took the opportunity to confront Giridhari when he was alone and did not give the blow from the front, so as to render any opportunity to the deceased to have any kind of protection from the blow since the blow was given from behind. The blow was at the cervical vertebra at no.6 level i.e. posterior base of the neck. The part of the body chosen for inflicting the blows is so conspicuously decided that even a single blow would be fatal whereas the appellant Nabin Dehury has given successive blows to rule out any possibility of survival of the deceased;

(iii) After doing away with the life of a male member of the family, the evidence on record suggests that appellant Nabin Dehury walked about 700 meters to the village before committing the next two murders of deceased Pirobati Behera and Sabitri Sahu, which indicates a degree of deliberation and planning and again caught them off-guard to avoid the possibility of any defence. No sooner appellant Nabin Dehury came across deceased Pirobati Behera at the tube well point, he dealt severe tangia blows on the back of the neck at cervical vertebra no.4 while she was quite helpless and was not in a position to ward off the blow. Responding to such act of appellant Nabin Dehury, when her daughter deceased Sabitri Sahu rushed to her rescue, appellant Hemananda Dehury caught hold of her by her hair while appellant Nabin Dehury dealt several blows to deceased Sabitri on the right cheek, left cheek and right side of neck to end her life. This prolonged journey and the subsequent actions suggest that appellant Nabin Dehury had time to reflect, thereby potentially aggravating the nature of the offence;

(iv) Furthermore, it is established by the testimony of P.W.5 that the appellant Nabin Dehury was annoyed and wanted to kill deceased Pirobati since she had got favourable decrees in disputes relating to the ancestral property, which the

appellant believed was by deceitful means and on many occasions, he was telling to kill the deceased Pirobati Behera, which proves the motive behind commission of the crime.

Therefore, we are of the view that there was premeditation on the part of appellant Nabin Dehury to commit the crime.

**Declaration made by Appellant Nabin Dehury**:

14. The appellant Nabin Dehury made a significant declaration immediately after committing the murders of deceased Pirobati Behera and Sabitri Sahu that he committed murder of deceased Giridhari Sahu. This declaration provides crucial insight into his state of mind and the motivations behind his actions. Not only in the F.I.R. but also in the evidence of P.W.1, P.W.3 and P.W.4, this aspect finds place. By openly admitting the crime committed, appellant Nabin Dehury confirmed his responsibility for the deaths, eliminating any ambiguity regarding the identity of the perpetrator and thereby strengthening the prosecution case. The declaration made by the appellant Nabin Dehury to have killed deceased Giridhari Sahu was only intended to take credit for the execution of his plan. Though P.W.3 and P.W.4 have stated that it was only appellant

Nabin Dehury, who made such declaration but P.W.1 stated that both the appellants made such declaration.

Different persons seeing an event give varying accounts of the same. That is because the perceptiveness varies and a recount of the same incident is usually at variance to a considerable extent. Ordinarily, if several persons give the same account of an event, even with reference to minor details, the evidence is branded as parrot like and is considered to be the outcome of tutoring. Discrepancies in the matter of details pertaining to precise number of blows given by the appellant, the nature of weapon used particularly when the weapons are almost similar used to occur even in the evidence of truthful witnesses. Such variations creeped in because they are always natural differences in the mental faculty of different individuals in the matters of observation, perception and memorization of truth. These hardly constitute grounds for rejecting the evidence of the witnesses when there is consensus as to the substratum of the case.

**Seizure of tangia at the instance of appellant Nabin Dehury**:

15. P.W.12 is an independent witness and he has stated that appellant Nabin Dehury, while in police custody, disclosed to

have concealed the tangia under a straw heap in his courtyard. The said statement was reduced to writing by the I.I.C. and signature of the appellant Nabin Dehury was obtained thereon and he along with Parameswar Khadia (P.W.13) signed thereon as witnesses. He further stated that appellant Nabin led the police and the witnesses to his house and removed a 'tangia' from inside the straw heap which was in his inner courtyard. There was mark of blood stain on that tangia and female hair was also found from the weapon. The I.I.C. seized the same by preparing a seizure list in which he along with P.W.13 put their signatures. He further stated that the appellant Nabin Dehury also signed the seizure list. The seized 'tangia' was also identified by P.W.12 in Court and the same has been marked as M.O.I. Except giving some suggestions, nothing has been brought out in the cross-examination of P.W.12 to disbelieve his evidence.

The evidence of P.W.12 gets corroboration from the evidence of P.W.13 so also the I.O. (P.W.20) who specifically stated that on 22.10.2020 after recording the statement under section 27 of the Evidence Act vide Ext.P-14, the appellant Nabin led herself as well as the witnesses to his house and brought out the weapon of offence from the straw heap over the verandah of his house and accordingly, the seizure list vide Ext.P-15 was

prepared. The weapon was also produced before the doctor (P.W.6) for obtaining his opinion regarding possibility of the injuries on the deceased by such weapon and it was sent to D.F.S.L, Sambalpur on 23.10.2020 so also to R.F.S.L., Sambalpur on 09.11.2020 through learned S.D.J.M., Kuchinda along with other material objects for chemical analysis. As per the C.E. report marked as Ext.P-31, human origin blood was found from the tangia.

Mr. Sarangi, learned Amicus Curiae argued that seizure of 'tangia' was made on 22.10.2020 and it was examined by P.W.6 on 03.11.2020. However, it was sent for chemical examination on 09.11.2020. No evidence has been adduced as to where it was kept after its seizure and therefore, no importance can be attached to the findings of human origin blood on the 'tangia'.

It was no doubt the duty of the prosecution to adduce clinching evidence that the weapon of offence after its seizure and before it was produced in Court for being sent for chemical analysis, was kept in safe custody and there was no tampering with the same. However, neither the prosecution nor the defence has put any question on this aspect to the Investigating Officer. The weapon was seized on 22.10.2020, it

was produced before the Scientific Officer at D.F.S.L., Sambalpur on 23.10.2020 who examined on the same and prepared the report vide Ext.P-13 and then dried, sealed, packed all the exhibits including tangia properly and handed over to the I.O. on 24.10.2020 and then it was produced before the doctor (P.W.6) on 03.11.2020 for necessary examination and then it was produced before the Court of learned S.D.J.M., Kuchinda on 09.11.2020 for being sent to Deputy Director, R.F.S.L., Sambalpur for chemical examination and opinion. Therefore, any irregularity committed by the prosecution in bringing material on record regarding the safe custody of the exhibits including the tangia cannot be a factor to disbelieve the evidence of leading to discovery of the weapon, the opinion given by the doctor (P.W.6) so also the findings recorded in the serology report, particularly when the tangia was produced in a cardboard box covered with cloth, which was in a sealed condition and it was forwarded to R.F.S.L. with the seal of the Court.

**Whether F.I.R. was lodged at the time when it was shown to have been lodged**?

16. The F.I.R. (Ext.P-1) is shown to have been presented by P.W.1 on 21.10.2020 at 4.20 p.m. before I.I.C., Mahulpali

police station at the spot and it was registered as Mahulpali P.S. Case No.175 dated 22.10.2020 at 1.28 a.m.

P.W.1 has stated that she presented the written report at the spot to the police after the police arrived at the spot getting information and as per her statement, the report was written by Kalyan Behera (P.W.8), who read over the contents thereof to her and finding the same to be true and correct, she put her signature in it. In the cross-examination, P.W.1 has admitted that there was no endorsement in Ext.P-1 that the contents thereof were read over and explained to her and admitting the same to be true and correct, she put her signature. She further stated that she had read up to Class-X and since she was in shock and was trembling, she could not scribe the F.I.R. and requested P.W.8 to scribe the same.

P.W.8 has stated that as per the request of P.W.1, he scribed the F.I.R. (Ext.P-1). In the cross-examination, he has stated that after scribing the F.I.R., the contents thereof were read over and explained to P.W.1 and thereafter she put her signature. He admitted not to have given any endorsement to that effect.

Mr. Sarangi, learned Amicus Curiae for the appellants submitted that according to P.W.8, while he was in his elder

sister's house at Kirmira, phone call came to his sister in between 3.30 p.m. to 4.00 p.m. on 21.10.2020 intimating the death of three deceased and after about ten minutes of receipt of the phone call, they left for village Lapada in a Bolero vehicle which was at a distance of 50 kms. from village Kirmira and they reached at village Lapada at around 5.00 p.m. to 5.15 p.m. He further stated that the F.I.R. was submitted to the I.I.C. by P.W.1 at the spot. Around 5.20 p.m., P.W.1 told him that the accused persons killed the deceased Giridhari and the F.I.R. was scribed before 6.00 p.m.

It is the contention of the learned Amicus Curiae that when P.W.8 reached in between 5.00 p.m. to 5.15 p.m. and then at about 5.20 p.m., on the oral information given by P.W.1, he prepared the written report before 6.00 p.m., the endorsement given in the F.I.R. that it was received at the spot at 4.20 p.m. cannot be accepted. Therefore, the time of receipt reflected in the F.I.R. is not correct and it has been ante-timed.

The learned Additional Government Advocate has placed the evidence of the I.O. (P.W.20) who has stated that while she was on patrolling duty with the staff on 21.10.2020, at about 3.10 p.m., she received telephonic information from one unknown person regarding the commission of murder of three

persons at village Lapada and accordingly, she reduced the same in writing in Mahulipali P.S. G.D. No.14 dated 21.10.2020 and proceeded to village Lapada with staff where P.W.1 presented the written report before her. She immediately took up investigation of the case and after she returned to the police station, at 1.28 a.m. on 22.10.2020, she registered the F.I.R. as Mahulpali P.S. Case No.175 dated 22.10.2020 under section 302/34 of the I.P.C. In the cross-examination, she stated to have reached at the spot before 4.20 p.m. No further question has been put to P.W.20 regarding the timing of receipt of the written report from P.W.1. The endorsement given in the written report vide Ext.P-1 reads as follows:-

"At spot
4.20 p.m.
21.10.2020

Received the report at spot. As it reveals a cog. case u/s.302/34 I.P.C., registered a case vide Mahulpali P.S. S.D.E. No.14 and self took up investigation of the case. A copy of F.I.R. will be supplied to the complt. free of cost.

Sd/-(Illegible)
21.10.2020
I.I.C., Mahulpali P.S."

P.W.20 started investigation of the case after receipt of the written report vide Ext.P-1 at the spot from P.W.1 and by


that time, P.S. Case had not been registered. The three dead bodies were lying in the village Lapada and inquests were conducted and then the dead bodies were dispatched to S.D.H., Kuchinda for post-mortem examination. The three inquest reports marked as Ext.P-2, Ext.P-3 and Ext.P-4 indicates Mahulpali P.S. S.D.E. No.14 dated 21.10.2020. Similarly, the dead body challans, Exts.P-22, P-23 and P-24 also indicate the same S.D.E. No.14 dated 21.10.2020.

In our humble view, P.W.20 is quite justified in carrying out the investigation of the case on receipt of the written report at the spot without waiting for formal registration of the F.I.R. in the police station inasmuch as it was a case of triple murder and immediate action was required to be taken in holding inquest over the dead bodies and taking steps for sending the same for post-mortem examination. The place of occurrence was at a distance of 18 kms. away from Mahulpali police station as per the formal F.I.R. and if P.W.20 would have waited for the registration of the F.I.R. by sending the written report to the police station and then to carry out investigation, it would have delayed the process of investigation.

Therefore, we are of the view that the F.I.R. has not been ante-timed and it was lodged when it was shown to have been lodged.

**Common intention on the part of appellant Hemananda Dehury**:

17. The learned Amicus Curiae contended that the appellant Hemananda Dehury should not have been held guilty under section 302/34 of the I.P.C. on the accusation that he shared common intention with the appellant Nabin Dehury. He argued that appellant Hemananda was not there at all when the assault on the deceased Giridhari took place.

According to P.W.1, both the appellants came and appellant Nabin dealt a blow by means of a tangia on the neck of deceased Pirobati and seeing this, when the deceased Sabitri went to her rescue, appellant Hemananda restrained deceased Sabitri by dragging her hair. She further stated that the appellant Nabin gave consecutive three to four blows on the neck of deceased Pirobati for which she died at the spot and both the appellants restrained deceased Sabitri and went on giving blows by means of tangia on different parts of her body for which she died at the spot and the appellants were telling loudly that they had killed the deceased Giridhari.

In the cross-examination, P.W.1 has stated that she could not say whether appellant Hemananda was armed with any weapon but appellant Nabin Dehury was holding a tangia. She further stated that while appellant Nabin was assaulting, appellant Hemananda was holding the deceased Sabitri.

P.W.3 Sachin Sahu has stated that both the appellants came to the place where deceased Pirobati was pumping tube well and deceased Sabitri was collecting water in a bottle. He stated that appellant Nabin was holding a tangia and dealt blows to the deceased Pirobati and when deceased Sabitri went to protest appellant Nabin, appellant Hemananda Dehury restrained her by dragging her hair and appellant Nabin also assaulted deceased Sabitri by means of tangia. He further stated that appellant Nabin was telling loudly that they had killed deceased Giridhari, who is otherwise known as 'Kirmiria'.

In the cross-examination, P.W.3 has further stated that the appellant Hemananda was not armed with any weapon and no assault was also given by him but he was assisting appellant Nabin.

P.W.4 has stated that while deceased Pirobati was pumping the tube well and deceased Sabitri was pouring water in bottle, appellant Nabin Dehury came and dealt a blow on the

head of deceased Pirobati by means of a budia for which the latter fell down on the ground. When the deceased Sabitri went to rescue deceased Pirobati, appellant Hemananda restrained her by dragging her hair and appellant Nabin assaulted by means of budia.

P.W.4 has stated in the cross-examination that the appellant Hemananda was not armed with any weapon and no assault was given by appellant Hemananda and he had only restrained the deceased Sabitri.

From the evidence on record, it is evident that the appellant Hemananda was not present when the assault on deceased Giridhari took place near the cultivable land. He came to the second spot which was the tube well of the village with his father appellant Nabin Dehury where the two lady deceased were collecting water. He was not armed with any weapon nor assaulted any of the two lady deceased as per the evidence of P.W.3 and P.W.4 except restraining the deceased Sabitri when she proceeded to save her mother. Though the evidence of P.W.1 in the examination-in-chief is that both the appellants gave blows by means of tangia not only to deceased Pirobati but also to deceased Sabitri, but in view of the evidence of P.W.3 and P.W.4, the same cannot be accepted. At this stage, the


decisions cited by the learned Amicus Curiae needs to be discussed.

In the case of **Idrish Bhai Daudbhai** (supra), it is held that what would form a common intention is now well settled. It implies acting in concert, existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts.

In the case of **Tapan Sarkar and Ors.** (supra), it is held that the strained relations in the family and giving of evasive replies, by itself, cannot be considered to be a safe and sound basis to arrive at the required inference so as to attract the principle laid down in section 34 Indian Penal Code. The inference of common intention must be based on more tangible material so as to hold all the accused-Appellants to be jointly and vicariously liable for the crime committed. It is possible that one of the accused had committed the crime but in the absence of evidence to draw an inference of common intention, none of the accused can be held liable.

In the case of **Jasdeep Singh** (supra), it is held as follows:-

> "20. Section 34 Indian Penal Code creates a deeming fiction by infusing and importing a

criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the Accused within the fold of Section 34 Indian Penal Code is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him on a par with the one who actually committed the offence.

21. What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 Indian Penal Code does not get attracted.

22. It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid-fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more,

the result is shared between the players. The same logic is the foundation of Section 34 Indian Penal Code which creates shared liability on those who shared the common intention to commit the crime.

23. The intendment of Section 34 Indian Penal Code is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a Rule of evidence and thus does not create any substantive offense.

24. Normally, in an offense committed physically, the presence of an accused charged under Section 34 Indian Penal Code is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offence consists of diverse acts done at different times and places. Therefore, it has to be seen on a case to case basis.

25. The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

26. There may be cases where all acts, in general, would not come under the purview of Section 34 Indian Penal Code, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention, it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offence. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

27. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 Indian Penal Code. A mere common intention per se may not attract Section 34 Indian Penal Code, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused

> charged with an offence read with Section 34 Indian Penal Code are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the court."

According to Mr. Sarangi, learned Amicus Curiae, there is no evidence on record that the appellant Hemananda continued to hold the deceased Sabitri while she was being assaulted by the appellant Nabin or in other words, there is lack of clinching evidence that on account of holding the hairs, the assault on the deceased Sabitri was made possible and therefore, his mere presence at the spot or act of restraining deceased Sabitri cannot be a factor to hold him guilty with the aid of section 34 of I.P.C.

Mr. Katikia, learned counsel for the State submitted that not only the two appellants came together but they also left the place together and the appellant Hemananda never tried to restrain his father (appellant Nabin) in assaulting the two ladies

and in view of the presence of appellant Hemananda at the spot, it might have given passive support or courage to the appellant Nabin to commit such crime in killing two lady deceased and therefore, the finding of the learned trial Court that the appellant Hemananda shared common intention with his father appellant Nabin is quite justified.

Learned counsel for the State relied upon the decisions of the Hon'ble Supreme Court in the cases of **Ajay Kumar Das -Vrs.- State of Jharkhand reported in (2011) 12 Supreme Court Cases 319** and **Ramesh Singh -Vrs.- State of A.P. reported in (2004) 11 Supreme Court Cases 305** to elucidate the pre-condition needed to press in section 34 I.P.C. into service.

In **Ajay Kumar Das** (supra), the Hon'ble Supreme Court relied upon the decision in the case of **Mahbub Shah -Vrs.- King Emperor : (1944-45) 72 IA 148**, wherein it was held that to invoke the aid of Section 34 I.P.C. exclusively, it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of all and if that is shown then the liability for the crime may be imposed on any one of the persons in the same manner as if the acts were done by him alone. It was


further held that it is difficult, if not impossible, to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.

In **Ramesh Singh** (supra), the Hon'ble Supreme Court explained the ambit of section 34 I.P.C. in the following words:

> "12. To appreciate the arguments advanced on behalf of the appellants, it is necessary to understand the object of incorporating Section 34 in the Penal Code, 1860. As a general principle in a case of criminal liability, it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held guilty. By introducing Section 34 in the Penal Code, the legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share


which he had in its perpetration. Section 34 I.P.C. embodies the principle of joint liability in doing the criminal act based on a common intention. Common intention essentially being a state of mind, it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases, it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered from the manner in which the accused arrived at the scene and mounted the attack, the determination and concert with which the attack was made, and from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard, even an illegal omission on the part of such accused can indicate the sharing of common intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted.

xxx xxx xxx

16. A-2 is the person in this case who had the grievance that the deceased prevented him from

collecting the "bhajan samagri" (prayer material) for the use at the funeral of his relative. It is the case of the prosecution that all the accused persons came together to the place of incident at 11 o'clock to demand the "bhajan samagri". The fact that A-1 and A-3 who were not concerned with the need of A-2 to collect the "bhajan samagri", still came together at that time of the night i.e. at 11 p.m. shows that A-1 and A-3 were associates of A-2. After failing to get the "samagri", all the three went together presumably to the house of A-2 at 11.45 p.m. Again these three persons came to the house of the deceased which act cannot be termed as a normal act because by that time most of the people including the deceased would have been or had been sleeping. When these accused persons summoned the deceased to come out of the house, obviously they had some common intention which their second visit, timing of the visit and calling of the deceased indicates. Once the prosecution evidence tendered through P.Ws. 1 to 3 is accepted, then it is clear that when A-2 and A-3 held the hands of the deceased, they had some intention in disabling the deceased. This inference is possible to be drawn because the appellants in their statement recorded under Section 313 Cr.P.C. did not give any explanation why they held the hands of the

deceased which indicates that the appellants had the knowledge that A-1 was to assault the deceased. The fact that the appellants continued to hold the deceased all along without making any effort to prevent A-1 from further attacking, in our opinion, leads to an irresistible and an inescapable conclusion that these accused persons also shared the common intention with A-1. In these circumstances, what was the intention of A-1 is clear from the nature of weapon used and the situs of the attack which were all in the area of chest, penetrating deep inside and which caused the death of the deceased. It is very difficult to accept the defence version that the fight either took place suddenly, or these appellants did not know that A-1 was carrying a knife, or that these appellants did not know by the nature of injuries inflicted by A-1, that he did intend to kill the deceased. At this stage, it may be useful to note that A-1 did not have any motive, apart from common intention to attack the deceased. In such circumstances, if A-1 had decided to cause the injury and A-2 who had a direct motive had decided to hold the hands of the deceased with A-3, in our opinion, clearly indicates that there was a prior concert as to the attack on the deceased. We also notice that thereafter the accused persons had all left the place of incident


> together which also indicates the existence of a common intention.
>
> 17. Having thus independently considered the facts and circumstances in their totality and taking holistic view of the facts of this case, we are of the opinion that the two courts below are justified in coming to the conclusion that the appellants are guilty of an offence punishable under Section 302 read with Section 34 IPC."

From thorough analysis of the evidence of the witnesses and the authoritative findings in the aforesaid precedents, we find that even though there is no evidence on record that the appellant Hemananda Dehury was present when the assault on deceased Giridhari took place, but he joined his father somewhere on the way while the latter was coming to the second spot holding a blood stained tangia. He could have prevented his father not to assault the two lady deceased which he had not done. His presence with his father must have given passive support to commit the crime. He was not a mere observer at the spot, but restrained the deceased Sabitri from rescuing her mother. P.W.1 has stated that while appellant Nabin was assaulting, appellant Hemananda was holding deceased Sabitri. P.W.3 has stated that when his mother went to protest

appellant Nabin, appellant Hemananda restrained her by dragging her hair and appellant Nabin also assaulted his mother. P.W.4 has also stated in similar manner like P.W.3. Three chop wounds were noticed over right cheek in front of right ear and left cheek and right side of neck of deceased Sabitri which probablises that all the assault on the front side of the head were made possible as appellant Hemananda continued to hold her hairs and restrained her movement. He left the spot with his father after commission of the crime. The contributory acts of the appellant Hemananda are no less significant. He had adequate knowledge what offence his father is likely to commit. His presence, his support, his overt act are sufficient to hold that he shared common intention with his father in the assault of the deceased Pirobati Behera and deceased Sabitri Sahu. The learned trial Court has rightly found both the appellants guilty under sections 302/34 of the I.P.C. and also sentenced appellant Hemananda Dehury to life imprisonment taking into account the fact that his role was lesser than that of his father, who directly assaulted all the three deceased by 'tangia' and caused their death.

**Death Sentence on Appellant Nabin Dehury**:

18. Appellant Nabin Dehury was found guilty of committing triple murder of deceased Giridhari Sahu, Pirobati Behera and Sabitri Sahu and sentenced to death with a further direction that he be hanged by neck till he is dead.

The learned trial Court after convicting the appellant although fixed a separate date for hearing to decide on the quantum of sentence, but it found to have focussed extensively on the aggravating circumstances. The reasons given by the learned trial Court for awarding the sentence of death is that the case against Nabin Dehury is an act of extreme brutality and magnitude of the cruelty thrust in committing the crime bringing it to the category of 'rarest of rare' case.

It is thus clear that the mitigating circumstances, if any in favour of the appellant, has not been taken into consideration. A mitigating circumstance is a factor that lessens the severity of an act or culpability of the accused for his action. If the mitigating circumstances outweigh the aggravating circumstances, the Judge is likely to be less aggressive in the ruling/sentencing.

As per order dated 21.06.2024, during course of argument, this Court while delving into the impugned judgment, when found that there was no endeavour on the part of the learned trial Court to find out mitigating circumstances in respect of the appellant, taking into account the observations made by the Hon'ble Supreme Court in the case of **Sundar @ Sundar Rajan -Vrs.- State of Inspector of Police reported in 2023 Live Law (SC) 217 : 2023 SCC OnLine SC 310** and also the decision rendered by the Hon'ble Supreme Court in the case of **Manoj & others -Vrs.- State of Madhya Pradesh reported in (2023) 2 Supreme Court Cases 353**, held that for a purposeful and meaningful hearing on sentence, the appellant Nabin Dehury should be afforded an opportunity inviting from him such data to be furnished in the shape of affidavits and also to direct the jail authorities to do the needful in that regard. Accordingly, we directed the Senior Superintendent, Circle Jail at Sambalpur to collect all such information on the past life of the appellant, psychological condition of the appellant and also his post-conviction conduct, obtaining reports by taking service and assistance from the Probation Officer and such other officers including a Psychologist or Jail Doctor or any Medical Officer attending the prison and since the appellant was represented by

the learned Amicus Curiae, learned Additional Government Advocate was directed to furnish all such mitigating circumstances and to ensure collection of detailed information with reports on those aspects by filing affidavits through the competent person stating therein the particulars for the consideration of the Court. We also gave liberty to the appellant Nabin Dehury to file affidavit and produce any material on mitigating circumstances.

In pursuance of such order, the Senior Superintendent of Jail, Circle Jail, Sambalpur filed an affidavit wherein it is indicated that the appellant Nabin Dehury is not involved in any other case except in Mahulpali P.S. Case No.134 dated 06.11.2015 registered under section 379/34 of I.P.C., which is pending for trial. The appellant Nabin Dehury has not committed any jail offence during his confinement period. He has also annexed the reports relating to the past life period, psychological condition and post-conviction conduct of the appellant Nabin Dehury. One of such reports annexed to the affidavit is that of Regional Probation Officer, Sambalpur who after examining the neighbours of the appellant so also Sarpanch and Ward Member indicated that the family of appellant Nabin Dehury is comprised of his wife, one daughter and two sons. The

daughter is the elder one who has already got married and out of two sons, the younger one is dead and the second one is appellant Hemananda Dehury who is now in jail custody. The wife of appellant Nabin Dehury is residing at her father's place after arrest of the appellant. The statements collected indicate that prior to the imprisonment, the attitude, conduct and behaviour of appellant Nabin Dehury was very good and he was maintaining good and amicable relationship with the people of the locality and there was no adverse remark passed against him by any of the persons examined. It further came to light that the land dispute between the appellant Nabin Dehury and family of the deceased persons was one of the prime reasons for not having good relations between them. The ancestral property of the appellant Nabin Dehury was encroached by the deceased for which most of the times, the appellant was remaining upset for being deprived of his ancestral property. The deceased was teasing the appellant several times to create an unhealthy situation. The wife of appellant Nabin Dehury also expressed that due to land dispute, the appellant was not remaining in a constant state of mind and he was taking psychiatric medicine suffering from mental trauma. The medical documents from VIMSAR, Burla, Sambalpur relating to the treatment of the

appellant Nabin Dehury were also forwarded with the affidavit of the Jail Superintendent, which show that he was referred to the Department of Psychiatry wherein it is indicated that there was previous medication history of five years and two months.

Law is well settled that in order to make out a case for imposition of death sentence, the prosecution undoubtedly has to discharge a very onerous burden by demonstrating the existence of aggravating circumstances and the consequential absence of mitigating circumstances. The case must fall within the category of 'rarest of rare cases' warranting imposition of death sentence. The special reasons as mentioned in section 354(3) of Cr.P.C. has put sufficient safeguard against any kind of arbitrary imposition of the extreme penalty. Unless the Court is of opinion that the nature of crime and circumstances against the offender is such that the sentence of life imprisonment would be wholly inadequate, inappropriate and against all norms of ethics, lesser punishment should ordinarily be imposed.

Let us first discuss as to what are the aggravating factors in the case. The commission of multiple murders is no doubt a significant aggravating factor. The deliberate and voluntary nature of the acts, especially following the initial murder of deceased Giridhari Sahu, demonstrates a pattern of

extreme violence and a disregard for human life. According to the principles outlined by the Constitution Bench of the Hon'ble Supreme Court in the case of **Bachan Singh** (supra), the enormity of the crime and the number of victims are critical factors in determining the severity of the sentence. When the culpability assumes the proportion of extreme depravity that 'special reason' can legitimately be said to exist.

The brutal manner in which the murders were committed one after another is another aggravating factor. The use of violence not only reflects a high degree of culpability but also underscores the severity of the crimes. As noted in **State of Rajasthan -Vrs.- Kheraj Ram reported in (2003) 8 Supreme Court Cases 224**, the heinous nature of the act and the brutality involved are significant considerations in determining the appropriate sentence, which is as follows:-

> "35. A convict hovers between life and death when the question of gravity of the offence and award of adequate sentence comes up for consideration. Mankind has shifted from the state of nature towards a civilized society and it is no longer the physical opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment

following conviction at a trial in a system wedded to the rule of law is the outcome of cool deliberation in the court room after adequate hearing is afforded to the parties, accusations are brought against the accused, the prosecuted is given an opportunity of meeting the accusations by establishing his innocence. It is the outcome of cool deliberation and the screening of the material by the informed man i.e. the Judge that leads to determination of the lis.

36. The principle of proportion between crime and punishment is a principle of just deserts that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice, it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt.

37. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a

sentence in each case, presumably, to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the traffic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

38. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now a single grave infraction that is thought to call for uniformly drastic measures. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact quite


> apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences."

The emotional and psychological impacts on the families of the deceased also constitute an aggravating factor. The murders must have caused immense suffering to the families of deceased Giridhari Sahu, Pirobati Behera, and Sabitri Sahu. Deceased Giridhari Sahu and Sabitri Sahu had two minor children i.e. P.W.3 Sachin Sahu and P.W.4 Sapna Sahu and the occurrence took place before their eyes and they witnessed the murder of their mother and maternal grandmother and they were left orphaned. This is highlighted in **Machhi Singh** (supra), where the Court considered the impact of occurrence on the victims' families as a critical aspect of the sentencing process.

**Mitigating Circumstances**:

Hon'ble Supreme Court in the case of **Bachan Singh** (supra), while discussing the suggestions of Dr. Chitaley relating to mitigating circumstances, observed that the offence being committed under the influence of extreme mental or emotional disturbance can be taken into account. It was held that Judges should never be bloodthirsty.

**Emotional and psychological distress**:

As appears from the reports received, appellant Nabin Dehury was taking medications prior to the commission of the offence due to the teasing and bullying done by the deceased's family as mentioned by his wife. Although he was aware of his actions and its consequences, but his mental state was fuelled by annoyance, frustration and the constant reminder of the land dispute which he thought to have lost on account of fraudulent means adopted by the deceased Pirobati Behera. This context provides an understanding of his loss of mental control, which ultimately seems to have resulted in the murders. While not constituting a defence of diminished responsibility, appellant Nabin's mental health issues are a crucial mitigating factor, as acknowledged in **Dauvaram Nirmalkar -Vrs.- State of Chhattisgarh reported in 2022 SCC OnLine SC 955**, wherein it is held as follows:-

> "11. ***K.M. Nanavati*** (supra) (1962 Supp (1) SCR 567), has held that the mental background created by the previous act(s) of the deceased may be taken into consideration in ascertaining whether the subsequent act caused sudden and grave provocation for committing the offence. There can be sustained and continuous provocations over a period of time, *albeit* in such

cases Exception 1 to Section 300 of the I.P.C. applies when preceding the offence, there was a last act, word or gesture in the series of incidents comprising of that conduct, amounting to sudden provocation sufficient for reactive loss of self-control. ***K.M. Nanavati*** (supra) quotes the definition of 'provocation' given by Goddard, C.J.; in ***R.*** v. ***Duffy***, as:

> "...some act or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his own mind...indeed, circumstances which induce a desire for revenge are inconsistent with provocation, since the conscious formulation of a desire for revenge means that the person had the time to think, to reflect, and that would negative a sudden temporary loss of self-control which is of the essence of provocation...".

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16. For clarity, it must be stated that the prosecution must prove the guilt of the accused, that is, it must establish all ingredients of the

offence with which the accused is charged, but this burden should not be mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the accused may rely upon the case of the prosecution and the evidence adduced by the prosecution in the court. It is in this context we would refer to the case of the prosecution, which is that the deceased was addicted to alcohol and used to constantly torment, abuse and threaten the appellant. On the night of the occurrence, the deceased had consumed alcohol and had told the appellant to leave the house and if not, he would kill the appellant. There was sudden loss of self-control on account of a 'slow burn' reaction followed by the final and immediate provocation. There was temporary loss of self-control as the appellant had tried to kill himself by holding live electrical wires. Therefore, we hold that the acts of provocation on the basis of which the appellant caused the death of his brother, Dashrath Nirmalkar, were both sudden and grave and that there was loss of self-control."

**'Slow burn' reaction followed by provocation rendered to the Appellant**:

The constant teasing and bullying of appellant Nabin Dehury relating to the land dispute has been established through

himself and the witnesses and the reports collected. This aligns with the concept of sustained provocation which can be considered a mitigating circumstance. Continuous provocations over time, lead to a final act that causes a loss of self-control and can reduce the culpability of the offender. It is too much to expect from everyone to always be calm, no matter what the provocation be. In this case, appellant Nabin's prolonged exposure to harassment and the resulting emotional distress contributed to his actions. Although specific and immediate trigger for the initial assault on deceased Giridhari is not fully established, the circumstances suggest the effect of the distress rendered by him through the constant teasing from the prolonged land dispute and his feeling of helplessness in being landless. The prison Medical Officer has also submitted that the appellant continues to take psychiatric medication though his cognitive abilities are found to be intact.

**Potential for Rehabilitation**:

As per the reports submitted, prior to the imprisonment, the attitude, conduct and behaviour of appellant Nabin Dehury was very good and he was maintaining good and amicable relationship with the people of the locality and there was no adverse remark passed against him by anyone. His

behaviour in jail has been reported as normal and good, indicating his potential for rehabilitation. The Supreme Court in **Santosh Kumar Satishbhushan Bariyar -Vrs.- State of Maharashtra reported in (2009) 6 Supreme Court Cases 498** 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.

**Is it a 'rarest of rare' case?**:

The Supreme Court in the case of **Bachan Singh** (supra) set forth the doctrine that the death penalty should only be imposed in the "rarest of rare" cases where the alternative option is unquestionably foreclosed. The terms 'brutal', 'grotesque', 'diabolical' and 'ghastly' have been cited through various judgments by the Supreme Court, even though they are not specifically defined in legislative texts. The literal meaning of the above terms can be held as–

> (i) Brutal: Acts characterized by excessive cruelty or savagery. In a legal context, brutality implies a level of violence that is excessive and beyond what would be considered necessary to achieve the criminal objective.

(ii) Grotesque: Acts that are shockingly incongruous or out of the ordinary in a disturbing way. In legal terms, grotesque actions are those that are bizarre and evoke a sense of horror due to their abnormal nature.

(iii) Diabolical: Acts that are wicked or evil to an extreme degree. Legally, diabolical crimes are those that reflect a perverse and calculated intent to cause harm, often involving premeditation and malicious intent.

(iv) Ghastly: Acts that are horrifying or macabre. Legally, ghastly crimes are those that are gruesome and evoke a sense of revulsion due to their horrifying nature.

The actions taken by appellant Nabin Dehury were certainly heinous. He killed three individuals using a tangia, two of them were women. These acts could be described as brutal due to the violent manner of the killings. However, while the murders committed by appellant Nabin Dehury are undoubtedly heinous and premeditated, several mitigating factors go against the imposition of the death penalty. They do not constitute offences that are defined above as 'grotesque', 'diabolical' and 'ghastly'. These terms cumulatively describe an offence that is shocking and gruesome to the extent that it causes a sense of horror and indifference, shaking the core of society. As stated

above, in our opinion, the nature of the murder committed by the appellant is heinous, the motive appears confined to a form of revenge, driven by annoyance and psychological distress. These acts, though cruel and ruthless, do not fully meet the threshold of being 'grotesque', 'diabolical' and 'ghastly'.

In the case of **Rajendra Prasad -Vrs.- State of Uttar Pradesh reported in A.I.R. 1979. S.C. 916**, it is held that it is a mechanistic art which counts the cadavers to sharpen the sentence oblivious of other crucial criteria shaping a dynamic, realistic policy of punishment. Three deaths are regrettable, indeed, terrible, but it is no social solution to add one more life lost to the list. It is further held that a family feud, an altercation, a sudden passion, although attended with extraordinary cruelty, young and malleable age, reasonable prospect of reformation and absence of any conclusive circumstance that the assailant is a habitual murderer or given to chronic violence are the catena of circumstances tearing on the offender call for the lesser sentence.

In the case of **A. Devendran -Vrs.- State of T.N. reported in (1997) 11 Supreme Court Cases 720**, which was a case of triple murder, it is held that the number of persons


died in the incident is not the determinative factor for deciding whether the extreme penalty of death could be awarded or not.

In the case of **Manoj** (supra), in a case of triple murder, the Hon'ble Supreme Court on the sentencing of the accused held as follows:-

> "253. This Court is of the opinion, that there can be no doubt that the crime committed by the three accused was brutal, and grotesque. The three defenceless victims were women of different age groups (22, 46, 76 years) who were caught off-guard and severely physically assaulted, resulting in their death, in the safety and comfort of their own home. To have killed three generations of women from the family of P.W.1, is without a doubt, grotesque. The manner of the offence was also vicious and pitiless - Ashlesha and Rohini, were stabbed repeatedly to their death, while Megha was shot point blank in the face. The post-mortem (Ex. P-44) reflects that the stab wounds were extensive-ranging across the bodies of the victim. The extensive bleeding at the crime scene further reflects cruel and inhumane manner of attack, against the three women. The crime in itself, could no doubt be characterised as "extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse

intense and extreme indignation of the community" as defined in ***Machhi Singh***. These are the aggravating circumstances."

The Hon'ble Court however took into account the mitigating circumstances and considered the Psychological Evaluation Report, Probation Officer's Report and Prison Report including material on the conduct of each accused produced by the State and work done so also material placed by each accused before the Court and held as follows:-

"262. The reports received from the Superintendent of Jail reflect that each of the three accused, have a record of overall good conduct in prison and display inclination to reform. It is evident that they have already, while in prison, taken steps towards bettering their lives and of those around them, which coupled with their young age unequivocally demonstrates that there is in fact, a probability of reform. On consideration of all the circumstances overall, we find that the option of life imprisonment is certainly not foreclosed.

263. While there is no doubt that this case captured the attention and indignation of the society in Indore, and perhaps the State of Madhya Pradesh, as a cruel crime that raised alarm regarding safety within the community - it

must be remembered that public opinion has categorically been held to be neither an objective circumstance relating to crime, nor the criminal, and the courts must exercise judicial restraint and play a balancing role.

264. In view of the totality of facts and circumstances, and for the above stated reasons, this Court finds that imposition of death sentence would be unwarranted in the present case. It would be appropriate and in the overall interests of justice to commute the death sentence of all three accused, to life imprisonment for a minimum term of 25 years."

In the case of **Mofil Khan and another -Vrs.- State of Jharkhand reported in (2021) 20 Supreme Court Cases 162**, while dealing with the earlier judgment in which the petitioners were sentenced to death for commission of offence under section 302 read with section 34 of I.P.C., the Hon'ble Supreme Court held as follows:-

"13. Taking note of the petitioners' culpability in the gruesome murders which assumed "the proportion of extreme depravity", the High Court refused to interfere with the death sentence imposed by the trial court. This Court dismissed the criminal appeal taking note of the manner in which the offence was committed against the

helpless children and others and concluded that the Petitioners would be a menace and threat to harmony in the society. Putting an end to the lives of innocent minors and a physically infirm child, apart from other members of the family, in a pre-planned attack, was taken note of by this Court to hold that the case falls under the category of "rarest of the rare" cases.

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16. 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. There is a bounden duty cast on the Courts to elicit information of all the relevant factors and consider those regarding the possibility of reformation, even if the accused remains silent. A scrutiny of the judgments of the trial court, the High Court and this Court would indicate that the sentence of death is imposed by taking into account the brutality of the crime. There is no reference to the possibility of reformation of the petitioners, nor has the State procured any evidence to prove that there is no such possibility with respect to the petitioners.

17. We have examined the socio-economic background of the petitioners, the absence of any criminal antecedents, affidavits filed by their


family and community members with whom they continue to share emotional ties and the certificate issued by the Jail Superintendent on their conduct during their long incarceration of 14 years. Considering all of the above, it cannot be said that there is no possibility of reformation of the petitioners, foreclosing the alternative option of a lesser sentence and making the imposition of death sentence imperative. Therefore, we convert the sentence imposed on the petitioners from death to life. However, keeping in mind the gruesome murder of the entire family of their sibling in a pre-planned manner without provocation due to a property dispute, we are of the opinion that the petitioners deserve a sentence of a period of 30 years."

In the case of **Bhagchandra -Vrs.- State of Madhya Pradesh reported in (2021) 18 Supreme Court Cases 274**, the Hon'ble Supreme Court held as follows:-

"47. In view of the settled legal position, it is our bounden duty to take into consideration the probability of the accused being reformed and rehabilitated. It is also our duty to take into consideration not only the crime but also the criminal, his state of mind and his socio-economic conditions. The deceased as well as the appellant are rustic villagers. In a property

dispute, the appellant has got done away with two of his siblings and a nephew. The State has not placed on record any evidence to show that there is no possibility with respect to reformation or rehabilitation of the convict. The appellant has placed on record the affidavits of Prahalad Patel, son of appellant and Rajendra Patel, nephew of appellant and also the report of the Jail Superintendent, Central Jail, Jabalpur. The appellant comes from a rural and economically poor background. There are no criminal antecedents. The appellant cannot be said to be a hardened criminal. This is the first offence committed by the appellant, no doubt, a heinous one. The certificate issued by the Jail Superintendent shows that the conduct of the appellant during incarceration has been satisfactory. It cannot therefore be said that there is no possibility of the appellant being reformed and rehabilitated foreclosing the alternative option of a lesser sentence and making imposition of death sentence imperative.

48. We are therefore inclined to convert the sentence imposed on the appellant from death to life. However, taking into consideration the gruesome murder of two of his siblings and one nephew, we are of the view that the appellant deserves rigorous imprisonment of 30 years."

In the case of **Anshad -Vrs.- State of Karnataka reported in (1994) 4 Supreme Court Cases 381**, the Hon'ble Supreme Court held that the number of persons murdered is a consideration but that is not the only consideration for imposing death penalty unless the case falls in the category of "rarest of rare cases". The Courts must keep in view the nature of crime, the brutality with which it was executed, the antecedents of the criminal, the weapon used etc. It is neither possible nor desirable to catalogue all such factors and they depend upon case to case.

The aggravating circumstances in this case, particularly the commission of multiple murders, the evidence of premeditation, and the brutality of the acts, point towards a severe sentence. However, the mitigating circumstances, including the psychological distress, the appellant's mental health issues, his good attitude, conduct and behaviour prior to the imprisonment, his good behaviour in jail suggest that the death penalty may be disproportionate. While appellant Nabin Dehury's mental health issues do not constitute a credible ground for complete exoneration, still it remains a crucial mitigating circumstance.

It is evident that in the judgment of the learned trial Court, there is no reference to the discussions on mitigating


circumstances and possibility of reformation and rehabilitation of the appellant Nabin Dehury. In fact, there was no endeavour on the part of the learned trial Court to find out mitigating circumstances, if any in respect of appellant. Failure on the part of the learned trial Court to consider such vital aspects before imposing death sentence, added to our duty and responsibility to carefully collect such materials, to elicit information of all the relevant factors and to take into consideration not only the crime but also the criminal, the state of mind and the socio-economic conditions of the appellant keeping in view the golden principle that life imprisonment is the rule and death sentence is an exception.

In the case of **Surja Ram** (supra), on which reliance was placed by the learned State Counsel, it is held that punishment must respond to the society's cry for justice against the criminal. While considering the punishment to be given to the accused, the Court should be alive not only to the right of the criminal to be awarded just and fair punishment by administering justice tempered with such mercy as the criminal may justly deserve, but also to the rights of the victims of the crime to have the assailant appropriately punished and the society's reasonable expectation from the Court for the appropriate deterrent


punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused.

We are of the view that public opinion or the society's expectation may be to confirm the death sentence of appellant Nabin Dehury since it is a case of triple murder and two deceased were ladies, but it must be remembered that such opinion or expectation is neither an objective circumstance relating to crime, nor the criminal, and therefore, this Court must exercise judicial restraint and play a balancing role. The appellant comes from a rural and economically poor background and on account of property dispute and after losing the ancestral property in the Court battle, he had done away with the lives of three deceased. The appellant is having a criminal antecedent of a Magistrate triable offence in which trial is yet to be over and therefore, he cannot be said to be a hardened criminal. The reports furnished by Jail Superintendent in which the appellant has been lodged for more than three and half years shows that the conduct of the appellant during incarceration has been satisfactory. It cannot, therefore, be said that there is no possibility of the appellant being reformed and rehabilitated foreclosing the alternative option of a lesser sentence and

making imposition of death sentence imperative or in other words, life imprisonment would be completely inadequate and would not meet the ends of justice.

In view of the foregoing discussions and giving our anxious consideration to the facts and circumstances of the case and striking a balance between the aggravating and mitigating circumstances in the case, we are of the humble view that death penalty would be disproportionate, unwarranted and life imprisonment would be a more appropriate sentence.

Accordingly, we commute the death sentence imposed on the appellant Nabin Dehury to life imprisonment. The appellant Nabin Dehury is sentenced to life imprisonment for each of the three murders committed by him and the sentences so awarded are directed to run concurrently in view of the ratio laid down in the five-Judge Bench decision of the Hon'ble Supreme Court in case of **Muthuramalingam and others -Vrs.- State reported in (2016) 8 Supreme Court Cases 313** and it is made clear that life imprisonment awarded shall mean the remainder of his natural life, without remission/commutation under sections 432 and 433 of Code of Criminal Procedure.

**Victim Compensation:**

19. The learned trial Court has directed the entire fine amount of Rs.2,00,000/- (rupees two lakhs), if realized to be paid to P.W.3 Sachin Sahoo and P.W.4 Swapna Sahoo in equal proportion, which means if the appellants decide not to pay the fine amount, then they have to undergo the default sentence but the minor children of the two deceased would not get any financial benefits. The State Govt. of Odisha in exercise of powers conferred by the provision of section 357-A of Cr.P.C. has formulated the Odisha Victim Compensation Schemes, 2017 (hereafter '2017 schemes') which was amended by virtue of Odisha Victim Compensation (Amendment) Scheme, 2018 and it came into force with effect from 02.10.2018. Schedule-II of the Scheme, which was inserted as per the amended scheme of 2018, inter alia, deals with compensation for the survivors in case of crime in which death/loss of life takes place. The learned trial Court unfortunately has not passed any compensation award in terms of 2017 schemes. The minimum limit of compensation payable is Rs.5,00,000/- (rupees five lakhs) and the maximum limit of compensation payable is Rs.10,00,000/- (rupees ten lakhs) in such cases. In the factual scenario and particularly taking into account the young age of the deceased-parents of

P.W.3 and P.W.4 and their future liabilities, the maximum compensation amount i.e. Rs.10,00,000/- (rupees ten lakhs), for each of the death as provided under Schedule-II is awarded i.e. in total Rs.20,00,000/- (rupees twenty lakhs) which is to be paid to P.W.3 and P.W.4 in equal proportion. So far as the death of deceased Pirobati Behera is concerned, the upper limit of compensation of Rs.10,00,000/- (rupees ten lakhs) is also to be paid to the victims, out of which Rs.5,00,000/- (rupees five lakhs) is to be paid to P.W.1 and the balance amount of Rs.5,00,000/- is to be paid in equal proportion to P.W.3 and P.W.4. If any compensation amount has already been disbursed to any of these persons, i.e. P.W.1, P.W.3 and P.W.4, the same shall be adjusted and the D.L.S.A., Sambalpur shall take immediate steps to pay the balance amount of compensation within four weeks from today.

**Conclusion**:

20. In view of the foregoing discussions, CRLA No.693 of 2024, filed by the appellant Hemananda Dehury is dismissed. The conviction of the appellant Hemananda Dehury under section 302/34 of the I.P.C. and sentence imposed thereunder is upheld. So far as JCRLA No.118 of 2023 filed by appellant Nabin Dehury is concerned, his conviction under section 302/34 of the I.P.C. is

upheld, however, the death sentence awarded to him is commuted to life imprisonment. The appellant Nabin Dehury is sentenced to life imprisonment for each of the three murders committed by him and the sentences so awarded shall run concurrently. It is made clear that such life imprisonment shall mean the remainder of his natural life, without remission/commutation under sections 432 and 433 of Code of Criminal Procedure. The fine amount imposed by the learned trial Court on both the appellants and the default sentence stands confirmed.

Accordingly, the death sentence reference is answered in negative.

Before parting with this case, we would like to put our deep appreciation to Mr. Debasis Sarangi, learned Amicus Curiae for the preparation and presentation of the case and assisting the Court in arriving at the decision above mentioned. This Court also appreciates the able assistance provided by Mr. Pranaya Kumar Dash, Advocate to this Court. This Court also appreciates extremely valuable assistance provided by Mr. Janmejaya Katikia, Addl. Govt. Advocate who has been ably assisted by Mrs. Sushama Rani Sahoo, learned Addl. Standing Counsel and Ms. Gayatri Patra, Advocate. The hearing fees is

assessed to Rs.20,000/- (rupees twenty thousand) in toto which shall be paid to the learned Amicus Curiae Mr. Debasis Sarangi immediately.

The trial Court records along with a copy of the judgment be sent forthwith to the Court concerned and a copy of the judgment be communicated to the D.L.S.A., Sambalpur for compliance.

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**S.K. Sahoo, J.**

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**Chittaranjan Dash, J.**

Orissa High Court, Cuttack
The 28th August 2024/M.K.Rout/RKMishra/Sipun