

# Justification of Death Penalty in Rarest of Rare Cases and Opinion for its Abolition

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**Abstract** – Death Sentence is the law[1] and the “Rarest of Rare Cases” is the policy. The Supreme Court’s first version in awarding the death sentence is to study whether the offence amounts to the rarest of rare cases. Its first Cardinal Principle is that whether the alternative remedy is fit to the gravity of offence. The penalty is awarded by the court by interpreting the circumstances of individual cases. The day were there when the Supreme Court in 1980s had been criticized on the ground that “The Court cannot give birth to a human being and hence how it can take away the life”. The Social activists like Human Rights Activists and AGOs are against the death penalty given by court. But as the heinous crimes are in increasing rate the courts are being serious about the serious types of offences. Because the death penalty is not a principal mode of punishment rather it is a major deterrent of effect to the future judiciary system and checks the preparing accused. The Supreme Court in *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470: AIR 1983 SC 957: 1983 SCC (Cri) 681: (1983) 3 SCR 413 held that the reasons why the community as a whole does not endorse the humanistic approach reflected in “death sentence in no case” doctrines are not for to seek.

**Keywords** – Death Sentence, Rarest of Rare Cases, Alternative Remedy, Humanistic Approach, Social Activists, Retribution, Penology, Rule of law, Magnitude of Crime, Deterrent, Abolitionists of Death Sentence, Law Commission of India etc.

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## INTRODUCTION

In the first place the very humanistic edifice is constructed on the foundation of “reverence for life” principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine.

Secondly, it has to be realized that every member of the community is able to live with safety without his or her or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law enforced by it. The very existence of the rule of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to be community for this protection. When ingratitude is shown instead of gratitude by “killing a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in “rarest of rare cases”, when its collective conscience is so shocked that it will expect the

holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment, when the crime is viewed from the platform of the motive for, or the manner of commission of the crime or the anti-social nature of the crime viz.

1. Manner of commission of murder.
2. Motive of commission of murder.
3. Anti-social or socially abhorrent nature of the crime.
4. Magnitude of crime.
5. Personality of victim of murder.

## MANNER OF COMMISSION OF MURDER

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community i.e.

- (i) When the house of the victim is set a flame with the end in view to roast him alive in the house.
- (ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his/her death.
- (iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

### MOTIVE FOR COMMISSION OF MURDER

When the murder is committed for a motive which evinces total depravity and meanness viz.

- (i) When a hired assassin commits murder for sake of money
- (ii) A cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust.
- (iii) A murder is committed in the course for betrayal of the motherland.

### Anti-social or Socially Abhorrent Nature of the Crime, viz.

- (i) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.
- (ii) In the cases of bride-burning and what are known as "dowry deaths" or when murder is committed in order to re-marry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

### MAGNITUDE OF CRIME

When the crime is enormous in proportion viz., when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

### Personality of Victim of Murder

When the victim of murder is:

- (i) An innocent child who could not have or has not provided even an excuse, much less a provocation, for murder.
- (ii) A helpless woman or a person rendered helpless by old age or infirmity.
- (iii) When the victim is a person vis-à-vis whom the murderer is in a position of dominion or trust.
- (iv) When the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

### Aggravating circumstances where the court may award Death Sentence[2]

- If the murder has been committed after previous planning and involves extreme brutality, or
- If the murder involves exceptional depravity, or
- If the murder is of a member of any of the armed forces of the union or of a member of any police force or of any public servant and was committed:-
- While such member or public servant was on duty; or
- In consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, or
- If the murder is of a person who had acted in the lawful discharge of his duty under section 43 of the Code of Criminal Procedure, 1973 or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under section 37 and section 129 of the Cr.P.C., 1973.

### Mitigating Circumstances for Death Sentence[3]

1. The offence was committed under the influence of extreme mental or emotional disturbance.
2. The age of the accused. If the accused is young or old, he shall not be sentenced to death,

3. The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
4. The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.
5. That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
6. That the accused acted under the duress or dominion of another person.

The condition of accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

In Jagmohan Singh v. State of Uttar Pradesh, (1973) 2 SCR 541: AIR 1973 SC 947, the Constitution Bench, of Supreme Court held that:

"The impossibility of laying down standards (in the matter of sentencing) is at the very Core of Criminal Law as administered in India which invests the judges with a very wide discretion in the matter of fixing the degree of punishment and that this discretion in the matter of sentence is liable to be corrected by Superior Court..... The exercise of judicial discretion on well recognized principles is, in the final analysis, the safest possible safeguard for the accused."

### **VIEWS OF ABOLITIONISTS OF DEATH SENTENCE**

1. Death penalty is irreversible. Decided upon according to fallible processes of law by fallible human beings – it can be and actually has been-inflicted upon people innocent of any crime.
2. There is no convincing evidence to show that death penalty serves any Penological purpose.
  - (i) Its deterrent effect remains unproven. It has not been shown that incidence of murder has increased in countries where death penalty has been abolished, after its abolition.
  - (ii) Retribution in the sense of vengeance, is no longer an acceptable end of punishment
  - (iii) On the contrary, reformation of the criminal and his rehabilitation is the primary purpose of punishment. Imposition of death penalty nullifies that purpose.

1. Execution by whatever means and for whatever offence is a cruel, inhuman and degrading punishment.

### **35<sup>th</sup> Report of Law Commission of India's view regarding the Deterrent Effect of Death Sentence**

1. Basically every human being dreads death.
2. Death, as a penalty, stands on a totality different level from imprisonment for life or any other punishment. The difference is one of quality, and not merely a degree
3. Those who are specifically qualified to express an opinion on the subject, including particularly the majority of the replies received from State Government Judges, members of Parliament and Legislatures and Members of the Bar Police Office are definitely of the view that the deterrent object of capital punishment is achieved in fair measures in India.
4. As to conduct of prisoners released from jail, it would be difficult to come to a conclusion, without studies extending over a long period of years.
5. Where any other punishment can possess all the advantages of capital punishment is a matter of doubt.
6. Statistics of other countries are inclusive on the subject. If they are not regarded as proving the deterrent effect, neither can they be regarded as conclusively disproving it.

### **Views of Lord Denning before British Royal Commission on Capital Punishment**

The punishment is the way in which society expresses its denunciation of wrong-doing; and in order to maintain respect for law, it is essential that the punishment inflicted for grave crimes, should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformatory or preventive and nothing else..... The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrong-doer deserves it, irrespective whether it is a deterrent or not.

### **Does the Death Penalty deter Homicides?**

People murder for a variety of reasons and under many different situations e.g.:

- During domestic disputes, when passions are inflamed.
- Under the influence of alcohol or other drugs, when the perpetrator is not in rational control.
- Hit-men doing contract killings; they typically never expect to be arrested.
- Psychopaths and other mentally ill individuals who have little regard for human life and who are unable to accept responsibility for their actions.
- Self-destructive individuals who believe that they deserve to die and want to be arrested and executed.
- Brain-damaged individuals, who experience periods of rage, and occasionally kill.

With the exception of professional hit-men, very few people are in a rational frame of mind when they kill others. It may be hopeless to expect any form of punishment to act as a deterrent.

#### **There are Some Indicators that the death Penalty has no Effect:**

- From 1976 to 1996, the number of executions per year in the United States has increased from 0 to just under 60. The homicide rate per 1,00,000 population has remained constant at just under 10.[4]
- Criminologists who belong to the American Society of Criminology, the Academy of Criminal Justice Sciences, and the Law and Society Association were polled. Over 80% believe that our current knowledge does not indicate a deterrent effect. 75% felt that increasing the numbers of executions or decreasing time spent on death row would not result in a deterrence.[5]
- 67% of U.S. police chiefs do not believe that the death penalty significantly reduces the numbers of murders.[6]
- In 1967, a study by Thorsten Sellin[7] compared the homicide rates between neighboring States in which some had the death penalty, and others did not. Sellin also compared murder rates before and after States either abolished or reinstated the death penalty. He found no statistically valid difference in rates in both cases. These results were summarized in a book by J.Q. Wilson.[8] The study might have been affected by the numbers of executions at the time; they had dropped to near zero in the U.S., so that even those States with death

penalty laws on the books were not exercising them fully.

- A 1998 research study conducted for the United Nations concluded: "This research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis."[9]

#### **There are some Indicators that it Acts as a Deterrent:**

- Police chiefs ranked the death penalty as least effective among 7 methods of reducing the homicide rate. 31% viewed reducing the usage of drugs as the most effective; 17% with a better economy and more jobs, 16% by simplifying court rules; 15% with longer prison sentences....1% by expanding the use of the death penalty.
- One writer[10] disagrees with the belief of most sociologists that the death penalty does not deter murderers. Differing cultures in various States may produce differing homicide rates. And those States with the higher murder rates might also be those which retain the death penalty. He refers to:
- A study by Isaac Ehrlich which found that the murder rate responded to changes in the likelihood of execution. He concluded that 7 or 8 murders were prevented by each execution from 1933 to 1967.[11],[12]
- A study by Kenneth Wolpin which showed that each execution, on average, reduced the number of murders in England by 4.[13]
- Other articles and books are.[14],[15],[16]

#### **There are some Indicators that it acts as an Anti-deterrent i.e., the Death Penalty Actually Increases the Homicide Rate:**

- In 1996, those States which had the death penalty had an average murder rate of 7.1 per 100,000 population; those States which do not execute people had a homicide rate of 3.6.[17]
- Comparing adjacent States where one State has the death penalty and the other does not, frequently shows that the



States with capital punishment have a much higher homicide rate.[18]

- A report of the Bureau of Justice Statics showed that during 1996, Southern States, where about 81% of the executions are performed, have an average murder rate of 9 per 100,000 population. States in the Northeast are responsible for 1% of the executions and have a murder rate of 5.4.[19]
- A 1980 study of homicides in New York found that the average numbers of murders increased in the month following an execution.[20]
- A 1995 study of the annual percentage increases in homicide rates in California showed that murders increased 10% a year during 1952 to 1967 when the State was executing people. When the State performed no executions (1968-1991) the average rate of increase was less (4.8%)
- Canada's homicide rate has dropped 27% since the death penalty was abolished in that country (for ordinary crimes) in 1976. For many years prior to 1976, the federal government had converted each death sentence to life imprisonment.
- The FBI Uniform Crime Reports Division publication Crime in the US for 1995 reports that there were 4.9 murders per 100,000 people in States that have abolished the death penalty, compared with 9.2 murders in those States which still have the death penalty. "In no State has the number of murders diminished after legalizing the death penalty".[21]

## **PUBLIC SUPPORT FOR THE DEATH PENALTY, AND ALTERNATIVES**

The American Civil Liberties Union noted that in the 1960's and 1970's only a bare majority of Americans favoured capital punishment. They believe that "mounting fear of crime, and the cynical manipulation of the death penalty issue by many politicians for their own political gain, led to a shift upwards." The death penalty now has broad public support in both the United States and Canada.

Surveys in the US and Canada regularly show that a sizable majority of adults are in favour of the death penalty for convicted murderers. Depending upon the exact question asked, 65 to 80% of adults are in favor of the death penalty. In 1984, individuals who give greatest support to capital punishment were found to be older, white, male, rich, urban dwellers, politically independent, and religious believers.[22]

The numbers appear to increase when people perceive the crime rate as increasing.

A serious deficiency of almost all public opinion polls is that they generally ask too simple a question: whether the subject is in favour of the death penalty or not. They rarely offer alternatives to execution in their polling questionnaires. One exception was an ABC News/Washington Poll released on 2001-May-2. It shows a public ambivalence towards the continuation of the death penalty. When asked whether or not they supported the death penalty, the public responded 63% in favour. This is a major reduction in support from the 80% level, seven years ago. Of even greater potential importance is that if life without parole is offered as an option, response is a statistical dead heat: 46% favour the death penalty; 45% favour life without any chance at parole. The ABC News/Washington Post poll also determined that most American adults believe that:

- The death penalty does not act as a deterrent.
- The death penalty is applied unfairly across jurisdictions.
- Innocent people are sometimes executed.

51% of the public would support a nationwide moratorium while a commission studies whether the death penalty is being administered fairly. When they were told that just such a moratorium and study was underway in Illinois, their support rose to 57%.[23]

## **POLITICAL ATTEMPTS TO ABOLISH THE DEATH PENALTY**

- **1988 & 1994: Federal laws:** New federal laws were passed that expanded the number of offenses punishable by the death penalty. Although there have been no federal executions for the past 36 years, 21 federal prisoners are on death row; one is expected to be electrocuted in early 2001.
- **1999-Nov: Stop federal executions:** Senator Feingold introduced bill S 1917, "Federal death Penalty Abolition Act" in 1999-Nov. It would prevent any future federal executions and would prohibit the death penalty for violations of federal law.
- **2000-Jan-31: IL temporary abolition:** Governor G.H. Ryan of Illinois announced that he will create a moratorium on executions in that State until after an

administration review of the death penalty. More details.

- **2000-Apr: Letter to the President:** A number of religious groups wrote a letter to President Clinton calling on him to declare a moratorium on the federal death penalty.
- **2000-Apr: Bill introduced:** According to the Unitarian Universalist Association of Congregations Washington Office for Faith in Action, Senators Feingold (WI) "introduced S 2463, a bill which would immediately suspend executions in the United States while a national commission reviews the administration of the death penalty. The moratorium would bar execution of individuals sentenced under either State or federal statutes. Currently 38 States have death penalty statutes on the books." The bill did not proceed.[24]
- **2005-Nov-07: Catholic Bishops heavily promoting end to death penalty:** According to Religion Link: "U.S. Catholic Bishops say they want to 'seize a new moment and new momentum' in their 25-year campaign against capital punishment. They're set to approve a new statement urging an end to the death penalty at their Nov. 14-17 meeting at a time when advocates on both sides of the issue say that opinions are more in flux than they have been in years." [25]

## STATE MORATORIUMS

On 2000-Jan-31, Governor G.H. Ryan of Illinois announced a moratorium on executions in that State until after an administration review of the death penalty is completed. More details.

In 2000-Sep, The Texas Civil Rights Project issued a report which called for a moratorium on executions in that State until changes can be made to the system. They recommended:

- Changes to the selection process for defense attorneys. The American Bar Association has established standards in this area which require lawyers to have at least five years' experience, and training in defense of capital cases.
- Defence attorneys should be paid at close to the market rates.
- Financial compensation should be guaranteed to anyone who has been wrongfully convicted.
- Prosecuting attorneys should be subject to lawsuits if they concealed evidence from the

defense, knowingly used perjured testimony or knowingly used tainted evidence. They are currently immune from prosecution.

- Creation of a life-without-parole sentence option for capital cases.
- Allow jurors who have doubts about the fairness of the system to serve in capital cases.
- Not allowing crimes, that a defendant has been accused of but not convicted of, to be mentioned during sentencing hearings.
- Consideration of the use of two juries in capital cases: one to try the individual and the other to assign the sentence.
- Restoration of the right of habeas corpus.
- Reinstating the previous appeals legislation.
- Guarantee that the inmate receives a new lawyer for appeals in death cases.
- Guarantee DNA testing for any convict that requests it.
- Overhaul the Board of Pardons and Paroles' procedures.
- Alter legislation to ban the execution of persons who were minors at the time of the crime.
- Alter legislation to ban the execution of developmentally disabled persons.

## GUIDELINES OF RAREST OF RARE CASES MACHHI SINGH CASE

Machhi Singh v. State of Punjab, (1983) 3 SCC 470: AIR 1983 SC 957: 1983 Cr LJ 1457: 1983 SCC (Cri) 681: (1983) 3 SCR 413

**Thakkar, J.**

1. Protagonists of the "an eye for an eye" philosophy demand "death for death". The 'Humanists' on the other hand press for the other extreme viz, "death in-no-case". A synthesis has emerged in 'Bachan Singh v. State of Punjab', AIR 1980 SC 898: (1980) 2 SCC 684: 1980 Cr LJ 636: 1980 SCC (Cri) 580, wherein the "rarest-of-rare-cases" formula for imposing death sentences in a murder case has been evolved by this Court. Identification of the guidelines spelled out

in Bachan Singh in order to determine whether or not death sentence should be imposed is one of the problems engaging our attention, to which we will address ourselves in due course.

2. A feud between two families has resulted in tragic consequences. Seventeen lives were lost in the course of a series of five incidents which occurred in quick succession in five different villages, situated in the vicinity of each other in Punjab, on a night one would like to forget but cannot forget, the night between August 12 and August 13, 1977. The seventeen persons who lost their lives and the three who sustained injuries included men, women and children related to the Amar Singh and his sister Piaro Bai.
3. In this connection one Machhi Singh and his eleven companions, close relatives and associate were prosecuted in five sessions cases, each pertaining to the concerned village in which the killings took place. Machhi Singh was the common accused at each trial. The composition of his co-accused differed number-wise from trial to trial. At the conclusion of the series of trials the accused found guilty were convicted under appropriate provisions. Four of them were awarded death sentence, whereas sentence of imprisonment for life was imposed on nine of them. They were also convicted for different offences and appropriate punishment was inflicted on each of them in that behalf. The order of conviction and sentence gave rise to five murder references and fourteen appeals by the convicts before the High Court of Punjab and Haryana. The High Court heard every individual appeal separately, but disposed of the group of appeals by a common judgment for the sake of convenience. The present group of appeals is directed against the aforesaid judgment rendered by the High Court. We will treat each of the appeals compartmentally, and separately, on its own merits, on the basis of the evidence recorded at the trial in each session's case giving rise to the respective appeal. But for the sake of convenience we will dispose of the appeals by this common judgment. In order to avoid confusion, the occurrence in each village will be adverted to in the same manner in which the High Court has done viz. Crime No. I, IIA, IIB, III, IV and V. Motive.
4. The aspect regarding motive has been discussed exhaustively in the third paragraph of the elaborate judgment rendered by the High Court. We need not set out this aspect at length or examine it in

depth. This aspect need not therefore be adverted to in the context of each crime over and over again so as to avoid avoidable repetition, Suffice it to say that reprisal was the motive for the commission of the crime.

## **COMMON CRITICISM**

1. The most serious criticism pressed into service by learned counsel for the appellants in each of the appeals is common. Instead of dealing with the identical criticism, in the identical manner, repeatedly, in the context of each matter, we propose to deal with it at this juncture. The criticism is this. It was a dark night. Electricity had not yet reached the concerned village at the material time. In each crime the appreciation of evidence regarding identification has to be made in the context of the fact-situation that a lighted lantern was hanging in the courtyard where the victims were sleeping on the cots. The light shed by the lantern cannot be considered to be sufficient enough (such is the argument) to enable the eye witnesses to be sufficient enough (such is the argument) to enable the eye witnesses to identify the culprits. This argument has been rightly rebuffed by the Sessions Court and the High Court, on the ground that villagers living in villages where electricity has not reached as yet, get accustomed to seeing things in the light shed by the lantern. Their eyesight gets conditioned and becomes accustomed to the situation. Their powers of seeing are therefore not diminished by the circumstance that the incident is witnessed in the light-shed by the lantern and not light. Moreover, identification did not pose any serious problem as the accused were known to the witness. In fact they were embroiled in a long-standing family feud. As the culprits had not covered their faces to conceal their identity, it was not difficult to identify them from their facial features, build gait etc. Light-shed by the lantern was enough to enable the witnesses to identify the culprits under the circumstances.
2. The concurrent finding of fact recorded by the Sessions Court and the High Court in this behalf does not, therefore, call for interference at the hands of this Court on this score.
3. Now we will address ourselves to the facts pertaining to the individual appeals.

**Crime No. 1**

1. The occurrence giving rise to the proceedings culminating in the appeal before this Court took place at Village Alahi Baksh Badla at about 8.30 p.m. on August 12, 1977. Four members of the household of PW Amas Singh became the target of the assailants and lost their lives in the course of the murderous attack. The four victims were the wife and three sons of PW Amar Singh viz., (1) Biban Bai (aged about 45); (2) Gurcharan Singh (aged about 15); (3) Jagtar Singh (aged about 10) and (4) Balwant Singh (aged about 9). As luck would have it Amar Singh the head of the household and his 10 years old daughter, PW Mohindo, escaped the murderous assault and survived to tell the tale of the ghastly murder in the Court. Evidence of PW Amar Singh shows that on the unfortunate night, he and the members of the household were sleeping in the courtyard. There was a lighted lantern in the courtyard which was placed on the small boundary wall of the kitchen. PW Amar Singh was sleeping on one cot. PW Mohindo, his daughter who survived the attack, was also sleeping in the same cot. Next to him was another cot on which his wife Biban Bai was sleeping. And an infant child was sleeping with her on the same cot. His two sons, Gurcharan Singh and Kulwant Singh, were sleeping together on another cot just nearby. P.W. Amar Singh suddenly woke up on hearing the noise of the barking of a dog since he was half awake being apprehensive of some trouble because of a murder case which was pending in a Criminal Court against his relations. Amar Singh sprang up on hearing the noise and instinctively went inside, where some sarkana reeds were heaped, and concealed himself there. He was peeping from his place of hiding and was able to see what was happening. Barely had he done so when he espied the five appellants, who were known to him, enter the courtyard. Appellant Machhi Singh and appellant Mohinder Singh were each armed with a rifle. Their three companions viz., Appellant Bhajan Singh, Kashmir Singh and Chinna Singh, were armed with kirpans. Appellant Machhi Singh fired a shot at Biban Bai, who was lying on the cot. At the same time appellant Mohinder Singh fired a shot at Balwant Singh who was lying on a cot. Appellant Machhi Singh then fired another shot at Jagtar Singh and yet another shot at Kulwant Singh. Appellant Mohinder Singh on his part fired a shot at Gurucharan Singh. It is the version of P.W. Amar Singh that his daughter P.W. Mohindo managed to get beneath the cot on which he was previously lying while the assailants

were firing at the different victims. The three companions of appellants Machhi Singh and Mohinder Singh, namely, Kashmir Singh, Chinna Singh and Bhajan Singh, gave kirpan blows which were aimed at the head of Biban Bai who had already been injured by rifle shots. The kirpan blows did not fall on the head of Biban Bai but struck the upper surface of the table which was lying nearby. Thereafter all the five culprits fled from there with their respective weapons. After day break PW Amar Singh left the house in order to lodge a report of the occurrence with P.W. 31 Head Constable Wassan Singh.

2. Seven persons were prosecuted in connection with this incident. Five of them have been acquitted. Only two of the original seven accused, viz., Appellants Machhi Singh and Mohinder Singh have been convicted for murder and sentenced to death. We propose to deal with the appeals preferred by them separately.

**Appellant Machhi Singh:**

1. As far as Machhi Singh is concerned the finding of guilt recorded by the Sessions Court and affirmed by the High Court rests on the testimony of two eye witnesses viz., P.W. Amar Singh and his 10 year-old daughter P.W. Mohindo. Evidence has also been adduced to establish that one of the rifles used in the course of the murderous assault had been issued to Machhi Singh in his capacity as an officer of Punjab Home guards. The evidence of the ballistic expert establishes that the said rifle had been recently used and some of the empty cartridges found from the scene of the occurrence were fired from this rifle. This evidence is further corroborated by the evidence pertaining to the recovery of the rifle at the instance of appellant Machhi Singh which has been accepted by the Sessions Court and the High Court.
2. Learned Counsel for the appellant contended that the evidence of the two eye witnesses namely, P.W. Amar Singh and P.W. Mohindo was not such as could be implicitly relied upon, and the rest of the evidence was neither sufficient nor satisfactory enough, to bring home the guilt to appellant Machhi Singh.
3. The Sessions Court and the High Court have accepted the evidence of P.W. Amar Singh and his daughter P.W. Mohindo after close and careful scrutiny



of the same. We do not think that there is any justification to take a different view in regard to the assessment of their evidence. The presence of Amar Singh and his daughter Mohindo at the scene of occurrence is natural inasmuch as the occurrence took place at the house of Amar Singh. Counsel for the appellant has assailed the finding recorded by the Sessions Court and affirmed by the High Court by pressing into service the argument that as there was only one lantern burning in the courtyard, and as it was a dark night, it being the 14<sup>th</sup> day of the second half of the lunar month, Amar Singh and Mohindo could not have identified the culprits. It is no doubt true that it was a night preceding the 'amavashya'. All the same the evidence clearly shows that a lamp was burning in the courtyard. This aspect has already been dealt with a short while ago. For the reasons indicated in the course of the earlier discussion we think that the concurrent view taken by the Sessions Court and the culprits must be affirmed. Besides, it is a pure question of appreciation of evidence which cannot be reagitated before us. Even so we have considered on our own the evidence on the point and we are satisfied that the view taken by the Session Court and the High Court is unexceptionable.

4. Counsel for the appellant next contended that the evidence pertaining to the recovery of the rifle and the evidence adduced by the prosecution in order to establish that one of the rifles used in the course of the occurrence was issued to appellant Machhi Singh in his capacity as an officer of the Punjab Home guards was not satisfactory and reliable. The Sessions Court and the High Court have accepted the prosecution evidence in this behalf. We have on our own perused the evidence and we see no reason to disbelieve the evidence connecting appellant Machhi Singh with the weapon of offence (Ex. P-18). The evidence of P.W. 15 Shri Yashpal. Platoon Commander of Punjab Home guard, is supported by entry Ex. 32/A in the Register relating to the issuance of arms and ammunitions to the volunteers of the Home guards. The evidence of P.W. 32 Narinder Singh, Quarter Master of Punjab Home guards, conclusively establishes that the rifle was issued to appellant Machhi Singh. The evidence shows that appellant was personally known to the witness. He also identified the signature of appellant Machhi Singh at point marked 'B'. It may be mentioned that in the course of his statement under section 313 of the Code of Criminal Procedure appellant Machhi Singh admitted

that the signature at Ex. PW 32A was his signature. Of course according to him the said signature had been obtained by the police under coercion. Unless we hold that the Investigating Officer and the Officers of the Home guards had entered into a conspiracy to concoct evidence against Machhi Singh, this evidence is otherwise flawless and has remained unshaken. We therefore see no reason to disbelieve the testimony of P.W. 32 (Quarter Master Narendra Singh) and P.W. 15 (Platoon Commander Yashpal). On a close and careful scrutiny of the evidence on this point the Sessions Court and the High Court have rightly reached the conclusion to the effect that rifle Ex. P. 18 was issued to appellant Machhi in his capacity as a member of the Punjab Home guards on February 12, 1977 and that the said rifle and the ammunition had remained with appellant Machhi Singh ever since. On a close scrutiny, the evidence on this point is unassailable and the view taken by the Sessions Court and the High Court is unimpeachable. The rifle in question, Ex. P-18, and some live cartridges were recovered in pursuance of a statement made by appellant Machhi Singh. The evidence of P.W. 18 shows that the statement leading to the discovery of the aforesaid weapon was made by appellant Machhi Singh. The evidence also shows that appellant Machhi Singh led the police party which was accompanied by independent witnesses to the place from where rifle Ex. P-18 and live cartridges were recovered. The Sessions Court and the High Court have accepted this evidence and we do not see any reason to disbelieve the same. Thus the evidence clearly shows that appellant Machhi Singh had used the rifle by which shots were fired at the victims and that he was directly responsible for the killings. The order of conviction is therefore unassailable and must be confirmed. We will deal with the question of sentence at the far end of the judgment.

#### **Appellant Mohinder Singh**

1. So far as appellant Mohinder Singh is concerned the evidence connecting him with the crime falls into two parts. The first part of the evidence consists of the evidence of P.W. Amar Singh and P.W. Mohindo. Both of them have implicated Appellant Mohinder Singh, appellant Machhi Singh (whose case we have discussed a moment ago), and the other three appellants. The criticism leveled in

the context of appellant Machhii Singh has been repeated in the context of the evidence connecting appellant Mohinder Singh with the crime. We have already evaluated the evidence of these two eye witnesses. We need not therefore reiterate the same reasoning in the context of appellant Mohinder Singh for repelling the criticism on this score.

2. The second part of the evidence connects appellant Mohinder Singh with the second rifle which was used in the course of the commission of the crime. The Sessions Court and the High Court have accepted the evidence on both these points. Counsel for the appellant has challenged the validity of the finding recorded by the Sessions Court and the High Court on these two points. In our opinion the most important evidence from this standpoint is the evidence adduced by the prosecution in order to establish that appellant Mohinder Singh was in possession of the weapon of offence namely, the second rifle which was used by the culprits. Counsel is right in his submission that the evidence on this point does not satisfactorily establish the link. In fact the evidence shows that the second rifle used in the commission of the crime was originally issued to one Kashmir Singh; thus a doubt is created in regard to the identity of the culprit who fired the second rifle.
3. Admittedly, the weapon in question was not issued to appellant Mohinder Singh. The weapon along with ammunition (20 rounds) was originally issued to PW 27 Kashmir Singh by Punjab Home guards 'B' Company on 16<sup>th</sup> October, 1974.

## CONCLUSION

In my opinion, after analyzing the arguments for and against capital punishment, I have concluded that the death penalty is morally right to a considerable extent. When a criminal commits a capital crime, they should suffer a punishment which equals the crime and it is thought that the worst punishment possible is the death penalty since it does not only remove a criminal's physical freedom by imprisoning them, it removes their psychological freedom by withdrawing their choice to live. Currently, the death penalty is administered as a painless injection which is the most humane way possible in comparison to earlier methods such as beheading or the electric chair. Therefore, the argument that it is a cruel system is invalid since torture is avoided and in the modern day, capital punishment is administered in a humane manner. When a criminal is humanely killed for his or her horrific crimes, this means that they cannot re-offend once released from prison, which is highly common, and even if they are planned not to be

released, there is a minor possibility of their escape. This is incredibly beneficial for society and will increase the confidence of innocent individuals who may otherwise be afraid to leave their home. Therefore, capital punishment is better for the majority so more people are happier. Capital Punishment also warns future criminals and dissuades them from performing capital crimes and this increased the safety of the public. Some would argue that Capital Punishment has not seemed to make a difference in the crime rate however, the fact that it is in place makes the criminal system in a country seem more severe and would generally deter future criminals. It is also though hypocritical for the government to murder, as a punishment for murder. However, the legal system counteracts the immoral actions with a punishment that matches the horrific crime; and in these circumstances the death penalty is the only possible match for murder. The fact that the criminal will not learn and does not have the ability to change his or her ways; but it can be argued that every human is given one chance at life and their morality is their own choice which they must pay the price for. To conclude, I believe that capital punishment is morally right since the society benefits greatly, it is administered in a humane manner and is the only punishment that levels with the crime.

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