PETITIONER:
MACHHI SINGH AND OTHERS

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT20/07/1983

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)

CITATION:
1983 AIR 957 1983 SCR (3) 413
1983 SCC (3) 470 1983 SCALE (2)1
CITATOR INFO :
RF 1983 SC1155 (3,4)
F 1987 SC1721 (3)
R 1988 SC1785 (14)
R 1988 SC1883 (322)
R 1989 SC1335 (10)
E&D 1989 SC1456 (12,13)

ACT:
Penal Code (Act 45 of 1860), Section 302-Sentence-Imposition of death sentence-"Rarest of rare cases formula"-Guidelines to be adopted in identification of rarest of rare cases, explained-Evidence Act (Act 1 of 1872) Section 9-Witnesses indentifying culprits in the light shed by lantern-Appreciation of-Dying declaration, non-recording of-Evidentiary value-Doctrine of benefit of doubt, when to be invoked.

HEADNOTE:
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 the night between August 12 and August 13, 1977. The seventeen persons who lost their lives and the three who substained injuries included men, women and children related to one Amar Singh and his sister Piaro Bai.

In this connection one Machhi Singh and his eleven companions, close relatives and associates 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 and identity-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. Having lost their appeals

and the death sentences having been con-firmed, the appellants have come in appeal by way of special leave.

The Court considered the following:

(a) What normal guidelines are to be followed so as to identify the "rarest of rare cases" formula for imposing death sentence, as spelled out in Bachan Singh v. State of Punjab, [1980] 2 SCR 864; (b) Reliability of eye witnesses to a crime under light shed by the lantern in a village to identify connect an accused to the crime; (c) invocation of the doctrine of benefit of doubt;

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and (d) the effect of non-summoning the magistrate for recording dying declaration.

Allowing the Criminal Appeals Nos. 79/81 and 86/81 and dismissing the other appeals, the Court

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HELD : 1:1. The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration alongwith the circumstances of the 'crime'. Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances. A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. [433 A-E]

Bachan Singh v. State of Punjab [1980] 2 S.C.C. 684, relied on,

1;2. In order to apply these guidelines inter-alia the following questions may be asked and answers : (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and called for a death sentence ? (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender. [433 E-G]

1:3. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed here in above, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so. [433 G-H]

2. The 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 electric light. Paucity of light cannot, therefore, improbablise the commission of the crime by the accused. [417 C-D]

3:1. When a piece of evidence introduced and relied upon by the prosecution itself creates a doubt (a reasonable doubt) as regards the complicity of the accused, even if there are no infirmities in other evidence, the doctrine of

benefit of doubt must be invoked by the court in favour of the accused. [422 F-G]
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In the instant case, though there is no infirmity in the evidence of PW Amar Singh and PW Mohindo to connect Mohinder Singh to the crime, the fact that the second rifle used in the commission of crime having been originally issued to one Kashmir Singh does not satisfactorily establish the link.
[422 B, E-F]
3:2. When the deceased was making good recovery and having regard to the condition of his health, no danger to his life was apprehended and therefore in that fact situation, the magistrate was not summoned, no fault can legitimately be found on this score for getting the benefit of doubt in favour of the accused. Any statement made to the police by such deceased can be subsequently allowed to be treated as dying declaration and evidence scanned. [429 G-H]

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 78-79, 80-84, 85-86, 87 and 88-89 of 1981 and 419 of 1982.
Appeals by Special leave petitions from the Judgment and Order dated the Ist September, 1980 of the Punjab and Haryana High Court in Murder Reference Nos. 14, 18, 16 and 1979 and 1 of 1980 and Criminal Appeal Nos. 933. 1176, 935, 977, 978, 972, 992, 979, 976, 980, 981, 991, 827 and 1105 of 1979.
R. L. Kohli and R. C. Kohli for the Appellants.
Harbans Singh and D. D. Sharma for the Respondent.
The Judgment of the Court was delivered by
THAKKAR, J: 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(1) wherein the "rarest-of-rare-cases" formula for imposing death sentence 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.
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
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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 one Amar Singh and his sister Piaro Bai.
In this connection one Machhi Singh and his eleven companions. close relatives and associates 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 and identity-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 sessions 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:

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:

The most serious criticism pressed into service by learned counsel for the appellants in each of the appeals is common.

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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 court-yard 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 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 electric light. Moreover, identification did not pose any serious problem as the accused were known to the witnesses. 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.

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.

Now we will address ourselves to the facts pertaining to the individual appeals.

CRIME No. 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 Amar 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
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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. P.W. 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, Kashimir 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.
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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:

As far as Machhi Singh is concerned the finding of guilt recorded by the Session 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 Homeguards. 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.

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 implicity relied upon, and the rest of the evidence was neither sufficient, nor satisfactory enough, to bring home the guilt to appellant Machhi Singh.

The Sessions Court and 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 14th 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 420
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 High Court that there was sufficient light to enable the identification of 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 Sessions Court and the High Court is unexceptionable.

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 Homeguards 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 Homeguard, is supported by entry Ex 32/A in the Register relating to the issuance of arms and ammunitions to the volunteers of the Homeguards. The evidence of P.W. 32 Narinder Singh, Quarter Master of Punjab Homeguards, 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 Sec. 313 of the Code of Criminal Procedure, appellant Machhi Singh admitted that the signature at Ex. P.W. 32 A 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 Homeguards had entered into a conspiracy to concoct evidence against Machhi Singh, this evidence cannot be disbelieved. There is no warrant for such an assumption. Their 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 Session's Court and the High Court have rightly reached the conclusion to the effect that rifle Ex. P.18 was issued to appellant Machhi Singh in his capacity as a member of the Punjab Homeguards on February 12, 1977 and that the said rifle and the ammunition had remained with appellant Machhi Singh ever
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since. On a close scrutiny of 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 fag end of the judgment.

Appellant Mohinder Singh:

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 levelled in the context of appellant Machhi 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.

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 stand point 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
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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.

Admittedly, the weapon in question was not issued to appellant Mohinder Singh. The weapon alongwith ammunition (20 rounds) was originally issued to P.W. 27 Kashmir Singh by Punjab Homeguards 'B' Company on 16th October 1974. The official records evidence this fact. There is no record to show that this rifle was returned by PW 27. The evidence PW 27 that one Kaka Ram, a Platoon Commander of Homeguards, had taken back the rifle and the ammunition from him and handed over the same to appellant Mohinder Singh a few days before 13th April 1977 in the presence of PW 27 has been disbelieved by the Sessions Court. The High Court has not given any convincing reason to justify taking a different view. Thus the link between the weapon of offence and appellant Mohinder Singh is not established. In fact the evidence shows that it was issued to PW 27 some 3 years before the occurrence. Even if the prosecution evidence is accepted at its face value it does not establish that the weapon was with appellant Mohinder Singh at any point of time proximate to the point of time of the offence. Under the circumstances we are unable to agree with the High Court that appellant Mohinder Singh was in possession of the weapon of offence at the point of time of the offence. In view of this lacuna in the evidence we are unable to hold that the second rifle which was used in the commission of the crime was fired by appellant Mohinder Singh.

This dimension gives rise to a dilemma. A piece of evidence introduced and relied upon by the prosecution itself creates a doubt (a reasonable doubt) as regards the complicity of the appellant. Though we do not see any infirmity in the evidence of PW Amar Singh, and PW Mohindo, in view of this factor, which speaks in favour of the appellant, we must invoke the doctrine of benefit of doubt. We accordingly accord the benefit of reasonable doubt to Appellant Mohinder Singh. The order of conviction and sentence, in so far as he is concerned must therefore be set aside. We accordingly acquit Appellant Mohinder Singh and direct that he be set at liberty forthwith unless he is required to be detained in the context of some other order.
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Crime No. II A & II B:

II A

At about 9-10 p.m. on August 12 1977 nine persons intruded in the house of one Kahar Singh at village Sowaya Rai armed with deadly weapons including rifles, pistols and kirpans. They killed two inmates of the household (Smt. Ghamobai and Smt. Rajobai) and injured the third one (Smt. Nankobai) by gun shots.

II B

From there, they straightway proceeded to a place known as 'Kho Kunjuka' situated at a distance of about two furlongs from the said village. They forcibly intruded into the house of one Bishan Singh. They attacked the inmates of the house and killed Bishan Singh, Smt. Paro, and her child Balbir Singh, by firing rifle shots. PW. 2 Hakam Singh was lying on a cot outside the compound of the house of Bishan Singh. He was apprehensive of his life and fled from there. Two of the culprits viz., Machhi Singh, and Jagir Singh,

chased him and fired at him. As a result of this Hakam Singh sustained gun shot injuries.

In connection with these two incidents the appellants were tried by the Sessions Court for various offences. The Sessions Court convicted the appellants for an offence under Sec. 302 I.P.C. read with Sec. 149 I.P.C. as in its view it was established beyond reasonable doubt that the nine appellants had formed an unlawful assembly with the common object of committing murder of Smt. Ghamobai, Smt. Rajobai, Smt. Parobai and Balbir Singh. The appellants were also found guilty of an attempt to commit the murder of PW 20 Nankobai, and, PW 22 Hakam Singh, who sustained injuries by gun shots in the course of these incidents, but who survived the murderous assaults to narrate the version of the incident before the Court. The Sessions Court imposed death penalty on three of the appellants, viz., Machhi Singh, Kashmir Singh, and Jagir Singh. The remaining six were sentenced to undergo imprisonment for life. The High Court confirmed the order of conviction and sentence and dismissed the appeals preferred by the appellants.

II A

So far as the first incident is concerned the conviction of the appellants rests on the testimony of three witnesses viz,,

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PW 16 Kaka Ram, PW 21 Bagicha Singh, and PW 20 Smt. Nankobai. Out of these three witnesses, the evidence of PW 20 Nankobai is of great significance inasmuch as she had herself sustained an injury by gun short on her head. The fact that Smt. Nankobai sustained gun shot injury in the course of this transaction is satisfactorily established by the medical evidence. Now PW 20 was an inmate of the Household of Kehar Singh. Her presence at the house was therefore natural. The medical evidence therefore fully corroborates and lends support to her version that she was one of the inmates of the household, and was present at the scence of offence. Her presence at the time of the offence cannot therefore be disputed. She being an injured witness her evidence is entitled to great weight. There is an in built guarantee that she was an eye witness to the incident. Her evidence convincingly establishes that the appellants were the persons who had intruded in the house of Kehar Singh and committed the crime resulting in the death of Smt. Gamobai and Smt. Rajobai, both of whom succumbed to the injuries inflicted on them. Her testimony further establishes that she herself was injured by the rifle shots in the course of the incident by appellant Kashmir Singh. It was a matter of sheer luck that PW 20 did not succumb to the injuries and survived to till the tale. There is no reason to doubt or disbelieve her testimony. It is no doubt true that she had remained unconscious for five or six days before she regained consciousness at the hospital. But then her evidence clearly shows that she had sustained the injury only after Smt. Gamobai, and Smt. Rajobai were shot dead by the assailants. It was only after she sustained the injury that she became unconscious. Her evidence that she had witnessed the murderous assault on Smt. Gamobai and Sm. Rajobai and had identified the assailants has remained unshaken and has been accepted by the Sessions Court and the High Court. There is no valid reason to take a different view. The argument about insufficiency of light has already been negatived. The evidence of PW 20 is therefore sufficient to uphold the order of conviction recorded by the courts below. Furthermore, there is the evidence of PW 16, Kaka Ram, and PW 21, Bagicha Singh. PW 16 occupies a house

in the neighborhood. He came out from the house upon hearing the report of fun fire. He was standing outside the house and had witnessed the incident. He had identified the appellants as the culprits. His evidence is reinforced by PW 21 Bagicha Singh who was sleeping on the roof of the adjoining house. He had also witnessed the incident and identified the assailants. They are not
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shown to be interested witnesses who would concoct a story. Why should they do so ? In fact they were exposing themselves to considerable risk. On probabilities, therefore, it is least likely that these two witnesses would falsely implicate the appellants. Their evidence has been accepted by the Sessions Court and the High Court. We see no reason to do otherwise, The finding of guilt recorded by the Sessions Court and the High Court in regard to this incident must therefore be unhesitatingly confirmed.

(II B)

In-so-far as the second incident is concerned, the most important witness is PW 22 Hakam Singh, inasmuch as he himself had sustained injuries by gun shot in the course of the incident in question That he was present at the time of the occurrence and had witnessed the incident is therefore incapable of being disputed. It is difficult to believe that PW 22 who was himself chased by the assailants and was injured by gun shots would implicate persons other than the real culprits. His evidence further shows that two of the culprits viz., appellant Machhi Singh and appellant Jagir Singh had chased him and fired the shots at him which caused injuries to him. The medical evidence fully supports his testimony and establishes that he had sustained gun shot injuries in the course of this incident. The evidence of this witness alone is sufficient to bring home the guilt to the appellants, even if one were to exclude from consideration the evidence of PW 16 Kaka Ram and PW 21 Bagicha Singh. There is however, no reasons to do so. Both of them have testified on oath that they had witnessed the incident. They are not shown to be interested witnesses there is no reason why they should falsely implicate the appellants and expose themselves to the obvious risk arising therefrom. The Sessions Court and the High Court were perfectly justified in accepting and acting upon the testimony of these two witnesses whose evidence lends further strength and support to the evidence of the injured witness viz., PW 22 Hakam Singh. The stock criticism that the culprits could not have been identified in the light of the lantern which was hanging in the courtyard, has already been dealt with and repelled earlier. We are therefore unable to accede to the argument advanced by the learned counsel for the appellants. The finding of guilt and the order of conviction must therefore be confirmed. As regards sentence, the sentence of imprisonment of life imposed on six of the
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appellants and the other sentences imposed on them have to be consequently confirmed. Their appeals will stand dismissed. So far as appellants Machhi Singh, Kashmir Singh and Jagir Singh are concerned, the Sessions Court has imposed death sentence on each of them. The High Court has confirmed it. On our part, we will deal with the question of sentence imposed on them in the concluding part of our judgment.

Crime No. III

One Wanjar Singh (65) and his grand son Satnam Singh (16) were killed by gun shots in the course of this incident

at the house of Wanjar Singh in village Mamujoa at about 11 p.m. on the night of August 12, 1977. The only inmate of the house who escaped was PW 16 Smt. Sabban, the wife of Wanjar Singh who was narrated her story in the following manner:-

She was sleeping in the courtyard of her house. At about 11 p.m. she woke up and saw appellant Machhi Singh armed with rifle, and his two brothers, appellant Chhina Singh and appellant Kashmir Singh, armed with Kirpans, standing near the feet of Satnam Singh who was sleeping on the cot. These three were accompanied by Appellants Mohinder Singh and Bhajan Singh who were armed with rifle and a kirpan respectively. Appellant Kashmir Singh flashed a torch at Satnam Singh. Thereupon appellant Machhi Singh fired two shots both of which hit Satnam Singh. Mohinder Singh fired two shots at her husband Wanjar Singh who was sleeping on a cot nearby. Wanjar Singh and her grand-son Satnam Singh died on the spot on their cots. She shouted for help and began to cry. The Appellants, who were about to leave, turned back. Appellant Machhi Singh fired a shot at her which missed her but hit her bullock (which was tied in the courtyard) on its right leg. The witness raised an alarm and cried for help. But no one came during the night. At dawn Chowkidar Sardar Ram came to the spot. She requested him to remain near the dead bodies. She herself proceeded to police-station Gur Mar Sahay and lodged F.I.R. Ex. PW 10/B.

The presence of Smt. Sabhan at her own house at night time is but natural. Her husband and her grand-son have been killed. She is the lone survivor of the household. Her evidence therefore assumes great importance. It is inconceivable that the witness, who

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has lost her husband, as also her grand son, would implicate persons other than the real culprits. The only argument pressed into service was the stock argument regarding insufficiency of light. It was negatived by the courts below. We have already dealt with and negatived this argument for reasons indicated earlier. Her evidence furthermore shows that appellant Kashmir Singh had flashed his torch at her husband (Wanjar Singh) and at her grand-son (Satnam Singh). That she herself remained alive to tell the tale was a stroke of luck. The appellants had shot at her but the rifle shot hit the bullock instead of hitting her. The culprits were naturally, in a hurry to get away. They would not have waited to ascertain whether she was hit. Her evidence remains unshaken. The Courts below have, therefore, rightly considered it to be creditworthy and safe for being acted upon. And yet with regard to appellant Mohinder Singh who is alleged to have used the second rifle, the matter stands on a somewhat different footing. The evidence connecting the appellant with the rifle in question in the present case is the very same evidence that we have disbelieved in the context of crime No. 1. Official records show, and it is the case of the prosecution itself, that the rifle was issued to PW 15 Kashmir Singh on 16th October 1974. The evidence adduced in order to show that it was taken back and handed over to appellant Mohinder Singh a few days before 13th April 1977 does not inspire confidence. We agree with the reasoning of the Sessions Court. We need not repeat the reasons which we have set out at some length in the course of discussion pertaining to crime No. 1. Suffice it to say that the doctrine of benefit of doubt requires to be invoked on the facts of this case. We accordingly allow the appeal of Mohinder Singh, set aside the order of conviction and sentence passed against him, and direct that he be set at liberty forthwith unless he is required to be

detained in some other connection.

In so far as the rest of the appellants are concerned, the evidence of this witness has been accepted and acted upon by the Sessions Court and the High Court, and we do not see any reason to do otherwise. Under the circumstances the finding of guilt recorded by the Sessions Court and the High Court for the aforesaid offence against the other appellants must be confirmed. Turning to the question of sentence, a death sentence has been imposed on Machhi Singh. We will consider the question as to whether death sentence is called for in the concluding part of our judgment. In so far as the rest of the appellants are concerned, the sentence of
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imprisonment for life and the other sentence imposed on each of them must be confirmed. Their appeals will therefore stand dismissed.

Crime No. IV

The incident occurred at Village Kamrewala at about 1 a.m. on the night between 12th August and 13th August 1977. Mohinder Singh, aged about 32, the brother of Amar Singh, was shot dead. The F.I.R. was lodged within half an hour at about 1.30 a.m. by Piaro Bai wife of victim Mohinder Singh. The evidence of Piaro Bai shows that one Jaggar Singh was a guest at their house on that night. Her husband Mohinder Singh was sleeping on one cot. The guest, PW 4 Jaggar Singh, was sleeping on another cot nearby him. The witness herself was sleeping on a cot alongwith her two children in the courtyard. A lighted lantern was hanging on a peg on the wall. At about 1 a.m. someone from outside the house shouted for her husband. She woke him up and told him about it Her husband was in the process of sitting up on the cot when five persons intruded into the courtyard. Only one of the five intruders (Machhi Singh) was known to her. The remaining four were not known to her, One of them was armed with a rifle and the rest were armed with kirpans. Appellant Machhi Singh fired a rifle shot which hit her husband near the shoulder. Her husband succumbed to the injury on the spot. The culprits thereafter left the house. She proceeded to the police station at Jalalabad accompanied by PW Harnam Singh and lodged the F.I.R. at 1.30 a.m.

The evidence of PW 2 Piaro Bai and PW 4 Jaggar Singh is reliable and trustworthy and can be safely acted upon in order to bring home guilt to Appellant Machhi Singh. Her presence at her own house at night time is but natural. The evidence of PW 4 Jaggar Singh also corroborates the evidence regarding her presence and the occurrence. PW 2 has not implicated by name anyone other than Appellant Machhi Singh in her F.I.R. Her evidence is to the effect that the companions of appellant Machhi Singh were not known to her. This shows that she is a conscientious witness. The usual argument regarding inadequacy of light must be rejected for the reasons indicated earlier. In this case the F.I.R. was lodged within half an hour of the occurrence. The evidence of PW 4 who was a guest at the house fully corroborates the testimony of PW 2. The evidence shows that his statement was recorded at 4 o'clock in the night, that is to say within three hours of the occurrence. His
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evidence also shows that appellant Machhi Singh had fired the rifle shot. This evidence has been rightly accepted and acted upon by the Sessions Court and the High Court. We see no reason to dislodge this concurrent finding of fact. We must therefore confirm the finding of guilt recorded by the Sessions Court as affirmed by the High Court in so far as appellant Machhi Singh is concerned. We will deal with the

question of sentence at a subsequent stage.

Crime No. V.

At about 3.30 a.m. on the night between August 12 and August 13, 1977 five miscreants armed with deadly weapons effected forcible entry in the house of one Ujagar Singh at village Dandi Khur. They attacked the inmates and killed his sister Palobai, 35, and four near relatives of Palibai viz: (1) her father-in-law Sahib Singh, 70, (2) her mother-in-law Mattobai, 60, (3) her husband Jit Singh, 35, (4) last named Jit Singh's cousin Mukhtiar Singh, 25. Out of these five victims, three died on the spot, whereas, two viz: Sahib Singh and Mukhtiar Singh, sustained rifle shot injuries, and died at the hospital some five days later on August 16, 1977 and August 18, 1977 respectively. The incident occurred at about 3.30. a.m. and the F.I.R. was lodged within about six hours at 9.30 a.m. by PW 37 Ujagar Singh.

The order of conviction (passed by the Sessions Court and affirmed by the High Court) is inter-alia based on the dying declaration of Mukhtiar Singh. He was fired at and injured soon after midnight in the early morning of August 13. He was removed to hospital on that very day. His police statement (which has been subsequently treated as a dying declaration) was recorded on the 16th i.e. three days after the assault. He died on the 18th, two days later. The evidence shows that he was in fit condition to make a statement and his statement was truly and faithfully recorded. His statement has been considered to be genuine and true by the Sessions Court and the High Court. We are of the same opinion. It is true that the dying declaration has not been recorded by a magistrate. But then the evidence shows that Mukhtiar Singh was making good recovery and having regard to the condition of his health, no danger to his life was apprehended. It was in this situation that a magistrate was not summoned. Thus, no fault can be legitimately found on this score. Besides, the only question of importance now is as regards the creditworthiness of the statement which has been recorded. Since this statement has been found to be genuine and

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true nothing can detract from its value. The evidence provided by the dying declaration is by itself good enough to support the order of conviction. But this is not all. Also available is the evidence of PW 37 Ujagar Singh and his daughter-in-law, Munibai (PW 38). The evidence of these two witnesses lends full corroboration to the dying declaration of the victim, and has been rightly relied upon by the Sessions Court and the High Court. We have no reason to view the evidence askance. The presence of these two witnesses in the household was natural. Their evidence shows that on hearing the report of gun they had concealed themselves behind a herd of cattle and had witnessed the incident from there. We have no reason to disagree with the view of the Sessions Court and the High Court that their evidence is reliable. There is no substance in the argument that the culprits could not have been identified as the light shed by the lantern was not adequate to enable identification. We have already spelled out our reasons for repelling this contention. The finding of guilt is thus fully supported by evidence. We accordingly confirm the same unhesitatingly. Two of the five appellants (viz: Machhi Singh and Jagir Singh) have been sentenced to death. We will deal with the question of sentence in so far as they are concerned after a shortwhile. In regard to the remaining three, viz: Phuman Singh, Jagtar Singh and Kashmir Singh son of Wadhawa Singh, the sentence imposed by the courts below for the offence

under Sec. 302 read with 149 of IPC; and other offences, must be confirmed. Their appeals will stand dismissed.

Death Sentence

Having dealt with the appeals on merits from the stand-point of proof of guilt and validity or otherwise of the order of conviction, we now come face to face with the problem indicated when the curtain was lifted, namely, the application of the rarest-of-rare-cases rule to the facts of individual cases in the context of the relevant guidelines. Some reflections on the question of death penalty may appropriately be made before we tackle the said question in the perspective of the present group of appeals.

The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence-in-no-case" doctrine are not far to seek. 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

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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 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 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 the 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 entrain 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 or abhorrent nature of the crime, such as for instance:

I 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. For instance,

(i) When the house of the victim is set aflame 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 or her death.

(iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II Motive for Commission of murder

When the murder is committed for a motive which evince total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (2) a cold blooded

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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-a-vis whom the murderer is in a dominating position or in a position of trust. (c) a murder is committed in the course for betrayal of the motherland.

III Anti Social or Socially abhorrent nature of the crime

(a) When murder 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 with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV Magnitude of Crime

When the crime is enormous in proportion. For instance 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.

V Personality of Victim af murder

When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder. (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a vis whom the murderer is in a position of domination or trust (d) 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.

In this background the guidelines indicated in Bachan Singh's case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentences arises. The following propositions emerge from Bachan Singh's case:

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(i) the extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration alongwith the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

In order to apply these guidelines inter-alia the following questions may be asked and answered:

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

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

If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed here in above, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

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In the present group of appeals we are now concerned with the death sentence imposed on appellants (i) Machhi Singh (ii) Kashmir Singh; (iii) Jagir Singh by the Sessions Court as confirmed by the High Court.

Machhi Singh:

The High Court in its extremely well considered judgment has assigned the following reasons for imposing death penalty on appellant Machhi Singh in the context of each of the six crimes. We can do no better than to quote the said reasons in the very words employed by the High Court in the context of each crime:

Crime No. 1 (Crl. Appeal No. 78-79/81, Common)

"Machhi Singh killed Biban Bai and Jagtar Singh whereas Mohinder Singh killed Balwant Singh and Gurcharan Singh which has attracted on them death penalty. Now the circumstances of the case do reveal that it was a cold-blooded murder and the victims were helpless and undefended. And what was their fault, except that they were the immediate family of Amar Singh. The offence committed was of an exceptionally depraved and heinous character. The manner of its execution and its design would put it at the level of extreme atrocity and cruelty. The deceased woman and her children had offered no offence to Machhi Singh and Mohinder Singh."

CRIME NO.11 (Crl Appeal No.80-84/81 Common)

"We have found that two innocent helpless women named Ghamo Bai and Rajo Bai were brutally killed in a helpless and defenceless state in their own house and similarly a veteran couple namely Bishan Singh and his wife Paro Bai were killed by Machhi Singh and Jagir Singh appellants in similar circumstances. The crime committed carries features which could be utterly horrendous especially when we know the weapons and the manner of their use. The victims could offer no resistance to the accused appellants. The law clamours for a sterner sentence; the crime being heinous, atrocious and cruel."

CRIME NO. 111 (Crl. Appeal No. 85-86/81, Common)

"An old man Wanjar Singh and young man Satnam Singh were put to death for which Machhi Singh was sentenced to death for committing the murder of the latter and Mohinder Singh was

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sentenced to death for committing the murder of the former. These two defenceless and helpless men were put to death while asleep. The crime was gruesome and cold-blooded revealing the propensity of the accused appellants to commit murder."

CRIME NO. IV (Crl. Appeal No. 87/81, Common)

"A young man named Mohinder Singh, a bread-earner of the family, was put to death by Machhi Singh while asleep in his blissful abode. The crime was pre-mediated and hair-raising to the society at large in the sequence of which it came to be committed creating a great risk of serious bodily harm and death to many persons."

CRIME NO.V (Crl. Appeal Na. 88-89/81. Common)

'Sahib Singh, Mukhtiar Singh, Manto Bai, Palo Bai and Jita Singh were killed by five men including Machhi Singh and Jagir Singh appellants. Both these appellants pursued a course of utter cruelty and atrocity. Not only were the crimes cold-blooded, calculated and gruesome in features, these had been committed while spreading horror of a killing spree. They put to death a young newly married couple and rendered a young woman a widow. The helpless state of the victims and the circumstances of the case lead us to confirm the death sentence."

Jagir Singh:

Insofar as appellant Jagir Singh is concerned death sentence has been imposed on him by the Sessions Court and confirmed by the High Court in relation to Crime No. 11A-B and V. The High Court has observed thus in the context of the relevant crime:

CRIME NO. 11A & B (Crl. Appeal No. 80-84/81. Common)

"We have found that two innocent helpless women named Ghamo Bai and Rajo Bai were killed in a helpless and defenceless state in their own house and similarly a veteran couple namely Bishan Singh and his wife Paro Bai were killed by Machhi Singh and Jagir Singh appellants in similar circumstances. The crime committed carries features which could be utterly horrendous especially when we know the weapons and their manner of use. The victims could offer no resistance to the accused appellants. The law clamours for a sterner sentence; the crime being heinous, atrocious and cruel."

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CRIME NO. V (Crl. Appeal No. 88-89/81. Common)

'Sahib Singh, Mukhtiar Singh, Manto Bai, Palo Bai and Jita Singh were killed by five men including Machhi Singh and Jagir Singh appellants. Both these appellants pursued a course of utter cruelty and atrocity. Not only were the crimes cold-blooded calculated and gruesome in features, these had been committed while spreading horror of a killing spree. They put to death a young newly married couple and rendered a young woman a widow. The helpless state of the victims and the circumstances of the case lead us to confirm the death sentence."

Kashmir Singh: S/o Arjan Singh

In so far as appellant Kashmir Singh s/o Arjan Singh is concerned death sentence has been imposed on him by the Sessions Court and confirmed by the High Court for the following reasons:

> "Similarly, Kashmir Singh appellant caused the death of a child Balbir Singh aged six years while asleep, a poor defenceless life put off by a depraved mind reflecting grave propensity to commit murder."

We are of the opinion that insofar as these three appellants are concerned the rarest of rare cases rule prescribed in Bachan Singh's case (Supra) is clearly attracted and sentence of death is called for. We are unable to persuade ourselves that a sentence of imprisonment for life will be adequate in the circumstances of the crime. We therefore fully uphold the view concurrently taken by the Sessions Court and the High Court that extreme penalty of death requires to be imposed on appellants (1) Machhi Singh (2) Kashmir Singh son of Arjan Singh (3) Jagir Singh. We accordingly confirm the death sentence imposed on them and dismiss their appeals.

In the result we pass the following order:

I :

Appeals preferred by appellant Mohinder Singh being

Crl. Appeals Nos. Crl. 79/81 & 86 of 1981 are allowed. The order of conviction and sentence passed by the lower courts in so far as he is concerned are set aside. He shall be set at liberty forthwith unless he is required to be detained in connection with some other offence or in connection with some other orders authorizing his detention.

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II:

In regard to the rest of the appeals by the rest of the appellants the orders of conviction and sentence passed by the lower courts are confirmed and all the appeals shall stand dismissed. The sentence of imprisonment under various counts and sentence imposed on the concerned appellant in allied appeals will run concurrently.

III:

The death sentence imposed on the appellants named hereafter viz (i) Machhi Singh (ii) Kashmir Singh s/o Arjan Singh; (iii) Jagir Singh, having been confirmed, the sentence shall be executed in accordance with law.

IV:

Death sentence has separately been imposed on Appellant Machhi Singh in all the matters. By the very nature of things the sentence will be deemed to have been executed in all the cases if it is executed once.

V:

Appellants in Crl. A. No. 419/82 viz. (i) Phuman Singh (ii) Jagtar Singh; and (iii) Kashmir Singh s/o Wadhawa Singh who are on bail pursuant to the order passed by this Court on September 15, 1982 shall surrender to their bail bonds in order to undergo the sentence imposed by the lower courts and confirmed by this Court. Their bail bonds shall stand cancelled. Such of the other appellants, if any, who are on bail shall surrender in order to undergo the sentence imposed by the lower courts as confirmed by this Court and their bail bonds shall stand cancelled.

S.R. Crl. Appeals 79/81 and 86/81 allowed & other appeals dismissed.

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