AFR

Reserved on : 07.03.2019

Delivered on : 05.09.2019

Court No. - 34

Case :- JAIL APPEAL No. - 1144 of 2017

Appellant :- Lal Mohar
Respondent :- State Of U.P.
Counsel for Appellant :- From Jail,Jay Ram Pandey,Rajesh Kumar
Counsel for Respondent :- Rishi Chadha (A.G.A.)

Hon'ble Sudhir Agarwal, J.

Hon'ble Rajendra Kumar-IV,J.

(Delivered by Hon'ble Rajendra Kumar-IV,J.)

1. Against judgment and order dated 04.02.2017 passed by Additional Sessions Judge, F.T.C.-2, Ballia in Sessions Trial No.242 of 2013, Crime No.125 of 2003, under Sections 326 and 304 IPC, Police Station Garwar, District Ballia, accused-appellant has preferred present jail appeal under Section 383 Cr.P.C. from Jail through Superintendent District Jail, Ballia. By impugned judgement, appellant has been convicted under Section 304 I.P.C. and sentenced to undergo imprisonment for life with fine of Rs. 10,000/- and in default of payment of fine, three months imprisonment but acquitted under Section 326 I.P.C.

2. Factual matrix of case as emerging from First Information Report (hereinafter referred to as “FIR”) as well as material placed on record is as follows.

3. P.W.-1 Sri Ram submitted a written report Ex.Ka-1 in Police Station Garwar, District Ballia stating that on 10.8.2003 at about 8:30 PM, his daughter-in-law Smt. Vimla Devi with her daughter Gudia aged about one and half year was returning home from his

Dera (a structure being built in the agricultural field to stay for short duration). As usual when she reached the place between Dera and home, accused Lal Mohar came with petrol and sprinkled petrol on both of them and set them on fire. Due to burn, his daughter-in-law started crying, then to rescue them, he (PW-1) and many persons of the village rushed there and took them to District Hospital, Ballia for medical treatment. Gudia succumbed to injuries whose post mortem was conducted on 11.8.2003 in Ballia. Later on Vimla Devi succumbed to death due to burn injuries.

4. On the basis of written report Ex.Ka-1, Chick F.I.R. Ex.Ka-3 was registered by PW-4, Satya Narain Mandal, as Case Crime No.125 of 2003 against accused-appellant under Section 304, 326 I.P.C. An entry of case was made in General Diary (herein after referred to as 'GD') on the same day, copy whereof is Ex.Ka-6.

5. Km. Gudia and Smt. Vimla Devi were medically examined by Dr. Jitendra Kumar Singh on 10.8.2003 in District Hospital, Ballia.

6. Immediately, after registration of case, investigation was undertaken by S.I. Jagdish Yadav. He proceeded to spot and held inquest over the dead body of Vimla Devi and sent it for post mortem, visited spot, prepared site plan Ex. Ka-7.

7. PW-8, Dr. P.K. Rai, conducted autopsy over the dead body of Km. Priya (Gudiya) aged about one and half year and found ante-mortem superficial to deep burn injuries. In the opinion of doctor, death might have been caused at about 7:10 AM on 11.8.2003 and death was possible due to shock on account of ante-mortem burn injuries.

8. PW-6 Dr. R.N. Upadhyay, conducted autopsy over the dead body of deceased Vimla Devi and found ante-mortem burn injuries

over the dead body except upper portion of abdomen, right shoulder, head and upper portion of thigh. Doctor opined that death would have been caused due to infection and ante-mortem burn injuries.

9. PW-7 S.I. Atma Ram, after completing investigation submitted charge sheet Ex.Ka-13 against the appellant under Section 304 and 326 I.P.C.

10. Case, being triable by Court of Sessions, was committed by Chief Judicial Magistrate to Court of Sessions for trial after compliance of Section 207 Cr.P.C.

11. Trial Court framed charges against accused-appellant on 16.9.2013 under Sections 326 and 304 IPC. Charges read as under:

आरोप

मैं सी0 एम0 तिवारी (एच0जे0एस0) सत्र न्यायाधीश, बलिया आप अभियुक्तगणः—

1— लाल मोहर पुत्र श्रीराम भर

साकिन केशरूआ थाना सुखपुरा जिला बलिया।

के विरूद्ध निम्नलिखित आरोप विरचित करता हूँ :—

1— यह कि दिनांक 10.08.2003 को समय करीब 8.30 बजे साकिन कुल्हाडा मौजा रतसड़ खुर्द थाना गड़वार जिला बलिया मे आपने वादी श्रीराम की बहू विमला देवी और विमला देवी की पुत्री गुडिया उम्र डेढ वर्ष के शरीर पर पेट्रोल छिड़ककर सलाई से आग लगा दिया, जिसे विमला देवी और गुडिया जल गयी। इस प्रकार आपने खतरनाक आयुधों द्वारा स्वेच्छया उपहति कारित किया जो धारा— 326 भारतीय दण्ड संहिता के तहत दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।

2— यह कि उपरोक्त दिनांक, समय और स्थान पर आपने वादी श्रीराम की बहू विमला देवी की पुत्री गुडिया उम्र डेढ वर्ष के

शरीर पर पेट्रोल छिड़ककर सलाई से आग लगा दिया, जिससे वे दोनो जल गयी और जलने के कारण डेढ वर्षीय गुडिया की मृत्यु हो गयी। इस प्रकार आपने हत्या की कोटि में न आने वाला आपराधिक मानव वध कारित किया जो धारा– 304 भारतीय दण्ड संहिता के अन्तर्गत दण्डनीय है और इस न्यायालय के प्रसंज्ञान में है।

तदैव आपको को निर्दिष्ट किया जाता है कि आपका विचारण उक्त आरोपों में न्यायालय द्वारा किया जाएगा।

C H A R G E

I, C.M. Tiwari (HJS), Sessions Judge, Ballia, do hereby charge you the accused (1) ***Lal Mohar*** *S/o Shriram Bhar R/o Keshrua, PS Sukhpura, District Ballia with the following offence:*

1. That on 10.08.2003 at around 8:30 o'clock at Kulhara, Village Ratsarh Khurd, PS Gadwar, District Budaun, you sprinkled petrol on the bodies of the complainant Shriram's daughter-in-law Vimla Devi and her 1½-year-old daughter Gudia and set them afire with a matchstick, as a result of which Vimla Devi and Gudia got burnt. In this way, you have voluntarily caused grievous hurt by dangerous weapons which is punishable u/s 326 IPC and is within the cognizance of this court.

2. That on the aforesaid date, time and place, you sprinkled petrol on the bodies of the complainant Shriram's daughter-in-law Vimla Devi and her 1½-year-old daughter Gudia and set them afire with a matchstick, as a result of which Vimla Devi and Gudia got burnt, and 1½-year-old Gudia died due to burns. In this way, you have committed culpable homicide not amounting to murder, which is punishable u/s 304 IPC and is within the cognizance of this court.

It is hereby directed that you, the accused, be tried by this court for the aforesaid offences.

(English Translation By Court)

12. Accused-appellant denied charges, pleaded not guilty and claimed trial.

13. In order to substantiate its case, prosecution examined as many as nine witnesses, out of whom PW-1 Sri Ram, PW-2-Manish and PW-9 Muneeb Rajbhar are witnesses of fact; PW-3 Radhey Shyam (Panch witness of inquest), PW-4 Head Constable, Satya Narain Mandal, PW-5 Dr. Anoop Kumar Singh proved signature of Dr. Jitendra Kumar Singh, PW-6 Dr. R.N. Upadhyay, conducted autopsy of Vimla Devi, PW-7 S.I. Atma Ram Yadav and PW-8 Dr. P.K. Rai conducted post mortem on the dead body of Km. Gudia, are formal witnesses.

14. On closure of prosecution evidence, statement of accused-appellant under Section 313 Cr.P.C. was recorded by Court explaining entire evidence and other incriminating circumstances. In statement under Section 313 Cr.P.C., accused-appellant denied prosecution story in toto and desired to produce defence evidence. In response of question no. 6, accused-appellant said that he was innocent and has not committed any crime but did not adduce any evidence.

15. Trial Court after appreciating entire evidence led by prosecution on record and hearing counsel for parties, found appellant guilty and convicted him as stated above. Feeling aggrieved with impugned judgement of conviction, present appeal has been filed through Jail.

16. We have heard Sri Rajesh Kumar, learned counsel for appellant and Sri Rishi Chaddha, learned A.G.A for State-respondent at length and have gone through the record available on file carefully.

17. Learned counsel for appellant assailing impugned judgement of conviction of accused-appellant, advanced his submissions, in the following manner :-

(i) There is no independent witness. PWs-1, 2 and 9 are related to deceased persons, therefore, their evidence is not sufficient to base the conviction.

(ii) Witnesses of prosecution did not see accused committing crime.

(iii) There is no motive to accused-appellant to commit the present crime.

(iv) Medical evidence does not support prosecution case.

(v) There are major contradictions in evidence of witnesses rendering prosecution case doubtful.

(vi) F.I.R. was lodged by complainant with inordinate delay but no explanation.

(vii) Prosecution has failed to prove its case beyond reasonable doubt and Trial Court did not appreciate evidence properly and only convicted accused-appellant.

(viii) Punishment awarded by Trial Court is harsh and excessive and he must be dealt with sympathetic consideration.

18. Learned AGA for State opposed submissions and stated that accused is named in F.I.R.; relation of witnesses with victim or accused is not a ground to discard the evidence of relatives; PWs.1, 2 and 9 are witnesses of fact, supported prosecution case and it is a

case of direct evidence, prosecution has established his case beyond reasonable doubt and Trial Court has rightly convicted accused-appellant.

19. Although time, date, place and nature of injuries as well as death of victims could not be disputed from the side of accused-appellant but according to Advocate for accused-appellant, he is not responsible for causing death of Vimla Devi and Gudiya by causing burn injuries. Even otherwise, from the evidence of prosecution, death of Vimla Devi stands established due to burn injuries.

20. Thus the only questions for consideration of this Court is, “whether accused-appellant has caused death of Vimla Devi and her daughter Gudia and Trial Court has rightly convicted accused-appellant for causing death of Vimla Devi and her daughter Gudia punishable under Section 304 I.P.C.?”

21. Now, we may proceed to consider rival submissions of learned counsel for the parties and briefly, evidence of prosecution and some important decisions.

22. PW-1, Sri Ram has deposed that on 10.8.2003 at about 8:30 PM, he was in his Dera; his daughter-in-law Vimla Devi with her daughter Gudia aged about one and half year was returning to home after providing meal to him; when she reached near sugar cane field of one Jai Narayan Singh, accused-appellant Lal Mohar came there with petrol in a plastic can and sprinkled petrol on his daughter-in-law Vimla Devi and grand daughter Gudia and set them at fire; his younger son Manish, PW-2, was with Vimla Devi at that time; on hearing shrieks of Manish and his daughter-in-law, he (PW-1) and other persons of same village rushed to rescue them whereupon accused-appellant ran away but was identified in the light of Torch;

both injured persons were taken to District Hospital, Ballia for medical treatment in a serious position where Gudia succumbed to burn injuries on the next day during treatment in hospital and Vimla Devi succumbed to injuries in District Hospital, Ballia during treatment after 18-19 days of incident.

23. PW-1 stated in his cross-examination that at the time of incident, he was in his Dera, reached the place of incident on hearing noise of villagers; his Dera is at the distance of 10-20 Lattha from the place of occurrence; and that his daughter-in-law was being taken to hospital from spot by the people of village Tola and he was near his house. From this statement made in cross-examination, PW-1 does not appear to be an eye witness although, he told that he has seen accused running away from spot and proved presence of PW-2 Manish with Vimla Devi on spot.

24. PW-2 Manish deposed that on 10.8.2003 at about 8:30 PM, he was returning to his house from Dera with his Bhabhi Smt. Vimla Devi; when he reached near sugar cane field of Jai Narayan Singh, accused came out of Sarpat (Long grass) with petrol in a plastic can and poured petrol on victim and Gudia and set them at fire; on making noise his father and other villagers reached there; Vimla Devi and her daughter were taken to District Hospital, Ballia for treatment where Gudia succumbed to death in next morning and Vimla Devi died in District Hospital, Ballia after 17 days.

25. PW-9 Muneeb Rajbhar deposed that on 10.8.2003 at about 8:30 PM, his Bhabhi Vimla Devi along with her daughter Gudia aged about one and half year were going to home from Dera; when she reached near sugar cane field of one Jai Narayan Singh, accused-appellant sprinkled petrol on them and set them at fire; he was little behind the victim; on hearing alarm raised by Vimla Devi and his

brother Manish (PW-2), he and his father arrived at spot whereupon accused-appellant ran away from spot but he was identified by him in the light of Torch; he chased him but accused succeeded in making good escape; Vimla Devi and Gudia were taken to District Hospital, Ballia where Gudia succumbed to death on the next day but Vimla died after 17 days in hospital.

26. Both witnesses withstood sufficient cross-examination from the side of accused but no material could be brought so as to disbelieve their statement.

27. PW-3 Radhey Shyam, is witness of inquest, who proved inquest report of Gudia as Ex.Ka-2; PW-4, H.C. Satya Narayan Mandal proved registration of F.I.R. on the basis of written report Ex.Ka-1; PW-5 Dr. Anoop Kumar Singh proved signature of Dr. Jitendra Kumar Singh conducting medical examination of Vimla Devi and Gudia, proved medico legal reports' PW-6 Dr. R.N. Upadhyay, conducted autopsy over the dead body of Vimla Devi and proved post mortem report as Ex.Ka-10; and PW-8 Dr. P.K. Rai conducted post mortem report of Km. Gudia and proved post mortem report Ex.Ka-14.

28. Presence of PW-2 and PW-9 appeared quite natural on the spot and there was no reason to them to falsely implicate accused-appellant in the present case. In the statement under Section 313 Cr.P.C. accused did not suggest anything as to why witnesses deposed against him.

29. PW-1 and PW-2 established that they noticed accused running from spot. Statement of PWs.-1, 2 and 9 established that accused-appellant sprinkled petrol on Vimla Devi and her daughter Gudia and set them at fire causing serious burn injuries due to which they

succumbed to death in hospital in respective times.

30. Now, next thing to be considered is that PWs.-1, 2 and 9 are relatives of deceased have their evidence whether be treated to be trustworthy or not. This submission is thoroughly misconceived. Mere relationship is not sufficient to discard otherwise trustworthy ocular testimony and it is now well settled law laid down in **Dalip Singh v. State of Punjab, AIR,1953, SC 364** wherein Court has held :-

> *"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause' for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."*

31. In **Dharnidhar v. State of UP (2010) 7 SCC 759**, Court has observed as follows :-

> *"There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of* ***Jayabalan v. U.T. of Pondicherry (2010) 1 SCC 199,*** *this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes*

from a person closely related to the victim"

32. In **Ganga Bhawani v. Rayapati Venkat Reddy and Others, 2013(15) SCC 298,** Court has held as under :-

> *"11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.*
>
> *(Vide:* ***Bhagalool Lodh & Anr. v. State of UP, AIR 2011 SC 2292; and Dhari & Ors. v. State of U. P., AIR 2013 SC 308****)."*

33. It is settled that merely because witnesses are closed relatives of victim, their testimonies cannot be discarded. Relationship with one of the parties is not a factor that affects credibility of witness, more so, a relative would not conceal the actual culprit and make allegation against an innocent person. However, in such a case Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible evidence.

34. So far as argument made by learned counsel for appellant regarding motive is concerned, we are not impressed with the submission advanced by learned counsel for appellant as it is well settled that where direct evidence is worthy, it can be believed, then motive does not carry much weight. It is also notable that mind set of accused persons differs from each other. Thus merely because that there was no strong motive to commit the present offence, prosecution case cannot be disbelieved.

35. In **Lokesh Shivakumar v. State of Karnataka, (2012) 3 SCC 196,** Court held as under :-

> *"As regards motive, it is well established that if the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue of motive looses practically all relevance. In this case, we find the ocular evidence led in support of the prosecution case wholly reliable and see no reason to discard it."*

36. According to Advocate for appellant, medical evidence is not compatible with ocular evidence. We are not in agreement with the same for the reasons that PW-2 and PW-9 supporting prosecution case was deposed that accused-appellant came with petrol in Plastic Can and poured on the victims and set them at fire due to which Vimla Devi and Gudia received serious burn injuries. Doctor opined that death of both victims would have been caused due to ante-mortem burn injuries. In this way medical evidence is totally compatible with oral version.

37. In so far as discrepancies, variations and contradictions in prosecution case are concerned, we have analysed entire evidence in consonance with submissions raised by learned counsel's and find that the same do not go to the root of case and accused-appellant are not entitled to get benefit of the same.

38. In ***Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) 4 SCC 124,*** Court has held that minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and sense of observation differs from person to person.

39. We lest not forget that no prosecution case is foolproof and the same is bound to suffer from some lacuna or the other. It is only when such lacunae are on material aspects going to the root of the matter, it may have bearing on the outcome of the case, else such shortcomings are to be ignored. Reference may be made to a recent

decision of the Apex Court (3 Judges) in Criminal Appeal No. 56 of 2018, ***Smt. Shamim v. State of (NCT of Delhi),*** *decided on 19.09.2018.*

40. Learned counsel for the accused-appellant argued that PW-1 lodged F.I.R. of the incident against accused-appellant after four days of incident and he has not given proper explanation. Delay in lodging F.I.R. demolishes the prosecution story, hence, accused-appellant is entitled to get benefit of doubt. So far as delay in F.I.R. is concerned, we are not in agreement with the argument advanced by learned counsel for the accused-appellant for the reasons that delay has been explained by informant in written report Ex.Ka-1. It is well settled, if delay in lodging FIR has been explained from the evidence on record, no adverse inference can be drawn against prosecution merely on the ground that the FIR was lodged with delay. There is no hard and fast rule that any length of delay in lodging FIR would automatically render the prosecution case doubtful.

41. In **"Ravinder Kumar & Anr. Vs. State of Punjab", (2001) 7SCC 690,** Court has held;

> *"The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to*

any prosecution case. It cannot be overlooked that even a promptly FIR is not an unreserved guarantee for the genuineness of the version incorporated therein. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquility of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident."

42. In **Amar Singh Vs. Balwinder Singh & Ors. (2003) 2 SCC 518,** Court held :

"In our opinion, the period which elapsed in lodging the FIR of the incident has been fully explained from the evidence on record and no adverse inference can be drawn against the prosecution merely on the ground that the FIR was lodged at 9.20 p.m. on the next day. There is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR."

43. In this connection it will also be useful to take note of the following observation made in **Tara Singh V. State of Punjab AIR (1991) SC 63:-**

> *"The delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are, one cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course, in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts should be cautious to scrutinize the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstance of each case."*

44. In **Sahebrao & Anr. Vs. State of Maharashtra (2006) 9 SCC 794**, Court has held:

> *"The settled principle of law of this Court is that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR would put the Court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory."*

45. From the above exposition of law, it is manifest that prosecution version cannot be rejected solely on the ground of delay in lodging FIR. Court has to examine the explanation furnished by

prosecution for explaining delay. There may be various circumstances particularly number of victims, atmosphere prevailing at the scene of incidence, the complainant may be scared and fearing the action against him in pursuance of the incident that has taken place. If prosecution explains the delay, Court should not reject prosecution story solely on this ground. Therefore, the entire incident, as narrated by witnesses, has to be construed and examined to decide whether there was an unreasonable and unexplained delay which goes to the root of the case of prosecution. Even if there is some unexplained delay, court has to take into consideration whether it can be termed as abnormal. Recently in **Palani V State of Tamilnadu, Criminal Appeal No. 1100 of 2009, decided on 27.11.2018**, it has been observed by Supreme Court that in some cases delay in registration of FIR is inevitable. Even a long delay can be condoned if witness has no motive for falsely implicating the accused.

46. Considering the entire facts and circumstances of the case, statement of witnesses, evidence of prosecution into entirety and legal proposition discussed herein before, we have no hesitation to say that accused-appellant caused death of Vimla Devi and Gudiaya by causing burn injuries and committed offence punishable under Section 304 I.P.C. Trial Court has rightly convicted accused-appellant, therefore, conviction of accused appellant under Section 304 I.P.C. is maintained and confirmed. Criminal appeal lacks merit and liable to be dismissed on merit.

47. So far as sentence of accused-appellant is concerned, it is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and

mitigating in the individual cases.

48. It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation of court to constantly remind itself that right of victim, and be it said, on certain occasions person aggrieved as well as society at large can be victims, never be marginalised. The measure of punishment should be proportionate to gravity of offence. Object of sentencing should be to protect society and to deter the criminal in achieving avowed object of law. Further, it is expected that courts would operate the sentencing system so as to impose such sentence which reflects conscience of society and sentencing process has to be stern where it should be. Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against individual victim but also against society to which criminal and victim belong. Punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality which the crime has been perpetrated, enormity of crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. [Vide: **Sumer Singh vs. Surajbhan Singh and others, (2014) 7 SCC 323, Sham Sunder vs. Puran, (1990) 4 SCC 731, M.P. v. Saleem, (2005) 5 SCC 554, Ravji v. State of Rajasthan, (1996) 2 SCC 175**].

49. Hence, applying the principles laid down in the aforesaid judgments and having regard to the totality of facts and circumstances of case, motive, nature of offence and the manner in which it was executed or committed. We **partly allow** this appeal. We confirm appellant's conviction under Section 304 I.P.C. and

modify order of sentence to under go **rigorous imprisonment for a period of 14 years and fine of Rs. 25,000/-**. In default of payment of fine, he shall further undergo simple imprisonment for one year imprisonment. He shall be entitled to set off under Section 428 Cr.P.C.

50. Lower Court record along with a copy of this judgment be sent back immediately to District Court concerned for compliance and further necessary action and to apprise the accused-appellant through Jail Authority.

Order Date :-05.09.2019

Manoj