Raja Ram Yadav and Others

Vs

State of Bihar

Criminal Appeal No. 477-79 of 1996

(G.N. Ray, B.L. Hansaria JJ)

11.04.1996

JUDGEMENT

G. N. RAY, J. :-

1.Leave granted.

2. Heard learned counsel for the parties. These appeals arise out of three special leave petitions filed by eight convicted accused each of whom has been awarded death sentence. In the Special Leave Petitions, notice was issued limited only to the question of sentence to be suffered by the said eight convicted appellants namely (1) Raja Ram Yadav son of Chintaman yadav (2) Babu Ram Yadav son of Jathu Yadav (3) Keswar Jadav alias Ram Keswar Yadav son of Narain Yadav (4) Jag Narain Yadav son of Jattu Yadav (5) Chintaman Yadav son of Vilas Yadav (6) Brahamdev Yadav son of Moheri Yadav (7) Chander Deep Yadav son of Jattu Yadav and (8) Ram Pravesh Yadav son of Narain Yadav.

3. The learned fourth Additional Sessions Judge, Aurangabad by his judgment dated September 30, 1992 convicted Ram Pravesh Yadav, Keswar Yadav, Jag Narain Yadav, Chandradeep Yadav, Chintaman Yadav and Brahamdeo Yadav for the offence of murder and awarded death sentence against them. They were also convicted under Section 148 IPC but no separate sentence was passed for such offence. All the said eight accused were further convicted under Section 436 read with Section 149 IPC but no separate sentence was awarded for such conviction in view of death sentence awarded against them.

4. The said convicted accused filed two appeals being Criminal Appeal No. 460 and 461 of 1992 before the High Court of Patna impugning the order of conviction and sentence passed by the learned Additional Sessions Judge, Aurangabad. The said appeals and Death Reference No. 9 of 1992 for confirmation of death sentence awarded against the said eight convicted accused were disposed of by the Patna High Court by a common judgment dated 7-12-1995. The High Court upheld the conviction of Jainarayan Yadav (A-4), Chintaman Yadav (A-5) and Ram Pravesh Yadav (A-8) under Section 302 IPC and also upheld the conviction of Rajaram Yadav under Section 302/34IPC. But the conviction of Keswar Yadav (A-3), Brahamdeo Yadav (A-6) and Chandradeep Yadav (A-7) under Section 302 IPC was converted to conviction under Section 302 read with Section 34 IPC. The High Court also upheld the conviction of the appellants under Section 148 and 436/149 IPC and under Section 302/149 IPC but no separate sentence was passed for such conviction. The High Court upheld the death sentence awarded against each of the said eight

convicted accused by accepting the Death Reference.

5. Initially the appellants sent an application for special leave from jail being S.L.P. (Cri.) No. 323 of 1996 and Sri S.S. Khanduja learned advocate, was appointed as amicus curiae. Later on, the appellants preferred S.L.P. (Cri.) No. 432 of 1996 and S.L.P. (Cri.) No. 3434 of 1996. Mr. Rajendra Singh, the learned senior advocate, appeared in the appeal arising out of S.L.P. (Cri.) 452 of 1996 and Mr. K.G. Kannabhiran, learned senior advocate, appeared for the appellants in the appeal arising out of S.L.P. (Cri.) No. 3434 of 1996. Mr. Udai Sinha, learned senior Advocate, has appeared for the State in all the appeals.

6. Mr. Rajendra Singh has submitted that since the scope of the appeals is only limited to the question of sentence to be suffered by the appellants, he will confine his arguments only on the question of sentence on the footing that the order of conviction passed against the appellant stands upheld by this Court. Mr. Singh has submitted that in the instant case, the appellants have been convicted for the offence of murdering Gaya Singh; Sita Ram Singh, the wife of Sita Ram Singh; Giranti Kumar, Renu Kumar; Ritu Kumar and Gaya Prasad. The appellants have also been convicted under Section 436 read with Section 148 Indian Penal Code but they have been acquitted for the offence under Section 120 B of the IPC. Mr. Singh has submitted that 74 persons faced the trial before the Additional Sessions Judge in Sessions Trial No. 180 of 1987 (1 of 1988), in connection with the incident which had occurred at about 1 a.m. of 30th May 1987 at village Baghora, Police Station Madanpur, District Aurangabad. Twenty six persons including 6 women and 9 children were murdered and few houses in the said village were reduced to ashes. Out of 26 persons murdered in the said incident, 25 belonged to one community and 20 of them also belonged to the same family. As the charges against the remaining accused excepting the eight convicted accused could not be established beyond reasonable doubt, the learned Additional Sessions Judge acquitted the said accused but convicted the 8 appellants for the offence of murdering the aforesaid six persons and also for the offence under Section 436 read with Section 149 IPC. Mr. Singh has submitted that the said incident in which 26 persons were murdered and number of houses were reduced to ashes by setting them of fire was undoubtedly a very shocking incident and extremely lamentable.

7. But the conviction of the appellants has been based on the basis of eye witness account of a boy aged about 9 years, namely, PW 3, Shailendra. According to PW 3, at the time of incident he hid himself near a Kotna and from the place of hiding, he had witnessed the murder of the said six persons, namely, his father, mother, three sisters and uncle. Mr. Singh has submitted that in the case of a child witness, extreme care and caution are required to be taken before accepting the deposition of such child witness because it is not unlikely that a child after witnessing the murder of one or two very close relations, is likely to lose the normal frame of mind and composure and thereafter may not be in a position to note subsequent events carefully and depose about the same convincingly. Mr. Singh has submitted that unfortunately in this case no other eye witness is available in support of the prosecution case and both the learned Additional Sessions Judge and the High Court have relied on the testimony of the child witness, PW 3. He further submitted that according to PW. 1, the said child witness shortly after the incident ran to him and on being asked by him mentioned the names of Ram Pravesh, Raja Ram, Chintaman and Brahamdeo as the persons who had murdered the said six persons. PW 3 did not state before PW 1 the names of Keshav Yadav, Jag Narain, Babu Ram and Chandra Deep as the persons who had also committed the murder of said six persons. PW 3, however, deposed before the Court that all the said appellants were responsible for murdering the said six persons and also indicated the role played by each of them but in view of his omission to mention the names of the said four persons as the assailants in the commission of said murders the

said four accused deserve to be dealt leniently in the matter of awarding capital sentence.

8. Mr. Singh has also urged that none of the appellants was a hired assassin or professional murderer but they were ordinary family members with no past criminal history. It has also transpired from the deposition that the said crime was committed in order to avenge a carnage involving the kith and kin of the appellants. According to the prosecution case there had been a carnage in village Chhechhani near the village Baghora. The said incident of carnage in Chhechhani had taken place only about 1 1/2 months earlier. In the incident at Chhechhani, the Rajputs had killed the Yadavs and the prosecution has come out with a case that the incident of murder concerning the present appeal was a consequence of retaliation by the Yadavs by killing the Rajputs. In the aforesaid circumstances, the strong urge for revenge because of the trauma suffered by the appellants on account of carnage in the village Chhechhani where the kith and kin of the appellants were brutally murdered should not be lost sight of as on account of such carnage and such trauma, they had lost the normal frame of mind and became mad to avenge such killings. Such fact should also be taken into account as an important mitigating factor in awarding the extreme penalty of death.

9. Mr. Singh has also submitted that some of the appellants are quite young. They are not hardened criminal. There is a fair chance of their being reformed in the jail and to turn out as a responsible and useful member of the society. In the aforesaid circumstances, they should be given a chance to remorse and get reformed after serving the terms of imprisonment.

10. Mr. Kannadhiran has also made similar submissions and has submitted that PW 3, the said child witness, was not examined immediately after the incident but he made a statement before the police only on 30th May. It is not unlikely that in view of such delay, he might have got confused and having heard the names of the accused from others failed to give true account of the incident. Such possibility therefore should be considered as a mitigating factor in the matter of awarding death sentence in this case.

11. Mr. Khanduja the learned advocate appearing as amicus curiae in the appeal arising out of SLP (Crl.) No. 323 of 1996 has also made similar submissions as made by Mr. Rajendra Singh and Mr. Kannabhiran.

12. Mr. Udai Sinha, appearing for the State of Bihar, in all the appeals has however submitted that the evidence of a child witness is not required to be rejected per se but the Court, as a rule of prudence, considers such evidence with close scrutiny and only on being convinced about the quality of such evidence and its reliability, bases the conviction by accepting the deposition of the child witness. In the instant case, the said witness fortunately could hid himself in a Kotha and got the opportunity to see the murder of all the said six persons one after another from a close quarter. There is no manner of doubt that the said child had suffered a great trauma. But it cannot be reasonably contended that he failed to see how and by whom the murders had been committed. He has given a clear and straight forward account of the murders of all the said six persons in detail and has not been shaken even by the long cross examination undergone by him. Considering the quality of evidence, there was no difficulty either for the learned Additional Sessions Judge or for the High Court to accept the deposition of the said child witness as fully convincing and to convict the appellants for the aforesaid offences. Mr. Sinha has submitted that the said acts of murder and arson were pre-planned and the same had been committed to take revenge for an unfortunate incident happened in the village Chhechhani. In the incident which had happened in the village Baghora, out of 26 persons killed, 25 belonged to one community. It is quite apparent that the appellants and the co-accused in a planned manner with pre-meditation picked up persons of one community only and

just butchered them in a gruesome manner although such victims were innocent and did not do any harm to the appellants and the co-accused. The only fault of the innocent victims was that they belonged to a particular community. So far as the appellants are concerned, they not only killed both the mother and father of the said PW 3 but even his uncle and three sisters had been butchered in a very cruel manner. The sisters were innocent and did not play any role in the incident of Chhechhani village. The appellants did not spare even such innocent children and in a cool and calculated manner just wiped out the entire family of PW 3 Shailendra Kumar. Providence has saved Shailendra Kumar only because he managed to hide and was therefore not noticed by the assailants.

13. Both the learned Additional Sessions Judge and the High Court have considered in detail the gravity of the offences committed by the appellants and the barbaric acts committed by them in a cool and calculated manner with extreme brutality. On such consideration, the extreme penalty of death against all the appellants was awarded indicating cogent reasons. Mr. Sinha has submitted that the said incident of murder of the six persons is undoubtedly one of the rarest of rare cases which cannot but sent a shock wave to the entire society. It is because of extreme cruelty and brutality with which the murders of six persons in a family including children had been committed in a cool and calculated manner to wipe out all the members of a family only because they belonged to Rajput community, the crime has assumed an unprecedented magnitude making it a rarest of rare cases warranting death sentence. If for such crime, the extreme penalty is not given, the very purpose of such extreme penalty will lose its relevance. Mr. Sinha has submitted that the society at large is pained and shocked and it also cries for justice from the Court. Such cry for justice will be defeated if a lenient view is taken in these appeals.

14. After giving our anxious consideration to the facts and circumstances of the case and also to the submissions made by the learned counsel for the parties, it appears to us that incident which had happened at the early hours of 30th May, 1987 in the village Baghora is extremely shocking and we only wish that there may not be repetition of such incident. There is no manner of doubt that such gruesome and cruel incident cannot but send a wave of shock to the society at large.

15. In Bachan Singh's case (1980) 2 SCC 684 : (AIR 1980 SC 898) a Constitution Bench of this Court has indicated the aggravating circumstances in committing the offence of murder. It has been also indicated in the said decision that the Court should also take into account the mitigating circumstances, while noting the aggravating circumstances for awarding appropriate sentence. In Machni Singh v. State of Punjab (1983) 3 SCC 470 : (AIR 1983 SC 957) a three Judge Bench of this Court has noted the synthesis which emerged in Bachan Singh's case that in cases where there is no proof of extreme culpability, the extreme penalty need not be given. The extreme penalty of death may be given only in rarest of rare cases where aggravating circumstances are such that the extreme penalty meets the ends of justice. Having considered the guidelines indicated in Bachan Singh's case, the three Judge Bench in Machhi Singh's case has observed that the guidelines will have to be applied in the facts and circumstances of the individual case where the question for imposing the death sentence may arise.

16. In this connection, it will be appropriate to refer to a decision of this Court in Suresh v. State of U.P., AIR 1981 SC 1122. In the said case, the sole eye witness was a five year old son of the deceased but the deposition of the child witness was held to be convincing and reliable. After noting the mitigating factors in favour of the accused, Chandrachud, C.J., speaking for the Court, has also indicated that it will not be safe to impose extreme penalty of death in a conviction based on the deposition of a child. It has been observed that the extreme sentence cannot seek its main support from the evidence of a child witness and it is not safe enough to act upon such deposition, even if

true, for putting out a life.

17. After keeping in mind the relevant considerations for awarding the extreme penalty of death and also on considering the fact that in the instant case, the sole eye witness did not tell, according to PW 1, the names of four of the appellants we feel that although the murders had been committed in a premeditated and calculated manner with extreme cruelty and brutality, for which normally sentence of death will be wholly justified, in the special facts of the case, it will not be proper to award extreme sentence of death on the appellants.

18. Hence, we commute the death sentence to the sentence of life imprisonment to be suffered by each of the appellants for the offence of murder. No separate sentence was passed against the appellants for the offence under Section 436 read with Section 149 IPC and Section 148 IPC in view of awarding the sentence of death. Since we have commuted the sentence of death to that of life imprisonment, we award sentence of six years rigorous imprisonment against each of the appellants for the offence under Section 436 read with Section 149 IPC. In addition to such sentences, we also impose a composite fine of Rs. 15,000/- against each of the appellants for the offences under Sections 302 and 436 read with Section 149 IPC. In default of payment of such fine, each of the appellant will suffer further rigorous imprisonment for three years. No separate sentence is imposed for the offence under Section 148 IPC. It is further directed that the sentence of life imprisonment for the offence of murder and the sentence of six years rigorous imprisonment for the offence under Section 436 read with Section 149 IPC will run consecutively. If the said fines are realised, the same should be paid to PW 3 Shailendra Kumar who, not only became an orphan, but also lost his sisters and uncle, besides his hearth and home being reduced to ashes.

19. The appeals are accordingly disposed of. Order accordingly.