

Panchhi and Others

Vs

State of U. P.

National Commission for Women

Vs

State of U. P. and Others

Criminal Appeals Nos. 333-335 of 1998

(CJI M. M. Punchhi, S. M. Quadri, K. T. Thomas JJ)

19.08.1998

JUDGMENT

K. T. THOMAS, J.

Bad blood which existed between two families living next door to each other resulted in the extermination of all the adult members of one family and the consequent judicial verdict to send all the living members of the other family to the gallows. Four members of the family of the accused became killers of four members of the other family irrespective of gender differences on both sides. A glimpse at the injuries on the mangled dead bodies would have convinced the onlookers that none among the victims could have been saved even with the most advanced, sophisticated medical facilities. Death of all of them would have been instantaneous. Such injuries clearly reflected the resolve of the killers that everyone of the victims should have been snuffed out of their worldly existence.

2. Facts are too brief for elaboration. The house where all the accused were living is situate adjacent to the house where all the deceased were living. First appellant Panchhi and his wife Kalia were the parents of second appellant Manmohan and third appellant Smt. Ramshree. Among the victims, deceased Banke Lal was the husband of deceased Pan Kunwar, his mother Halki was aged 70 and a little female child Sonu aged only 5 then was the daughter of Banke Lal. This quadruple murder took place during the forenoon of 26-10-1989, inside and outside the house of the victims.

3. According to the prosecution story, the two families were on a warpath for some time and the members of both the families chose to indulge in petty quarrels. Bad blood started fomenting up. A fortnight prior to the incident, two female members of the accused's family (Kalia and Ramshree) gave a drubbing to Pan Kunwar. Though the matter was reported to the police there was no abatement of the hostility between the two families. So Banke Lal and Pan Kunwar retaliated to Ramshree by assaulting a her just six days prior to the occurrence.

4. Further story of the prosecution is, on the date of the occurrence, all the assailants, armed with weapons like kulhari and hansia, barged into the house of the deceased at about 10.30 a.m. and unleashed a killing spree. First target was Banke Lal. On seeing the plight of her son, his mother

Halki instinctively leaned to protect him but one of the assailants swished a lethal weapon on her neck and finished her. Pan Kunwar, wife of Banke Lal, made a bid to escape and she jumped out of the house with her little daughter Sonu. But the bid failed as the assailants rushed out and dealt deadly blows with weapons on the vital parts of their bodies. After accomplishing their target they retreated to their house.

5. Kalia could not face the trial as she died before its commencement. The remaining three appellants were tried for the murders of the deceased. The trial court and the High Court concurrently found that the four deceased were murdered by the four assailants who are the appellants and Kalia. Both the courts held the view that in the brutal nature of the perpetration of the murders, extreme penalty should be imposed and hence the trial court sentenced them to death which was affirmed by the High Court.

6. It seems there was initially no move to approach this Court for some time after the pronouncement of the judgment by the High Court in appeal. But the print media flashed the news that Ramshree (mother of a suckling child) was facing execution of the capital sentence. Some organisations came forward taking up her cause. However, in the meanwhile, the appellants filed a special leave petition and leave was granted by this Court. Execution of the death sentence was stayed.

7. We heard Shri R. K. Jain, learned Senior Advocate who appeared for the appellant and Shri R. B. Malhotra, learned Senior Advocate for the State of U.P., Smt Indira Jaising, Senior Advocate prayed for allowing the National Commission for Women to intervene presumably to bolster up the cause that Ramshree must be saved from the gallows. We could not permit the move for intervention in this appeal for the obvious reason that under the Code of Criminal Procedure, the National Commission for Women or any other organisation cannot have locus standi in this murder case.

8. There cannot be any dispute, nor has it been disputed before us, that the four deceased were brutally murdered inside their house in the forenoon of 26-10-1989. The only area where the dispute was focussed related to the identity of the assailants, as the appellants have totally denied their involvement in the matter.

9. The prosecution examined PW 1 (Ramkhelawan, s/o Banke Lal) who was a child witness. He has stated that while he was taking lunch around 11 a.m., all the four accused entered his house and killed his father and grandmother inside the house and the assailants killed his mother and sister who were out on the chabutara. Just when the incident started, PW 1 Ramkhelawan slipped out of the house and hid himself in the house of one of the closest neighbours. Besides that witness, the prosecution examined PW 3 Lakhanlal and PW 5 Shambhu Dayal as witnesses to the occurrence. According to PW 3, he saw the four accused entering the house of the deceased armed with weapons and he saw them while he was standing on the verandah of a barber shop situated very near to the place of the occurrence. He heard tantrums (sic) of the victims from inside the house of the occurrence. When he neared the chauraha (junction) which was located very close, he saw Pan Kunwar and Sonu who were standing outside their house, and within a few seconds the four assailants emerged out of the house and killed with the weapons. PW 5 also gave evidence almost in the same line as PW 3 had.

10. As pointed out above, the trial court and the High Court placed reliance on the evidence of the aforesaid three witnesses and reached the conclusion that the murders were committed by the three appellants and Kalia.

11. Shri R. K. Jain, learned Senior Counsel, contended that it is very risky to place reliance on the evidence of PW 1, he being a child witness. According to the learned counsel, the evidence of a child witness is generally unworthy of credence. But we do not subscribe to the view that the evidence of a child witness would always stand irretrievably stigmatized. It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring.

12. Courts have laid down that evidence of a child witness must find adequate corroboration before it is relied on. It is more a rule of practical wisdom than of law (vide *Prakash v. State of M.P.* ((1992) 4 SCC 225 : 1992 SCC (Cri) 853); *Baby Kandayanathil v. State of Kerala* (1993 Supp (3) SCC 667 : 1993 SCC (Cri) 1084); *Raja Ram Yadav v. State of Bihar* ((1996) 9 SCC 287 : 1996 SCC (Cri) 1004 : AIR 1996 SC 1613) and *Dattu Ramrao Sakhare v. State of Maharashtra* ((1997) 5 SCC 341 : 1997 SCC (Cri) 685).

13. PW 1 Ramkhelawan is one of the two survivors in the family (the other was a suckling child). It is greatly probable that PW 1 would have escaped from the notice of the assailants otherwise he would not have been spared as is clear from the fact that his younger sister Sonu was also murdered. His narration of the incident was quite natural though he saw only some part of the occurrence. That part is so decisive as to clear all doubts regarding identity of the assailants.

14. PW 3 and PW 5 were admittedly neighbours. The fact that they did not see all that happened inside the house of the deceased is no reason to take their evidence lightly because when he saw all the appellants sitting inside the house variously armed and they also saw all of them returning from the house after the incident with blood-soaked weapons, we have no doubt that the High Court has rightly concurred with the findings of the trial court regarding reliability of the testimony of the above three witnesses. There is no scope to contend that there was any serious error in the appreciation of their evidence. The resultant position is that none of the appellants can escape conviction under Sections 302/34 of the Indian Penal Code.

15. The trial court and the High Court chose death penalty for the appellants. Shri R. K. Jain made a fervent plea that imposition of the extreme penalty for all the accused in this case was not legally justified in this case. According to him, death penalty awarded to the three persons - one a septuagenarian, another a youth in his prime age, and the third a mother with a suckling child - is unwarranted since this case did not project any special feature as distinguished from other brutal murder cases in spite of the number of victims being four including a child. Learned counsel contended that the number of victims is not sufficient to make the case so special as to foreclose the next alternative sentence, i.e., imprisonment for life.

16. When the Constitution Bench of this Court, by a majority, upheld the constitutional validity of death sentence in *Bachan Singh v. State of Punjab* ((1980) 2 SCC 684 : 1980 SCC (Cri) 580) this Court took particular care to say that death sentence shall not normally be awarded for the offence of murder and that it must be confined to the rarest of rare cases when the alternative option is foreclosed. In other words, the Constitution Bench did not find death sentence valid in all cases except in the aforesaid freaks wherein the lesser sentence would be, by any account, wholly inadequate. In *Machhi Singh v. State of Punjab* ((1983) 3 SCC 470 : 1983 SCC (Cri) 681) a three-Judge Bench of this Court while following the ratio in *Bachan Singh* case ((1980) 2 SCC 684 : 1980 SCC (Cri) 580) laid down certain guidelines among which the following is relevant in the present

case : (SCC p. 489, para 38)

"(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have 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."

17. In *Allauddin Mian v. State of Bihar* ((1989) 3 SCC 5 : 1989 SCC (Cri) 490) (Ahmadi, J. as he then was) speaking for the Bench has stressed the need that the Judge should indicate the basis upon which he considers sentence of that extreme magnitude justified. It has been observed in the decision that : (SCC p. 19, para 9)

"Where a sentence of severity is imposed, it is imperative that the judge should indicate the basis upon which he considers a sentence of that magnitude justified. Unless there are special reasons, special to the facts of the particular case, which can be catalogued as justifying a severe punishment the judge would not award the death sentence."

18. As for the present case, the trial court advanced the following reasons in justification of the award of death sentence :

"The accused were not satisfied by causing two or four injuries and they made 27 attacks by axes and daranti. Man, when turns a beast from a human being, even then there must be a limit to his revenge but in this case, there remained no limit to revenge and four brutal murders were committed in broad daylight. This act of the accused was against the normal conduct of man. Hence in my opinion it would be proper that the accused be awarded the death penalty."

19. While concurring with the above conclusion, learned Judges of the High Court of Allahabad have set down the following reasons :

"The appellants were the next-door neighbours of the deceased persons. They should have lived like good neighbours, but all the four persons took kulhari and hansia, went inside the house of Banke Lal and butchered all the four persons one by one. We have seen the injury reports and it is apparent that all the four persons had been butchered like goats. The persons who have become so cruel do not deserve any leniency or mercy by the Court. The attack was deliberate, calculated and the appellants fully knew what they were doing."

20. We have extracted the above reasons of the two courts only to point out that it is the savagery or brutal manner in which the killers perpetrated the acts on the victims including one little child which had persuaded the two courts to choose death sentence for the four persons. No doubt brutality looms large in the murders in this case particularly of the old and also the tender-aged child. It may be that the manner in which the killings were perpetrated may not by itself show any lighter side but that is not very peculiar or very special in these killings. Brutality of the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the "rarest of rare cases" as indicated in *Bachan Singh case* ((1980) 2 SCC 684 : 1980 SCC (Cri) 580). In a way, every murder is brutal, and the difference between one from the other may be on account of mitigating or aggravating features surrounding the murder.

21. The incidents which happened on earlier occasions between members of the two rival families are indicative of the intensity of the bitterness which prevailed between them. It was a thirst for retaliation which became the motivating factor. Attacks and counter-attacks between them were frequent events during the preceding days. There is evidence that six days before this occurrence, two elderly persons of the deceased family (Banke Lal and Pan Kunwar) attacked the young female member of the accused family (Ramshree). The brutality with which the murders were committed by the assailants which include two ladies makes us think that more skirmishes would have happened prior to the incident which would have escalated the simmering thirst for vengeance to reach a boiling point.

22. We are persuaded to consider that this case cannot be treated as one of the "rarest of rare cases" where the lesser sentence is not at all adequate. Hence we alter the sentence of death penalty by awarding the sentence of imprisonment for life to each of the appellants.

23. The appeals are disposed of accordingly.

24. The writ petition is dismissed.