

Kishori

Vs

State of Delhi

Criminal Appeals No. 147 of 1998 with No. 148 of 1998

(G. T. Nanavati, S. R. Babu JJ)

01.12.1998

JUDGMENT

RAJENDRA BABU, J. -

1. When the country was mourning the assassination of Smt. Indira Gandhi on 31-10-1984, on that night and for the next two days, riots broke out in several places including Delhi when several persons belonging to the Sikh community were killed. Three persons, viz., Kishori, Mohd. Abbas and Duli Chand were charged with having committed the murder of Sajjan Singh, his younger brother, Hoshiar Singh and several other Sikhs including Kishan Singh. An Enquiry Committee was constituted and on the basis of the recommendations made by the Enquiry Committee, a complaint was registered in terms of Section 173 of the Code of Criminal Procedure. In an affidavit filed, Smt Bhakti Bai, w/o Sajjan Singh had stated that a mob attacked her husband with a meat-chopper on 1-11-1984 killing him and his younger brother, Hoshiar Singh on the next day. Thereafter investigation was done by the police and the accused persons were charged under Sections 147, 302, 395 and 436 read with Section 149 IPC attributing them with the acts of rioting, burning and looting of the houses of victims and killing of Sajjan Singh and Inder Singh. Charges were framed by the Sessions Court on the same line and the accused pleaded not guilty and claimed to be tried. The prosecution examined 14 witnesses of whom the testimonies of PW 3 Asaudi Kaur, PW 4 Burfi Kaur, wife of Hoshiar Singh, PW 5 Bhakti Bai, wife of Sajjan Singh, PW 6 Vidya Kaur, daughter of Sajjan Singh, PW 7 Hari Singh and PW 9 Ganga Kaur and other witnesses are relevant for consideration. The Sessions Court believed the eyewitness account of Asaudi Kaur, Bhakti Bai and Burfi Kaur and held that their version was trustworthy even after considering the statement of the accused recorded under Section 313 CrPC and convicted them of the offences under Sections 148 and 302 read with Section 149 IPC and passed the sentence of death on Kishori, while life imprisonment was imposed on the other two accused.

2. The appellant and other accused carried appeals to the High Court apart from the reference made by the Sessions Court for confirmation of the death sentence and the High Court allowed the criminal appeal filed by Duli Chand and Mohd. Abbas and acquitted them in their respective appeals while confirming the sentence of death of Kishori. The present appeals are before us by special leave.

3. The trial court and the High Court critically examined the evidence tendered and were convinced of the guilt of the appellant. The appreciation of evidence by the High Court and the trial court is based on cogent reasoning and, therefore, detailed examination by us in appeal by special leave is not called for. The fact that Inder Singh, Sajjan Singh and Hoshiar Singh met with homicidal death is not in serious dispute. On that part of the case, there are clear statements made by Asaudi Kaur,

PW 3 that on 1-11-1984 at about 12 midnight, a huge mob came to her house and pelted stones on the door of her house and they all entered the house. Her husband concealed himself in the "tand"; that he was given knife blows on his stomach/belly and both his hands were cut; that at the same time, certain other persons were also killed; that the mob put the quilt on the body of her husband and others; that they set fire to the bodies and pushed her out of the house.

4. Burfi Kaur, PW 4 also stated in similar terms that in the morning at about 3 or 4 a.m. in the month of November 1984 when she was staying with her husband, Hoshiar Singh and children in the house, a large mob armed with chhuras, lathis, dandas, kerosene came to their house; that her husband who was standing in front of the house, after seeing the mob she had gone to their neighbour in front of their house and she called her husband to the house of one Atul Singh where she had gone for concealing herself; that her husband had come to the house of the said Atul Singh and the members of the mob entered that house and looted the entire goods of their house and by that time it had become dark at about 8 p.m.; that when her husband was sitting in the house of one Nathu Singh, the members of the mob came there and surrounded him. In spite of the appeals made by him that he should be spared as he was their brother, the mob inflicted on him blows with lathi and knife and she was not able to identify the members of the mob and that was how her husband was killed.

5. PW 5 Bhakti Bai stated that on 1-11-1984, at about 11 p.m., a mob of about 5-7 persons which entered her house noticed the presence of her husband who had concealed himself beneath the cot and certain other persons joined them who were 40-50 in number and they removed the charpai (cot) and her husband appealed to them with folded hands for mercy to spare his life. However, the members of the mob gave lathi blows to him. On account of this, he fell down and thereafter he was given knife blows and the mob after having seen that her husband was still alive set him on fire. The evidence of other witnesses corroborate in material particulars the evidence tendered by these three witnesses. Therefore, there was enough material on record before the Court to come to the conclusion that Sajjan Singh, Hoshiar Singh and Inder Singh met with homicidal death.

6. The next question that arises for consideration is whether the appellant was a part of the mob and was he responsible in any manner for the death of the said persons, Sajjan Singh, Hoshiar Singh and Inder Singh. Asaudi Kaur, PW 3 is clear in her evidence that she could identify Kishori and one lambu as members of the mob. She was able to identify the said Kishori. She, in fact, stated that her husband cried addressing Kishori "Kishori, you were my friend and why are you killing me". Though certain discrepancies are sought to be attributed in the course of cross-examination as to her husband, Inder Singh having concealed himself in the "tand" in the room and her husband having cried out Kishori, being his friend, should not kill him or that a quilt being rolled upon her husband, she has been firm in stating that the death of her husband, Inder Singh, took place in her presence on account of injuries inflicted by the mob and she is also equally clear as to the presence of the appellant Kishori in the mob having a khanjar in his hand. Evidence of PW 4 Burfi Kaur, wife of Hoshiar Singh is not that clear and there are many discrepancies in her statement and, in fact, she was treated as hostile by the prosecution and she was not able to mention the names of the accused.

7. The evidence tendered by PW 5 Bhakti Bai, is categorical in stating that Kishori, the appellant was present at the time of attack by the members of the mob and she was able to identify him in the Court as well. She is clear that several blows were inflicted on her husband. She is not able to state as to what happened to her husband when she was asked to leave her husband on the threat of dishonouring her but she is definite that her husband was killed. Her version appears to be natural and probable when she stated a mob attacked her house and there was threat to the lives and honour

of women, it is quite natural that she had to go out of the house. Though the learned counsel for the accused sought to bring out that in the statements made before the police, Kishori's name had not been included in some of the documents, the name of Kishori was mentioned in Exhibit PW 5/DA which is the original Gurmukhi affidavit filed at the earliest point of time and Kishori was known to everyone in the area, he being a meat-seller. Thus there was ample material on record to bring home guilt to the accused that he had been responsible as a member of the mob for the death of the said persons. However, the learned counsel for the appellant sought to plead that there were several discrepancies in the evidence tendered by these witnesses. We have carefully and thoroughly examined the record and do not find any such discrepancy which would have a bearing on the evidence tendered by the eyewitnesses to the effect that death of their respective husbands had occurred and in identifying the presence of the accused in the mob which indulged in their killing. Matters of detail as to the roles attributed to the several persons in the mob or narration as to the succession of events that took place may not be of much relevance. Therefore, in our view, the High Court and the Sessions Court were justified in affirming the conviction of the accused, Kishori.

8. Now the crucial question which arises for consideration is as to what should be the sentence imposed upon the accused - whether we should affirm the death sentence imposed upon him or a lesser sentence should be given. The learned counsel for the appellant has sought to bring to our notice several mitigating circumstances. He has contended that the offence was committed under the influence of extreme emotional disturbance and in a state of frenzy following the unfortunate, gruesome and tragic assassination of Smt Indira Gandhi, when the entire country was engulfed in sudden and tremendous shock and distress, which also ignited anger and violence amongst a section of people showing their anger which led to the acts of riots, arson and killing of the members belonging to the Sikh community. He submitted that the appellant is not a habitual criminal; that he was probably instigated to indulge in riots by leaders belonging to political parties; that there is no motive or the acts have been done as a result of premeditation; that the deaths were the result of cumulative effect of different types of injuries inflicted by members of the riotous mob by use of different weapons such as lathis, iron bars, daggers in their hands; that in the absence of any medical evidence to establish that the deaths were caused only on account of the injuries stated to have been inflicted by each one of them cannot be guilty but to each member of the mob and therefore the appellant should not be imposed death sentence. He further pleaded that there is every probability that the appellant would not commit a criminal act of violence as would constitute a continuing threat to society and he can be reformed and rehabilitated. He pointed out that the accused had not been convicted in several other cases and he had been acquitted by the High Court in those cases and, therefore, the basis upon which the trial court has proceeded to impose the extreme penalty of death merely because he has already been awarded death sentence in other cases would not be justified. He pointed out that it was a chain of several incidents relating to one action only that took place in the wake of Smt Indira Gandhi's death and therefore that ground should not be treated as a special reason for awarding the sentence of death when there is a requirement of law that the capital punishment can be imposed in the rarest of rare cases and it cannot be said that in a situation of the present kind, death sentence was called for. The learned counsel drew our attention to several decisions of this Court to support the contentions put before us which are : *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681]; *Ajmer Singh v. State of Punjab* [(1977) 1 SCC 659 : 1977 SCC (Cri) 140]; *State of U.P. v. Bhoora* [(1998) 1 SCC 128 : 1998 SCC (Cri) 265]; *Hardayal v. State of U.P.* [(1976) 2 SCC 812 : 1976 SCC (Cri) 317]; *Balraj v. State of U.P.* [(1994) 4 SCC 29 : 1994 SCC (Cri) 823 : AIR 1995 SC 1935]; *Kesar Singh v. State of Punjab* [(1974) 4 SCC 278 : 1974 SCC (Cri) 440]; *Ediga Anamma v. State of A.P.* [(1974) 4 SCC 443 : 1974 SCC (Cri) 479]; *Shivaji Genu Mohite v. State of Maharashtra* [(1973) 3 SCC 219 : 1973 SCC (Cri) 214];

Sarwan Singh v. State of Punjab [(1978) 4 SCC 111 : 1978 SCC (Cri) 549]; Shankar v. State of T.N. [(1994) 4 SCC 478 : 1994 SCC (Cri) 1252].

9. The law is well settled by reason of the decisions of this Court as to the circumstances in which capital punishment can be imposed. It is held therein that capital punishment can be imposed in the rarest of the rare cases and if there are any aggravating circumstances such as the accused having any criminal record in the past, the manner of committing the crime, delay in imposing the sentence and so on. In the present case, the prosecution case, as unfolded before the Court, indicates that the riot in Delhi broke out as a result of the death of Smt Gandhi and her death appears to be the symbol or web around which the violent emotions were released. The death of Smt Gandhi became a powerful symbolic image as a result of which the crowds were perpetrating violence in the height of frenzy. It is common experience that when people congregate in crowds, normal defences are lowered so that the crowd instinct assaults on the sense of individuality or transcends one's individual boundaries by offering a release from inhibitions from personal doubts and anxiety. In such a situation, one can well imagine that a member of such a group loses one's self and the normal standard or sense of judgment and reality. The primary motivational factor in the assembly of a violent mob may result in the murder of several persons. Experts in criminology often express that when there is a collective action, as in the case of a mob, there is a diminished individual responsibility unless there are special circumstances to indicate that a particular individual had acted with any predetermination such as by use of a weapon not normally found. If, however, a member of such a crowd picks up an article or a weapon which is close by and joins the mob, either on his own volition or at the instigation of the mob responding to the exhortation of the mob, playing no role of leadership, we may very well say that such a person did not intend to commit all the acts which a mob would commit left to himself, but did so under the influence of collective fury. All the witnesses in this case speak that there was a mob attack resulting in the death of the three persons. Though the appellant is stated to be responsible for inflicting certain knife injuries, yet it is not clear whether those injuries of themselves would have been sufficient to result in the death of the deceased. In the absence of any medical evidence in these cases, it has become very difficult to draw any inference as to the injuries inflicted by the appellant. We are conscious of the fact that when an accused person is charged with an offence not only under Section 302 IPC but also read with Section 34 IPC or Section 149 IPC, the culpability of such an accused resulting in the death of the person will not be less than that of homicide amounting to murder. But what we are weighing now is whether such culpability is of such a nature which should result in capital punishment to the accused.

10. The trial court is of the view that the appellant before us deserves death sentence in this case as he has been convicted for murders for the seventh time and he had killed an innumerable number of Sikhs in a brutal manner. While affirming this sentence, the High Court took note of the fact that though there has been a long lapse of time between the date of commission of the offence and conviction of the appellant, the acts attributed to the appellant affect the basic feature of our Constitution, viz., secularism; that the appellant indulged in riots resulting in killing of innocent persons, looting and burning their properties would send shivers to any person; that the mob caused havoc of which the appellant was a member; that no leniency, mercy or sympathy should be shown. Relying upon the decision of this Court in Surja Ram v. State of Rajasthan [(1996) 6 SCC 271 : 1996 SCC (Cri) 1314 : 1997 Cri LJ 51] the High Court opined that the court has also to keep in view society's reasonable expectation for appropriate deterrent punishment commensurate with the gravity of the offence, the public abhorrence for the heinous crime committed by the appellant and thus the High Court concluded that this was one of the rarest of the rare cases where such sentence should be imposed.

11. Though the appellant had been charged with offences in seven cases and he had been convicted in all those cases, on appeal he had been acquitted in four cases and it is only in three cases that his conviction has been affirmed, of them, two are before us in appeal by special leave. Therefore, the basis upon which the Sessions Court concluded that he had been convicted in a number of cases, thereby indicating that the appellant is a hard-boiled criminal, may not stand to reason. On the other hand, what could be seen is that all these killings had taken place in a chain of events occurring on one night and day and, therefore, pertained to one incident. Looked from that angle, it could not be stated that the appellant was indulging in criminal activities one after another. None of the witnesses has stated that Kishori, the appellant, was the leader of the mob or he exhorted the members thereof to do any particular act. His role appears was only as a member of the mob.

12. It is no doubt true that the high ideals of the Constitution have to be borne in mind, but when normal life breaks down and groups of people go berserk losing balance of mind, the rationale that the ideals of the Constitution should be upheld or followed, may not appeal to them in such circumstances, nor can we expect such loose heterogeneous group of persons like a mob to be alive to such high ideals. Therefore, to import the ideas of idealism to a mob in such a situation may not be realistic. It is no doubt true that courts must be alive and in tune with the notions prevalent in the society and punishment imposed upon an accused must be commensurate with the heinousness of the crime. We have elaborated earlier in the course of our judgment as to how mob psychology works and it is very difficult to gauge or assess what the notions of society are in a given situation. There may be one section of society which may cry for a very deterrent sentence while another section of society may exhort upon the court to be lenient in the matter. To gauge such notions is to rely upon highly slippery imponderables and, in this case, we cannot be definite about the views of society.

13. We may notice that the acts attributed to the mob of which the appellant was a member at the relevant time cannot be stated to be a result of any organized systematic activity leading to genocide. Perhaps, we can visualise that to the extent there was unlawful assembly and to the extent that the mob wanted to teach a stern lesson to the Sikhs, there was some organisation; but in that design, that they did not consider that women and children should be annihilated which is a redeeming feature. When an amorphous group of persons come together, it cannot be said that they indulge in any systematic or organized activity. Such group may indulge in activities and may remain cohesive only for a temporary period and thereafter would disintegrate. The acts of the mob of which the appellant was a member cannot be stated to be the result of any organisation or any group indulging in violent activities formed with any purpose or scheme so as to call an organised activity. In that sense, we may say that the acts of the mob of which the appellant was a member was only the result of a temporary frenzy which we have discussed earlier. He did not play the role of a leader of the mob as noticed earlier.

14. On the totality of the circumstances, we are of the opinion that this is not a case where the courts below should have imposed capital punishment. While affirming the conviction of the appellant on the charges framed against him, we reduce the sentence from that of capital punishment to life imprisonment. With this modification, the appeals stand dismissed.