

Nirmal Singh and Another

Vs

State of Haryana

Criminal Appeal No. 46 of 1999

(G. B. Pattanail, M. B. Shah JJ)

18.03.1999

JUDGMENT

G. B. PATTANAIAK, J. -

1. The two appellants Nirmal and his brother Dharampal, being aggrieved by the judgment of the Punjab and Haryana High Court in Murder Reference No. 4 have approached this Court. The High Court has affirmed the death sentence awarded against them by the learned Sessions Judge, Shahpur for the brutal murder they committed by murdering the entire family of the deceased Tale Ram. The prosecution case in a nutshell is that Tale had three daughters, Punam @ Bimla, Nirmala and Neelam and two sons named Tinue and Parveen. Wife of Tale Ram was Smt Krishna. Dharampal and Nirmal are distantly related to Tale Ram. In January 1991, a complaint was lodged by Punam that Dharampal had committed rape on her. In the said proceeding, Dharampal had given a threat that if anybody gives evidence in the proceeding, then he will not be spared.

Notwithstanding the aforesaid threat, the victim Punam deposed in the court and ultimately Dharampal was convicted by the learned trial Judge and was sentenced to rigorous imprisonment for 10 years. Accused Dharampal preferred an appeal against the said conviction and sentence and the High Court after entertaining the appeal released him on bail by order dated 25-5-1993. Dharampal furnished the bail bond on 4-6-1993 and was released. Punam and her husband had come to Village Shahpur Turk and were staying with the Tale Ram on 9-6-1993. On the same day, after finishing their dinner, both Punam and her husband went to the rooftop of the house of Tale Ram and slept there. At about 3.30 a.m., hearing some voice from the courtyard where Punam's father and all the family members were taking rest, Punam and her husband got up and they saw accused Dharampal was armed with a Kulhari and accused Nirmal was armed with a burchi and they had been giving successive blows on all the family members who were sleeping down below in the courtyard. Punam and her husband were terrified that they could not raise any alarm and after the two accused persons left the scene of occurrence, they came down and found all the 5 family members namely, father Tale Ram, mother Krishna, sister Neelam and brothers Parveen and Tinue dead. Punam then went to the approach their neighbours but none came forward and she became unconscious. She regained consciousness at about 10.00 a.m. and then went to the Village Sarpanch and accompanied by him went to Police Station Shahpur and gave a report which was stated as first information report. On the basis of the said first information report, the police registered a case and started investigation and on completion of the investigation, charge-sheet was filed. The accused persons were committed to the Court of Sessions and they stood their trial. The prosecution examined as many as 11 witnesses which includes two eyewitnesses Punam, PW 8 and her husband

Rajkumar, PW 9. The two doctors examined in the case are PWs 4 and 5. The defence was one of denial and two witnesses examined on behalf of the defence, one of whom was the Village Sarpanch who allegedly had gone with Punam to lodge the first information report. The learned Sessions Judge relying upon the evidence of the two eyewitnesses PWs 8 and 9 came to the conclusion that they are truthful witness and their version can be safely relied upon. Taking into consideration the aggravating circumstances as well as the mitigating circumstances, if any, and drawing up a balance-sheet of the same and taking into consideration the manner in which the ghastly murder of five members of a family was committed are security risk, the learned Sessions Judge came to hold that the case is one which satisfies the test of rarest of rare case and death penalty is the only sentence which is awardable and accordingly awarded death sentence to both the accused Nirmal and Dharampal. The two accused persons preferred appeal to the High Court of Punjab and Haryana and a reference was also made for confirmation of death sentence which was registered as Murder Reference No. 4. The High Court by the impugned judgment affirmed the conviction and sentence passed by the learned Sessions Judge and dismissed the appeal preferred by the accused persons. The High Court recorded the finding that the murder of Tale and 4 members of his family is premeditated and was done in calculated manner and is certainly a rarest of rare case where death sentence will be the only proper sentence which will commensurate with the gravity of the crime and the circumstances in which the same was committed.

2. Mr. Cheema, the learned Senior Counsel appearing for the appellants contended that the evidence of the two eyewitnesses cannot be relied upon as several features in the prosecution case indicate that the first information report alleged to have been given by PWs 8 and 9 had not been really given at 10.00 a.m. but such timing was given by manipulation so as to secure the presence of the two eyewitnesses PWs 8 and 9 in the house of deceased Tale who could be utilised as eyewitnesses to the occurrence. In elaborating this submission, the learned counsel urged that the prosecution evidence unfolded through the photographer who was examined as PW 1 being that by the time he reached the spot at 8.00 a.m., the police was already there, therefore, it cannot be said that no information had been given till 10.00 a.m. Mr. Cheema further urged that the four inquest reports in the present case itself would indicate that the name of Rajkumar was in different ink and thus obviously introduced later which would belie the prosecution case that Rajkumar and his wife Punam were in the house of the deceased on the fateful night. According to Mr. Cheema, such serious lacunae in the prosecution case creates suspicion in the mind but they have been brushed aside both by the Sessions Judge and the High Court and on the other hand witnesses on whose testimony the two brothers have been held to be reliable witnesses on whose testimony the two brothers have been sentenced to be hanged. Mr. Cheema also further contended that the presence of 4 wounds on the person of Krishna as deposed to by the eyewitnesses is belied by the medical evidence and instead of entertaining doubt about the prosecution case and coming to a conclusion that the prosecution does not come forward with a true version of the occurrence, the courts below have accepted the prosecution case and have sentenced to death the two appellants.

3. Mr. Cheema also further contended that in the context of the aforesaid lacunae in the prosecution case, the evidence of the Village Sarpanch who was examined as Defence Witness 1 and who had gone with Punam to lodge the first information report to the effect that neither Punam nor her husband Rajkumar had seen the occurrence assumes great significance and the said piece of evidence had not been given its due weight. Mr Cheema also urged that the occurrence having taken place at 3.30 a.m., there is no explanation as to why the first information report was lodged only at 10.00 a.m. and it is unbelievable that none of the villagers or even Punam's husband dared to lodge the report Mr. Cheema further urged that it is Punam who deposed in the rape case and the said Punam was available in the house of the deceased Tale and yet she has been left out while others

have been murdered and those who have been murdered did not lead evidence in the rape case. The learned Senior Counsel, Mr Cheema then urged that assuming that the prosecution case as unfolded through the evidence of the two eyewitnesses PWs 8 and 9 happened in the manner as ascribed, but the nature and the quality of evidence is such that the extreme sentence of death penalty could not have been imposed for taking the life of two persons. Mr Cheema lastly urged that at any rate, the threat, if any, had been given by accused Dharampal and the eyewitness accounts of PWs 8 and 9 indicate that Dharampal had killed all the 5 persons and his brother Nirmal had accompanied him and given two blows on Krishna by means of a burchi and, therefore, the said Nirmal does not deserve the same sentence of death penalty as Dharampal.

4. The learned counsel for the respondent on the other hand submitted that the eyewitness accounts of PWs 8 and 9 corroborate each other and nothing has been elicited in their cross-examination for impeaching their testimony, as such the Sessions Judge and the High Court were fully justified in relying on their evidence. The learned counsel also urged that the murder in question being a calculated, deliberate and pre-planned action and was in pursuance of the earlier threat given by Dharampal and further the entire family of Tale Ram having been killed in a brutal manner, both the appellants deserve the extreme penalty of death and there is no infirmity with the judgment of the High Court affirming the death sentence.

5. In view of the submission made at the Bar and because of the fact that the two appellants have been sentenced to death, we have been taken through the evidence of the two eyewitnesses Pws 8 and 9. Having scrutinised their evidence with utmost care, we have found nothing in their evidence can be impeached in any manner. Both the witnesses, namely, Punam and her husband Rajkumar have given a vivid account of the entire incident which they had seen from the rooftop. The assailants are not unknown to them, more particularly, to Punam as Dharampal had committed rape on Punam and on the evidence of Punam, he had been convicted and sentenced to 10 years' rigorous imprisonment. We have also taken note of the infirmities pointed out by Mr Cheema, the learned Senior Counsel for the appellant, namely, the evidence of the photographer that the police was at the spot by 8.00 a.m. and the insertion of the name of Rajkumar in the inquest report in a different ink as well as the absence of the number of injuries on Krishna though the eyewitnesses' account is that 4 blows had been given. But on such score, the evidence cannot be discarded, particularly when the investigating officer has not been asked any question either as to how the name of Rajkumar was in a different ink or doubt the first information report being given at 10.00 a.m. It is true that accused Dharampal was convicted on account of the evidence of Punam in the rape case but there is no material to indicate that the accused had the knowledge of the presence of Punam in the house on the fateful night as by then Punam had married and was in her in-law's house. Therefore, the fact that Punam was left out by the assailants is by coincidence and not knowingly by the accused persons. So far as the by infirmity between the medical evidence and the oral evidence as to the absence of 4 injuries on deceased Krishna is concerned, the said cannot be held to be fatal to the prosecution case, more so, the witnesses having seen from the rooftop and in front of them, 5 persons of the family were brutally assaulted by the two accused persons.

6. In the aforesaid circumstances, it is difficulty for us to accept the contention of Mr Cheema that the evidence of the two eyewitnesses could be discarded by the Court. On the other hand, having gone through their evidence, we find them to be reliable on which the courts can easily act upon. In our considered opinion, therefore, the conviction of the two appellants under Sections 302/34 remains unassailable. Coming to the question of sentence, however, we find that the High Court has not considered the individual role played by each of the appellants. So far as accused Dharampal is concerned, it is he who had given the threat on the previous occasion that if anybody gives evidence

in the rape case, the whole family will be wiped off. It is he who after being convicted in the said rape case preferred an appeal and obtained a bail from the High Court and has totally misutilised that privilege of bail by killing 5 persons who were all the members of the family of Punam whose deposition was responsible for his conviction in the rape case. It is he who has assaulted each of the 5 deceased persons by means of a Kulhari and the nature of the injuries as found by the doctor would indicate that the act is an act of a depraved mind and is most brutal and heinous in nature. It is he who had consecrated the plan to put into action his earlier threat but he has taken the help of his brother Nirmal. In the facts and circumstances narrated, the act of accused Dharampal in giving brutal and merciless blows on the 5 deceased persons cannot but be held to be rarest of rare case for awarding the extreme penalty of death sentence. We, therefore, affirm the conviction and sentence of appellant Dharampal and dismiss his appeal and direct that he should be hanged till death.

7. But so far as accused Nirmal, brother of Dharampal is concerned, the case stands totally on a different footing. Dharampal was a convict undergoing a sentence of ten years in a rape case. There is nothing on record to suggest that Nirmal was having any past criminal antecedents or that there is a possibility that the accused would commit criminal acts of violence and would constitute a continuing threat to the society. The only aggravating circumstance is that he had come with his brother and had given 3 blows on deceased Krishna only after Dharampal chased Krishna and gave Kulhari blows hitting on the neck while Krishna was running and on sustaining that blow, she fell down and then Dharampal gave two to three blows to Krishna and only thereafter Nirmal gave burchi blows on the said Krishna. It is no doubt true that the presence of Nirmal at the scene of the occurrence with a burchi in his hand had emboldened Dharampal to take the drastic action of causing murder of 5 persons of Tale's family as a result of which Tale's family was totally wiped off. But because of the fact that Nirmal has not assaulted any other person and assaulted Krishna only after Dharampal had given her 3 or 4 blows, the case of Nirmal cannot be said to be the rarest of rare case attracting the extreme penalty of death. While, therefore, we uphold his conviction under Sections 302/34, we commute his sentence of death into imprisonment for life.

8. This appeal is disposed of accordingly.