

Ram Deo Chauhan and Raj Nath Chauhan

Vs

State of Assam

Criminal Appeal No.4 of 2000

(Mr. K.T. Thomas and Mr. R.P. Sethi, JJ.)

31.07.2000

### JUDGMENT

**R.P. Sethi, J.:-** The appellant was charged under Sections 302 and 326 IPC for having caused the death of four persons of a family, namely, Mr. Babani Charan Das, Assistant Engineer, PWD, Morigaon Division, aged 37 years, his wife Smt. Minati Das, aged about 30 years, their daughter aged 2-1/2 years and Ms. Smriti Rekha Das, sister of Babani Charan Das aged about 22 years. He was also charged to have caused injuries with the sharp edged weapon to Smt. Jayanti Das, the mother of the deceased No.1 and Shri Rajen Hazarika, neighbourer of the deceased. On proof of charges, the Trial Court convicted the appellant of the offences punishable under Sections 302, 326, 325 and 323 IPC. As he was sentenced to death under Section 302 IPC, the Trial Court did not feel the necessity of awarding separate punishments for offences under Sections 326, 325 and 323 IPC. The Trial Court submitted the entire proceedings to the High Court for confirmation of the sentence. The appellant also filed an appeal against the order of conviction and sentence passed by the Trial Court. Both the Criminal Death Reference No.1 of 1998 and Criminal Appeal No. 109 of 1998 were disposed of by the judgment impugned in this appeal by confirming the conviction and sentence awarded by the Trial Court. Not satisfied with the impugned judgment, the appellant has preferred the present appeal in this Court.

We have heard the learned amicus curiae appearing for the appellant and the learned counsel for the respondent. We have also perused the record and minutely examined the evidence led in the case. The report recording examined the evidence led in the case. The report recording mental state examination of the appellant has also been examined by us.

Learned amicus curiae has submitted that as there was no direct evidence available in the case it would not be safe to convict and sentence the appellant for the offence of murder as has been done by the courts below. We are not satisfied with this submission. It is generally believed and accepted that the witnesses may lie but the circumstances cannot. The Trial Court has enumerated the circumstances appearing against the accused as under:

"(1) On the fateful day, inmates of the house present were Bhabani Charan Das, his wife Minati Das, his only daughter Darathi Das and his sister Smriti Rekha Das and the accused Ramdeo Chauhan alias Rajnath Chauhan. Another inmate of the house, mother of Bhabani Charan Das was absent on that day.

(2) All the four members of the ill-fated family were found dead and their dead bodies were lying in three different rooms in pool of blood and all the doors and windows of the house were closed and the front door was under lock to give an impression that inmates of the house had gone somewhere.

(3) At that time, only alive person present in the house was the accused and no prudent person would believe that he had no knowledge that all the inmates of the house were lying dead inside the rooms.

(4) Intentionally he gave false information to PW5 that all four inmates of the house were sleeping in their rooms.

(5) When PW5 entered into the room and shouted sleeping the ugly scene, she was attacked by the accused Ramdeo Chauhan alias Rajnath Chauhan.

(6) Perhaps, if the handle of the spade would not have been broken during tussle there was every possibility of killing PW5 by the accused with the spade.

(7) He also attacked Rajen Hazarika (PW1) when he went to save the old lady from his (accused) attack.

(8) Conduct of the accused in attacking and assaulting PW5 and PW1 is another actor indicating his involvement in the ghastly crime.

(9) The accused also led the police to recover the spade used in commission of the crime which was used in commission of the crime which was seized and exhibited in the court.

(10) Lastly, the confessed his guilt."

The Trial Court has rightly concluded that the prosecution had fully established the existence of aforesaid circumstances and the circumstances narrated created such a chain complete in itself which lead to the only conclusion that the accused had committed the crime for which he was charged. The High Court also after examining the statement of the witnesses, the recovery memos and the coconfessional statement of the accused came to the conclusion:

"The entire evidence brought on the record of the case, in our considered view, creates a chain of circumstances wit no missing link which points, to the guilt of the accused beyond reasonable doubt. Minor contradictions and inconsistencies here and there in the peculiar facts and circumstances of the present case do not create any doubt about the prosecution case."

Both the courts below have concurrently concluded that the incriminating circumstances in the case are such which lead only to the hypothesis of the guilt and reasonably exclude every possibility of innocence of the appellant. It has also rightly been found that the circumstances proved against the appellant form themselves into a complete chain unerringly pointing to this guilt.

This Court has in Malempati Patabhi Narendra vs. Ghattamaneni Maruthi Prasad & Anr. [2000(5) SCC 226 has ruled that in an appeal under Article 136 of the Constitution of India normally the concurrent findings of fact relating to appreciation of evidence would not be reopened. In the present case we do not feel and find any good ground to deviate from the general practice. No circumstance has been referred to requiring re-appreciation of evidence. We have thus no hesitation in upholding the conviction of the appellant and recorded by the Trial Court and confirmed by the High Court.

Regarding Sentence

During the pendency of the appeal it was suggested that the appellant might have been deprived of his senses at the time of occurrence or caused the deaths on account of sudden provocation. As the accused had been convicted and sentenced to death we thought that in the interests of justice we should have a report from the competent expert of mental illness. Consequently the arrangements were made to keep the appellant under observation in the mental hospital at Tejpur, Assam. The members of the family of the appellant were also directed to be contacted for ascertaining his antecedents. The experts of the mental hospital at Tejpur were directed to prepare a report regarding all aspects relating to cognitive faculties (present and past) to the extent ascertainable by them within a period of one month from the date of our order) passed on 29.3.2000.

In obedience to our directions the appellant was admitted for observation in the hospital and was kept under observation with effect from 10.4.2000 to 20.4.2000. During the aforesaid period his ward behaviour, socialisation, personal hygiene, food intake and sleep patterns were periodically observed. His mental state was also periodically examined by psychiatrists independently. He was examined by a Medical Board headed by Dr. J.C. Sarmah, SDM & HC as Chairman, the other members of the Board being Dr. K. Pathak, Asstt. Professor, Psychiatry and Dr. B.S. Neog, M&HO-I, Psychiatry. To gather antecedents, history of the appellant and his family, his father was interviewed by the Medical Board on 12.4.2000. The appellant was also permitted to meet his father in order to watch his emotional reaction during the interaction. The Board has reported:

#### "Development history"

As mother did not come, detail history regarding birth is not available. So far father can remember it was uneventful normal delivery. His mile-stone development was normal. There is no history of neurotic traits in the childhood he was quarrelsome and irritable since childhood. From 10 years of age he became increasingly quarrelsome and started quarreling with neighbours and friends very frequently for trivial reasons. But he was not involved in physical fighting or any other activities like stealing, gambling etc. His performance in the school was average. No abnormality was observed in his behaviour during childhood.

When he was 14 years old, that is about 7-8 years back, one day he ran away from home and remained untraced. The father tried to find him out and searched everywhere possible. But there was no message from him. Then after 6 months Rajnath Chauhan (Ramdeo) was brought to his home by the police. Father says that then only then came to know that Rajnath (Ramdeo) was involved in murder case. Rajnath admitted before parents about committing the murder, but did not disclose anything in detail, according to father.

Father says that before leaving home there was no abnormality observed in Rajnath's behaviour except irritability. Ramdeo was on parole for about 8 months. During this period he was at home and then also no abnormality was noticed in his behaviour. He was helping in house-hold chores and sleep was normal.

#### History of physical illness:

There is no history of any major physical illness in the past. There is no history of epilepsy or head injury. At present on physical examination his physical parameters are normal.

#### Family history:

There is no history of mental illness in both paternal and maternal side.

### Observation during hospital stay:

In the initial period of his stay in the hospital he was tense, anxious and was uncooperative. He was not talking properly and replied in monosyllabic terms on repeated persuasion. From second day onwards he started cooperating. Throughout the period of his stay no abnormality is observed in his behaviour and emotion. Gradually he started socialising with hospital staff though it is not spontaneous. His sleep pattern is normal. He maintained personal hygiene. Food intake is normal. He shows the tendency of dramatization at times.

### Mental State Examination:

Appearance and general behaviour - Ramdeo Chauhan sits comfortably throughout the interview sessions. He is dressed properly. He maintains eye to eye contact. He is cooperative. Personal hygiene is maintained.

Speech is slow and hesitant initially. Later on normal flow and rate is observed. Speech is relevant and coherent. No abnormality of speech patterns are observed.

Mood and affect are euthmic, submissive in nature and congruity is present.

No abnormality in the thought process is observed.

There is no perceptual disorder.

Higher function - consciousness is clear.

Attention can be drawn and it is sustained.

Memory - immediate, recent and remote memory are intact.

Orientation - In relation to time place and person are intact.

Social and personal judgment - intact, when asked his reaction to three different situations he gave rational answers.

Similarly test - He could tell the similarities between different pairs of items.

Proverb test: He says that he does not know any proverb - which is normal considering his socio-economic back ground and prolonged confinement.

Intelligence - Average.

Insight is intact: He knows the reason why he is in jail and now prays for his release.

Hence, from observation of behaviour and mental state examinations at present his cognitive faculties are found within normal limit. From the available informations gathered about his past, there is no evidence to suggest abnormalities in mental faculties also in the past".

It may also be pointed out that when during the trial the appellant was examined for determination of his age, a team of doctors headed by Dr. Bhushan Candra Roy had found that "the individual was mentally sound on the date of examination. Intelligence and memory were average on the date of

examination". In view of what has been noticed hereinabove, it cannot be said that the appellant was, in any way, deprived of his senses even temporarily at the time of commission of offence. It appears from his confessional statement, which has been duly proved, that he had prepared himself for committing this ghastly crime of murdering four innocent persons. There is no doubt in our mind that the murders have been committed by the appellant after previous planning which involved extreme brutality.

This Court in Balwant Singh vs. State of Punjab (1976 (1) SCC 425] ha ruled that only for special reasons which are required to be stated, the death sentence can be passed. It is not possible to catalogue the special reasons justifying the passing of the death sentence which are required to be determined under the facts and circumstances of each case. In Bachan Singh vs. State of Punjab (1980 (2) SCC 684) this Court held:

:.... for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist".

Commission of the crime in a brutal manner or on a helpless child or the woman or the like were held to be such circumstances which justify the imposition of maximum penalty. In Magahar Singh vs. State of Punjab [1975 (4) SCC 234] this Court held that "for pre-planned cold blooded murder death sentence is proper".

The Trial Court, after referring to various judgments, concluded:

"In the case in our hand, it is apparently a pre-planned, cold-blooded, brutal quadruple murder. It is relevant that the murder was committed in the most brutal manner with severe cruelty inflicting number of injuries on each victim including a female baby hardly of 2-1/2 years of age and two helpless women. They were murdered while they were in deep sleep after lunch keeping the doors and windows of the house open without suspecting any foul play from any quarter. It is, in my view, a rarest of the rare cases which is of exceptional nature. Facts and circumstances of the case justify the extreme penalty provided U/S 302 IPC. The accused seems to be a menace to the society and in my view, sentence of life imprisonment would be altogether inadequate, because the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community. Extreme penalty, in my view, is necessary in such cases to protect the community and to deter others from committing such crime".

The High Court also referred to various judgments of this Court and found on facts:

"There cannot be any manner of doubt that in the present case murders have been committed by the accused after pre-mediation with a motive to commit a theft. The crime can be described to be heinous, dastardly, gruesome and cruel. The persons asleep have been killed in a merciless manner

by the accused who has no value for human lives. The crime committed by the accused falls within the aggravating circumstances as it has been committed after previous planning involving extreme cruelty. The murders in the present case involve exceptional depravity. In view of all this the question arises whether the single circumstance of the accused being too young should be good enough for us to award lighter punishment or not. We have not been able to lay our hands upon any observations of the Apex Court and none has been brought to our notice during the course of arguments that even if all the aggravating circumstances are present in a particular given case, single circumstance of the accused being too young or too old would outweigh other aggravating circumstances and the court must on the basis of a single circumstance grant lighter punishment. Having given our deep and thoughtful consideration and after giving due weight to the mitigating as well as aggravating circumstances which have been referred to above, we are of the view that the accused in the present case must be given death sentence. The present is one of the rarest of rare cases in which infliction of extreme penalty is called for."

It is true that in a civilised society a tooth for tooth, and a nail for nail or death for death is not the rule but it is equally true that when a man becomes a beast and menace to the society, he can be deprived of his life according to the procedure established by law, as Constitution itself has recognised the death sentence as a permissible punishment for which sufficient Constitutional provision for an appeal, reprieve and the like have been provided under the law. It is true that life sentence is the rule and death sentence is an exception. We are satisfied that the present case is an exceptional case which warrants the awarding of maximum penalty under the law to the accused/appellant. The crime committed by the appellant is not only shocking but it has also jeopardised the society. The awarding of lesser sentence only on the ground of the appellant being a youth at the time of occurrence cannot be considered as a mitigating circumstance in view of our findings that the murders committed by him were most cruel, heinous and dastardly. We have no doubt that the present case is the rarest of the rare requiring the maximum penalty, imposable under law.

There is no merit in this appeal which is dismissed. The conviction and sentence passed by the Trial Court, as confirmed by the High Court, is upheld.

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