SUPREME COURT OF INDIA

Gudda @ Dwarikendra

Vs.

State of Madhya Pradesh

Crl.A.Nos.1566-1567 of 2013

(H.L.Dattu, Sudhansu Jyoti Mukhopadhaya and M.Y. Eqbal JJ.)

30.09.2013

JUDGMENT

H. L. DATTU, J.

1. Leave granted.

2. These appeals are directed against the judgment and order passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Reference No. 03 of 2010 and Criminal Appeal No.2246 of 2010, dated 16.01.2012. By the common impugned judgment and order, the High Court has confirmed the judgment and order passed by the Additional Sessions Judge, Satna, in Sessions Trial No.257 of 2007, dated 07.09.2010, whereby and whereunder the learned Sessions Judge has convicted the appellant for offence punishable under Section 302 of Indian Penal Code, 1860 (for short, 'the IPC') and sentenced him to death.

Facts:

3. The Prosecution case : On 28.05.2007, at around 12:20 p.m., Dehati Nalishi (Ex. P-10) was recorded by the Investigating Officer (PW-19) on the basis of information received from the complainant-Ramesh Prasad Gupta (PW-4) regarding murder of his nephew Sunil Gupta, his daughter-in-law Pushpa Gupta and grandson Gaurav, aged 5 years by the appellant in his rented house. Thereafter, an FIR was registered for the offence punishable under Section 302 of the IPC, inquest proceedings were conducted and the dead bodies were sent for post-mortem examination. On further investigation, blood-stained pieces of wall, cement floor, etc. along with a mobile phone, a Katar (sharp edged weapon) and

the Motorcycle of the deceased were seized from the appellant's house. On 31.05.2007, the appellant was arrested and at his instance an iron knife was recovered and sent for forensic examination.

4. On further investigation it surfaced that the appellant thoroughly detested the association of his wife, Smt. Geeta (A2) with the deceased-Sunil Gupta. It has come on record that the appellant did not like the deceased-Sunil Gupta visiting his house to meet A2 in spite of his strong opposition and therefore, hatched a conspiracy with A2 to murder the deceased persons on the pretext of inviting and hosting them for a lunch. On the basis of the same, the charge-sheet was filed against the appellant and A2 for offences punishable under Sections 302/34 and 120-B of the IPC and the case was committed to trial by order dated 10.09.2001.

5. In the statements recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short 'the Code') the appellant has stated that on 27.05.2007, when the school was closed during holidays, the deceased had come to his house in his absence and asked his wife to come to school in the morning insisting upon completion of some pending work. The day next, around 9.00 A.M. the deceased had sent message for A2 again. Then, the appellant had called the deceased and categorically told him that A2 would only go to the school when the school reopens. He has also stated that the same day on returning from the market at 11:30 AM, he heard the cries of A2 for help and noticed the wife of the deceased and the child sitting on the terrace of his house. He has further stated that when he went inside, he saw the deceased attempting to commit rape and was attacking A2 with the knife. On his intervention, the deceased attempted to hit him and a fight ensued where he snatched the knife from the deceased and hit him in order to protect his wife's modesty and their lives. It is also stated that wife of the deceased and the child intervened between them and therefore suffered serious injuries leading to their death. A2 has supported the said defence in her statement.

6. The Prosecution has examined 19 witnesses in support of its case including three eye-witnesses PWs-5, 7 and 8. We would only notice the evidence of witnesses relevant for the disposal of this appeal, viz., PWs-4, 5, 7, 9 and 18 along with the evidence of Doctors.

7. PW-4 is the informant and has testified that on the fateful day at 12.00 P.M. he overheard a mob in the market that the appellant had committed murder of three persons in his rented house. Upon proceeding towards the said house of Subhadra Jaiswal (PW-5), he found dead bodies of the deceased persons lying in the passage of the house. On enquiry, PW-5 had informed him that about 45 minutes ago, the

appellant slaughtered them by a Katar and fled away and that A2 had also received injuries on her leg.

8. PW-5 is the owner of the house where the appellant and A2 resided as tenants. She has stated that she was acquainted with the deceased persons as they used to visit the appellant's house. She has testified that on the fateful day at 11.00 AM, she heard the shrieks from the staircase of her house and upon reaching the spot, she witnessed the deceased followed by the appellant with a knife in his hands running down the stairs. Thereafter, the appellant started assaulting the deceased with the knife and despite her intervention he proceeded to assault the deceased family. She ran out after grabbing the child and immediately rushed to the house of A2's mother who resided in the neighborhood and informed about the incident. On returning, she found that the deceased persons had succumbed to their injuries and the appellant had fled.

9. PW-7, Smt. Munni, is another tenant in the house of PW-5. In her evidence she has stated to have heard the sound of something falling from the stairs and cries at 12.00 PM on the fateful day, whereafter she went towards door of her house and witnessed the appellant assaulting the deceased persons with a knife. She has further stated that though PW-5 attempted to intervene, the appellant continued to assault the deceased persons.

10. PW-9, Lale @ Lal Singh was known to the deceased persons and at the relevant time was in the neighborhood. He has stated that at 11:45 AM, he heard PW-5 screaming and coming out of the appellant's house with the child-Gaurav. When he went near the child, he noticed the stab injuries to which he had succumbed. In the meanwhile, the appellant came out of the house with a knife and threatened others not to stop him and fled away on his motorcycle. Further, PW-9 has stated that on proceeding towards the passage of the house, he found the deceased-couple lying in a pool of blood and A2 sitting on the stairs. Upon enquiry from A2, she stated that the appellant detested her relationships with the deceased-Sunil Gupta and that the deceased family was invited for lunch at her house, where the quarrel broke out and resulted in murder of the three deceased persons by the appellant.

11. PW-18, Dinesh Singh, had accompanied PW-9 on the fateful day and thus, is a witness to the incident and has corroborated the testimony of PW-9.

12. PWs- 16 and 14 are the Doctors who conducted post-mortem of Pushpa Gupta, Sunil Gupta and the child-Gaurav respectively and have deposed in respect of the

26 week pregnancy of the deceased-Pushpa Gupta, the injuries sustained by them, weapon of crime as sharp edged knife and the cause of death to be excessive hemorrhage due to ante-mortem injuries.

13. The Trial Court has relied on primarily the evidence of eye- witnesses PWs-5 and 7, whose evidence is corroborated by the evidence of PWs-4, 8, 9 and 18 and the medical evidence of PWs- 16 and 14 and the post-mortem report of the deceased persons and the medical report of A2 to reject the defense version and record a finding that the appellant had invited the deceased family for lunch and upon a quarrel thereat, attacked Sunil Gupta with a knife and thereafter, assaulted Sunil Gupta, his wife and his child to death. The motive of the appellant is recorded as the suspicion of the appellant on the fidelity of A2 and her continuous engagement with Sunil Gupta even after his warnings. On the basis of the aforesaid, the Trial Court has found the evidence insufficient to establish the guilt of A2 beyond reasonable doubt and reached the conclusion that the appellant alone is guilty of murder of the deceased family and hence, convicted him under Section 302 of the IPC while acquitting A2 of the charge under Section 302 read with Section 120-B of the IPC. The Trial Court has considered the following factors and found the present case fit into the category of "rarest of the rare" and therefore, sentenced the appellant to death for the following reasons:

a. The appellant had apparently no reason to commit the murder of three persons especially the murder of a pregnant woman and an innocent child,

b. He was under no duress or provocation by any visible circumstances,

c. His conduct in stabbing the deceased persons was "so brutal, cruel, grotesque and diabolical"

d. Manner of commission of crime being unsympathetic and "dastardly".

14. Aggrieved by the aforesaid, the State had preferred an appeal against the acquittal of A2 and the appellant had questioned his conviction and sentence. The High Court has disposed of the said appeals along with the reference for confirmation of death sentence of the appellant. The High Court has considered the evidence on record at length and the judgment and order of the Trial Court and after considering all aspects of the case in the light of the submissions made by the parties has reached the conclusion that the Trial Court has not committed any error whatsoever in acquitting A2 and convicting the appellant for the offence under Section 302 of the IPC. The High Court has dismissed the appeals filed by the

State as well the appellant- herein and confirmed the sentence of death of the appellant.

15. Aggrieved by the aforesaid dismissal of his appeal and confirmation of his conviction and sentence, the appellant is before us in this appeal.

16. We have heard Shri Vijay Kumar, learned counsel appearing for the appellant-accused and Smt.Vibha Dutta Makhija, learned senior counsel appearing for the respondent-State at length. We have also carefully perused the evidence on record including the evidence of the eye-witnesses and the statements of the appellant and A2 under Section 313 of the Code and the judgments and orders of the Courts below.

Submissions

17. Shri Kumar would submit that Courts below have erred in placing heavy reliance on the evidence of eye-witnesses, PWs-5 and 7 and rejecting the defence version of the incident. He would further contend that the plea of right to private defence put forth by the accused persons is not properly appreciated by the Trial Court and therefore, the conviction of the accused persons deserves to be set aside. On the question of sentence, he would submit, that the incident occurred at the spur of the movement when the deceased-Sunil Gupta injured the appellant when he tried to protect his wife, and further the appellant had to use the knife to defend himself from the assault made by the deceased-Sunil Gupta. He would further submit that the wife of the deceased and child suffered injuries only when they tried to intervene between the deceased-Sunil Gupta and the appellant and therefore, the death sentence deserves to be commuted. He would submit that neither the murder was pre- planned nor did the appellant had any motive and that the manner and time of occurrence must be considered in the background of his mental condition and agony while weighing the mitigating and aggravating factors towards determination of his sentence.

18. Smt. Makhija would support the judgment and order of the Courts below and submit that the conviction of the appellant is justified in the light of evidence of Prosecution Witnesses and post-mortem reports. On the question of sentence, she would submit that the appellant has committed the murder of three innocent persons in a pre-ordained fashion driven by the suspicion of fidelity of his wife (A2). Further, that no provocation or duress could be gathered from the facts of the case in respect of the wife or child who were brutally slaughtered and therefore, the

case falls into the category of "rarest of rare" warranting the imposition of death sentence on the appellant.

19. The learned counsels have addressed this Court on two issues: firstly, the conviction of the appellant and secondly, if the same be upheld his sentence. We would discuss the two issues sequentially.

Issue one: Conviction

20. The submission of Shri Kumar in respect of the non-credibility of the eye-witnesses relied upon by the Courts below to establish the guilt of the appellant and reject the statements of the appellant and A2 fails to convince us.

21. As already noticed by us, PW-5 in her evidence has testified in respect of the appellant assaulting the deceased persons with a knife, refusing to stop even on intervention and thereafter, running away on his motorbike. PW-5's evidence is amply supported on all aspects by the evidence of PW-7, who has categorically stated that the appellant assaulted the deceased persons and continued to do so in spite of PW-5's intervention and thereafter, fled away on his motorcycle. The said evidence of the two eye-witnesses garners further support from the testimonies of PW-9 and 18 who saw PW-5 carrying the child out of the house and thereafter, the appellant running out with a knife in his hand and escaping on his motorcycle after extending threats to them. The cross-examination of the aforesaid witnesses has neither punctured their testimonies nor elicited sufficient material to reject the prosecution version.

22. Apart from the aforesaid, the evidence of the eye-witnesses draws strength from the evidence of PWs-16 and 14 who conducted the post-mortem of the deceased persons testifying that the injuries were caused by a knife like weapon. The same has been further corroborated by the evidence of PW-19, in respect of recovery of the knife from a pit of sand at the instance of the appellant.

23. The testimony of the two eye-witnesses is natural, convincing and well corroborated by the evidence of PWs 4, 8, 9 and 18 and the medical evidence. The two do not seem to have any animus against the appellant. There is nothing on record to suggest any dispute between the two eye-witnesses and the appellant or hint towards bitterness in their relationships so as to suggest their false testimony against him. Additionally, no such close alliance of the witnesses with the deceased persons has surfaced so as to prove their bias towards the appellant. Thus, the evidence of the two eye-witnesses is credible and trustworthy.

24. It is true that there is no evidence to establish the genesis of the incident. The incident has occurred within the four walls of the appellant's house. In a scenario of this nature the prosecution and the defense version has to be tested on the touchstone of probabilities and truthfulness. In our considered view the defense version appears to be unnatural and improbable. We say so for the reason that when the appellant suspected the deceased person's illicit relationship with A2, the deceased would not have dared to enter the house of appellant, with his wife and child and attempted to rape A2 and on her resistance threatened to assault her with the knife. Further, the statement of appellant that when A2 was shouting for help, the wife of the deceased and the child continued to sit outside on the terrace while the appellant intervened to protect A2 and the deceased assaulted the appellant and on the intervention in the scuffle the wife and the child received the fatal injuries. The plea of right to private defence and non- orchestrated nature of the offence stand vitiated by the evidence of PW-9 who has testified that A2, immediately after the fateful incident has narrated the version of the genesis of the incident absolutely contrary to the version stated by the appellant. On this aspect of the matter, we are in consonance with the concurring observations of the Courts below.

25. In the light of the aforesaid, we are of the considered view that the prosecution case stands well supported and established by the evidence of PWs 5, 7, 9 and 18 coupled with the evidence of Doctors, the post-mortem report and medical evidence and does not leave any room for doubt as to the guilt of the appellant. Therefore, in our considered opinion, the Courts below have not committed any error in convicting the appellant for the murder of the three persons under Section 302 of the IPC and the conviction of the appellant requires to be upheld.

Issue two: Sentencing

26. We are mindful of the concept of and the caution to be exercised in classifying "rarest of the rare" cases in the light of the dictum of this Court in Bachan Singh case and Macchi Singh case which elucidated upon the few of many aggravating and the mitigating factors which must be judicially weighed and balanced while deciding upon the sentence proportional to the crime committed. In Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257 this Court has reflected upon the aforesaid decisions and collectively listed the principles laid down therein and the factors which must be borne in mind by the Court.

27. It is well settled that awarding of life sentence is the rule, death is an exception. The principles laid down earlier and restated in the various decisions of this Court can be broadly stated that a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman conduct in a ghastly manner, touching the conscience of everyone and thereby disturbing the moral fiber of society would call for imposition of capital punishment in order to ensure that it acts as a deterrent. (See: Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767, Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498, Mohd. Farooq Abdul Gafur v. State of Maharashtra, (2010) 14 SCC 641, Haresh Mohandas Rajput v. State of Maharashtra, (2011) 12 SCC 56 and State of Maharashtra v. Goraksha Ambaji Adsul, (2011) 7 SCC 437). However, the application of "the rarest of the rare case" principle is dependent upon and differs from case to case.

28. This Court has consistently held that the number of deaths or the factum of whole family being wiped off cannot be the sole criteria for determining whether the case falls into the category of "rarest of rare". (See: Aqeel Ahmad v. State of U.P., (2008) 16 SCC 372, Ram Pal v. State of U.P.,(2003) 7 SCC 141)

29. Further, we cannot loose sight of the fact that brutality also cannot be the only criterion for determining whether a case falls under the "rarest of rare" categories. In Panchhi v. State of U.P, this Court has reiterated the said principle and thereby justified the commutation of sentence from death to life imprisonment.

30. We would now revert to the facts of the instant case. The genesis of crime and the manner of occurrence inside the house of the appellant remains clouded while the guilt has been clearly established with the aid of available evidence. The factum of the crime being pre-ordained and the motive of the appellant in brutally assaulting the deceased-Sunil Gutpa with a knife after having invited him at his house for lunch stems from his suspicion on his wife's fidelity and his abhorrence for her relationship with the deceased-Sunil Gupta. However, the same motive to murder the wife of deceased-Sunil Gupta and their only child does not find favor with the facts of the case. The farthest possibility and the maximum motivation which may be attributed could be the instant urge of the appellant to silence the two deceased persons who were not only present in his house during the commission of crime but also witnesses to it, magnifying the undeniable probabilities of them testifying against the appellant leading to the discovery of his crime and thus, the immediate translation of such fear by slaughtering them and obliterating their evidence against him.

31. Indeed victims of the crime include an innocent child of 5 years and a pregnant lady who were assaulted by the appellant who was then in a position of trust having invited them to his house for lunch. But this alone would not be sufficient to place the crime in category of "rarest of the rare" as the proportion of culpability of the appellant could be separated for the three victims into two parts: the deceased and the pregnant lady and the young child.

32. As stated above, on one hand the crime is pre-mediated in respect of the deceased husband, while on the other, no motive or pre-orchestration could be culled out for the other two deceased persons. The two murders seem to have translated due to his sudden realization and extreme fear of being caught for the murder of the Sunil Gupta and also, to save himself from being shunned by the society. Having said so, the brutality envisaged in the pre-mediated murder of Sunil Gupta alone, in the light of present facts, does not inspire confidence so as to place it in the category of "rarest of the rare". Further, the appellant is a young man of about 35 years and neither does he have any criminal antecedents nor is it stated that he is or has been an anti-social element. The future possibilities of his reform also cannot be ruled out.

33. In a civilized society — a tooth for a tooth and an eye for an eye ought not to be the criterion to clothe a case with "rarest of the rare" jacket and the Courts must not be propelled by such notions in a haste resorting to capital punishment. Our criminal jurisprudence cautions the courts of law to act with utmost responsibility by analyzing the finest strands of the matter and it is in that perspective a reasonable proportion has to be maintained between the brutality of the crime and the punishment. It falls squarely upon the Court to award the sentence having due regard to the nature of offence such that neither is the punishment disproportionately severe nor is it manifestly inadequate, as either case would not sub-serve the cause of justice to the society. In jurisprudential terms, an individual's right of not to be subjected to cruel, arbitrary or excessive punishment cannot be outweighed by the utilitarian value of that punishment.

34. We reiterate the observations of this Court in Dagdu and Ors. v. State of Maharashtra, (1977) 3 SCC 68 and Subhash Ramkumar case (supra) that all murders are inhuman, some only more so than others. The degree of brutality has to be ascertained in contrast with other cases and the criteria and the tests laid down in Bachan Singh case (supra) and further streamlined in Macchi Singh case (supra) writ large upon the Courts the caution which must be borne in mind while declaring a crime so revolting and diabolical that it warrants nothing less but capital punishment.

35. In the contextual facts, we are of the considered view that the brutality as evinced by the appellant herein would not fall within the ambit of the "rarest of the rare" cases so as to exercise the discretion of imposing capital punishment. In the light of the aforesaid and having regard to the nature of the offence and the methodology adopted by the appellant, the facts at hand fail to convince us that the case falls into the category of "rarest of the rare" to justify the imposition of death penalty. Therefore, while recording our concurrence with the findings and conclusions of the Courts below as regards the guilt of the accused under Section 302, we are of the considered opinion that the sentence of death imposed on the appellant be commuted to imprisonment for life.

36. In view of the above, we set aside the judgment and order passed by the High Court and commute the death sentence imposed on the appellant into life sentence.

37. The appeals are disposed of in the aforesaid terms.