SUPREME COURT OF INDIA

Bimla Devi

Vs.

Rajesh Singh & Anr.

Crl.A.No.1033 of 2010

(Pinaki Chandra Ghose and R.K. Agrawal, JJ.)

16.12.2015

JUDGMENT

Pinaki Chandra Ghose, J.

1.These appeals have been filed against a common judgment and order dated 20.12.2007, passed by the learned Single Judge of the High Court of Judicature at Patna in Criminal Appeal Nos.371, 386, 441 and 447 of 2002. By the impugned judgment the learned Single Judge of the High Court, while allowing the appeal of one of the accused Rajesh Singh and acquitting him, dismissed the appeals of the other four accused, namely, Laloo Tiwary, Lala Tiwary, Uma Shankar Tiwary and Pramod Tiwary and upheld their conviction and sentence as awarded by the Trial Court. Criminal Appeal Nos.543-545 of 2013 are filed by the aforesaid four accused against their conviction and sentence by the two Courts below and Criminal Appeal Nos.1034-1036 of 2010 are filed by the informant Bimla Devi W/o late Lalan Tiwary, for enhancement of the sentence of these accused. Criminal Appeal No.1033 of 2010 filed by the informant and Criminal Appeal No.1037 of 2010 filed by the State, are against the acquittal of the accused Rajesh Singh.

2. The brief facts necessary to dispose of these appeals are that on 20.12.1998 at 4:30 PM, the informant Bimla Devi, resident of Village Mangara, P.S. Karakat, District Rohtas, recorded her statement (fardbeyan) at P.S. Karakat, alleging that at 2:00 PM, her father-in-law Kashi Nath Tiwary and her husband Lallan Tiwary were shot dead at their house by the assailants, namely, Uma Shankar Tiwary, Laloo Tiwary, Pramod Tiwary, Lala Tiwary amd Dipendra Tiwary @ Turhi and 2 other unnamed assailants. The dead body of Kashi Nath Tiwary was dumped into the well located in front of their house. The informant further alleged that the accused also snatched away the jewellery of the informant, her daughter and her sister-in-law. Out of the two unnamed assailants, one was named as Rajesh Sharma and the name of the other assailant was never known.

3. After investigation was concluded, the Investigation Officer submitted charge-sheet against accused Uma Shankar Tiwary, Laloo Tiwary, Kamal Narain Singh, Dipendra Tiwary

@ Torhi, Pramod Tiwary and Lala Tiwary, for offences punishable under Sections 147, 148, 149, 341, 342, 323, 452, 379, 302 and 201 of the Indian Penal Code, 1860 ("IPC" for short) and Section 27 of the Arms Act. Thereafter a supplementary charge sheet was submitted against accused Rajesh Kumar Singh under the aforesaid sections and also under Section 354 of IPC. The case was committed to the Court of Sessions. During the pendency of the trial, accused. Dipender Tiwary was held juvenile, his case was separated and sent to the Juvenile Justice Court. The charges were read over and explained to the accused persons, they pleaded not guilty and claimed for trial.

4. The Trial Court by its judgment and order dated 13.05.2002, convicted the accused and sentenced them to rigorous imprisonment for life. The Trial Court convicted Uma Shankar Tiwary, Laloo Tiwary, Pramod Tiwary, Lala Tiwary, Rajesh Singh and Kamal Narain Singh for offences under Sections 302/34, 201, 148 and 452 of IPC and sentenced them to rigorous imprisonment for life for the offence under Section 302/34 IPC, further rigorous imprisonment for four year for offence under Section 201, imprisonment of four years for offence under Section 452 and rigorous imprisonment for six months for offence under Section 323 IPC. Uma Shankar Tiwary, Laloo Tiwary and Pramod Tiwary were further sentenced to pay a fine of Rs. 10000/- each.

5. Four different appeals were filed before the High Court by five accused persons against the aforesaid conviction order. The sixth accused Kamal Narain Singh is absconding against which permanent Warrant of Arrest in red ink has been issued. The High Court allowed the appeal of accused Rajesh Singh and acquitted him of all the charges. However, the conviction of other four accused, namely, Uma Shankar Tiwary, Laloo Tiwary, Pramod Tiwary and Lala Tiwary was upheld by the High Court and their appeals were dismissed.

6. The Trial Court convicted the accused/respondents on the basis of the evidence of nine prosecution witnesses and also the documentary evidence which supported the prosecution story. However, in appeal the High Court pointed out that the informant neither named accused Rajesh Singh in the fardbeyan nor in the police statement. It was only after about two years that the accused Rajesh Singh was named before the Court. The High Court further stated that the other independent witnesses did not identify Rajesh Singh in the Court, even when they identified the other four accused. The High Court, thus, deemed it proper to give benefit of doubt to the accused Rajesh Singh. Hence, his conviction was set aside and he was acquitted of all the charges. As against the other accused, the High Court was convinced that the prosecution had proved its case beyond reasonable doubt.

7. The Trial Court finding enough evidence against accused Rajesh Singh, convicted him for the double murder. However, the High Court pointed out that accused Rajesh Singh was nowhere named in the FIR or the Police statement and his alleged role was testified only at the trial stage, after about more than 2 years of the incident. The High Court thus extended the benefit of doubt to this accused. Upon perusal of the records, especially the testimony of the eye witnesses, we find no infirmity in the reasoning of the High Court. Out of the six material eye witnesses, three were related to the accused. PW3 was the daughter of the

deceased Kashi Nath Tiwary, PW4 was the daughter of deceased Rajendra Prasad Tiwary @ Lallan Tiwary, and PW6 - informant was the wife of deceased Lallan Tiwary. The other three eye witnesses, i.e. PW1, PW2 and PW7, were from the village where the occurrence took place and they happened to be chance witnesses. However, in each of the witnesses' statements, the name of the respondent Rajesh Singh does not appear until testimony before the Court. The four related witnesses in their cross-examination stated that they had named Rajesh Singh as one of the accused in the FIR and the police statement. However, no explanation can be gathered as to how one name could be missed when all the other five accused were named categorically. Moreover, if the testimony of the other three unrelated witnesses is perused, none of the witnesses named the respondent Rajesh Singh directly and they did not even identify accused Rajesh Singh in the Court at the time of trial while they specifically recognized the other accused present in the Court. Thus, there is no infirmity in the High Court's order that the respondent/ accused Rajesh Singh is entitled to benefit of doubt as the prosecution has not been able to bring home the charge against him.

8. Accused persons (appellants in Criminal Appeal Nos.543-545 of 2013) argued on the same grounds which were categorically dealt with in details by the High Court which are mainly two: Firstly, that the FIR was not sent to the Court within time and so the correct version had not come out; Secondly, that there exists cutting/overwriting in the inquest report as, initially, the name of the informant was noted as Bunni Kumari daughter of Bishwa Nath Kumar, but subsequently it was erased and in its place, name of Bimla Devi wife of Lallan Tiwary was written.

9. The above two arguments were also pleaded before the Trial Court as well as the High Court, and both the Courts below denied the averments and reasoned that the two errors did not prejudice the investigation. Moreover, the prosecution case was supported by six strong and cogent eye witnesses, which was further corroborated by the medical evidence and the recovery memos. The High Court perused the testimony of PW9, who is the Investigating Officer, wherein it was deposed that he recorded the statement (fardbeyan) at 4:30 PM, thereafter he went to the place of incident and the body of deceased Kashi Nath Tiwary was recovered from the well after one hour of his arrival, and the inquest and other proceedings were conducted. Hence, he stated that FIR was lodged at about 9:00 PM. The witness further stated that the FIR was sent to the Magistrate through Special Messenger on 22.12.1998. Although it is true that delay in sending the FIR to the magistrate can vitiate the investigation, but it is settled position that a cogent reasoning can override this procedural lacunae. It is an accepted fact that there was a delay of one day in sending the FIR. However, no motive in manipulating with the FIR was proved. The prosecution case is strongly backed by testimonies of the six eye witnesses who have testified the incident in almost similar terms. A procedural lapse in not sending the FIR promptly, did not prejudice the present case.

10. The next factual lacunae raised was overwriting in the inquest report. The inquest report by the police officer is prepared under Section 174 of the Code of Criminal Procedure, 1973. The scope of the section is investigation by the police in cases of unnatural or suspicious death. However, the scope is very limited and aimed at ascertaining the first apparent signs of

the death. Apart from this the police officer has to investigate the place wherefrom the dead body is recovered, describe wounds, fractures, bruises and other marks of injury as may be found on the body, stating in what manner or by what weapon or instrument, such injuries appear to have been inflicted. From the above, it thus becomes clear, that the section aims at preserving the first look at the recovered body and it need not contain every detail. Mere overwriting in the name of the informant would not affect the proceedings. The fact of homicidal death was not in dispute and the manner in which the death was occurred is also not disputed. Then merely name being overwritten will not help the defence, when the contents of the inquest report was supported by the eye witnesses and also the medical evidences.

11. The accused have not raised any other argument in their favour. The testimonies of each of the six witnesses have been proved and corroborated by the other. The more or less similar testimonies stood the test of cross-examination by the defence and they were unshaken throughout the present case. No doubt the three witnesses were related to the deceased but their presence was very natural and each explained good details of the occurrence. The other three villagers who saw the incident seemed natural and also explained their presence at or about the place of the incident. The conduct of each of the witnesses preceding the incident, was also natural and their occurred no time gap in reporting the crime to the police so as to exclude any possibility of tutoring or manipulation.

12. The informant has vehemently argued that in the facts and circumstances of the case, imposition of death penalty was imperative. The informant supported her argument by stating that the accused had preplanned their attack and executed the same in a most gruesome manner. The fact that 41 pelletes were recovered from each of the body of the deceased, demonstrates the gruesomeness of the crime. The accused continued their assault on the corpse of the deceased Kashi Nath Tiwary by throwing it into the well and then throwing bricks, stones and flower pots in the well.

13. The Trial Court was also faced with similar argument at the time of awarding the sentence. However, the learned Additional Sessions Judge reasoned that although it is a case is of double murder, but all the convicts have not participated in the murder of both the deceased. The incident is not a stray incident but a common occurrence we see in the society in the prevalent era, where the motive was proved to be family feud. The learned Additional Sessions Judge deemed it fit and proper to uphold the right of life and liberty of the accused over awarding death sentence to the convict, since it not only affects the accused's rights but also would have made their dependents orphan. Hence a lenient view was taken. The High Court was posed with any such argument of enhancement of sentence of the accused, thus the High Court did not give any such reason. Although the sentence awarded to the four accused was upheld in toto. The above fact that the enhancement of sentence was not challenged before the High Court is a cogent reason not to entertain such a plea at this stage, however, we are of a considered view to scale this argument in light of the laws on this subject.

14. This Court has time and again reiterated that in criminal jurisprudence in our country, life imprisonment is the rule and death penalty is an exception. It is equally settled law that death penalty can only be awarded in rarest of the rare cases. No doubt each case of murder is gruesome and barbaric, however, the right of life of even an accused has to be respected. In the present case, it an admitted fact that their existed previous enmity between the families of the deceased and the accused. The accused were also proved to be from the same village who are neither having any criminal antecedents nor they are history-sheeters. The case is an apparent example of family feud gone horribly wrong. The accused are not posing any danger to society at large. This Court is, thus, inclined that the present case is not within the category of rarest of the rare cases and hence we need not burden ourselves with scaling each and every aggravating and mitigating circumstances. The sentence awarded by the Courts below is adequate for the accused to introspect and also sufficient for the society to heal its wounds.

15. Thus, in the light of the above discussion, we find no grounds to interfere with the judgment passed by the High Court. These eight appeals are, accordingly, dismissed.