

CASE NO.:
Appeal (crl.) 1621 of 2007

PETITIONER:
Prajeet Kumar Singh

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 02/04/2008

BENCH:
P.P. NAOLEKAR & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
REPORTABLE

CRIMINAL APPEAL NO. 1621 OF 2007

P.P. NAOLEKAR, J.:

1. This appeal arises out of the order of confirmation in Death Reference No. 1 of 2004 & order in Criminal Appeal No. 4 of 2004 filed by the accused-appellant, whereby the High Court was of the view that in the facts and circumstances the case falls under the purview of 'rarest of the rare case' and, thus, the death sentence imposed on the accused-appellant is completely justified.

2. The proceedings in the matter arose in the following facts: In the fardbeyan of Pawan Kumar Thakur (PW-3), it is said that the accused Prajeet Kumar Singh, a friend of Prakash Kumar (PW-1) (son of the informant), was living in the house of PW-3 at Supriya Road in Mirja Toli of Bettiah Town for the last four years and was also taking his meals for which he was paying Rs. 500/- per month. However, for the last several months, he had not paid the amount and owed Rs.4,000/- altogether as rent for the house and for food to the informant for which the informant was making demands regularly. Four-five days before the incident, when the informant made a demand, the accused said that he was going home to bring money and thereafter he went home. The day before the incident, the accused came back at 3.00 p.m. After having dinner, when the informant asked the accused for the dues, the accused told him that he should accompany him to his home where he would be paid his money. Thereafter, the informant and his wife went to sleep in their room which was on the third floor of the house. The accused also went to sleep in the adjoining room on the third floor. All the children of the informant were sleeping on the second floor. At night, the informant and his wife heard the noise of crying from the second floor and they suspected that the children had been quarrelling. Both of them came down and saw that the accused having picked up dab (dagger like weapon) from the house, had murdered their younger son Deepak Kumar. When the accused noticed the informant and his wife, he caused injury to them and their elder son Prakash Kumar, daughter Kiran Kumari and niece Pooja Kumari, using the same dab. During the course of investigation, the involvement of three more persons came to light to the investigating agency and chargesheet was submitted against the four persons, namely, accused No.1 (the appellant herein) Prajeet Kumar Singh, accused No.2 Ram Badai Singh, father of accused No.1 as well as Ajit Singh, brother of accused No.1 and Chandra Bhushan Pandey, relative of accused No.1. During the course of trial, two accused Ajit Singh and Chandra Bhushan Pandey remained absent and their cases were separated. The trial proceeded against two persons only, namely, the accused-appellant and his father.

3. The accused-appellant has been charged under Section 302 of the Indian Penal Code (for short "the IPC") for committing the murder of informant's son Deepak Kumar, aged about 16 years, daughter Kiran Kumari, aged about 15 years and niece Pooja Kumari, aged about 8 years, and further under Section 307, IPC for attempting to commit the murder of the informant Pawan Kumar Thakur (PW-3) and his wife Geeta Devi (PW-2). The Session Court found him guilty of the offence under Section 302, IPC and sentenced him to death penalty. He was also found guilty of the offence under Section 307, IPC. However, as the extreme penalty of death was imposed on the accused-appellant, the Session Court did not impose a separate sentence under Section 307, IPC. Father of the accused-appellant, Ram Badai Singh, has been charged for the offences under both the Sections read with Section 34, IPC. However, he was acquitted of the charges framed against him as the evidence of the witnesses that when the accused fled away from the place of incident after jumping from the top floor, they saw in the light the other accused also present beneath the house along with other persons, was not believed by the Session Court. The High Court has accepted the death reference and dismissed the appeal filed by the accused-appellant.

4. It is contended by Ms. Ranjana Narayan, the learned Amicus Curiae that on a minute scrutiny of the evidence of the eye-witnesses examined by the prosecution, it is clear that the prosecution has failed to prove its case beyond reasonable doubt and thus the appellant should have been acquitted of the charges framed against him. Learned Amicus Curiae submitted that in any case, in the facts and circumstances of the case, the offence committed by the accused-appellant does not fall within the purview of 'rarest of the rare case' and, therefore, the courts below should not have imposed death sentence on the accused-appellant.

5. To prove the case against the accused-appellant, the prosecution examined Prakash Kumar (PW-1), son of the informant Pawan Kumar Thakur (PW-3), Geeta Devi (PW-2), wife of PW-3 and the informant Pawan Kumar Thakur himself (PW-3), who are the injured witnesses residing in the house where the incident took place in the night between 18th & 19th April, 1998 at about 2.30 a.m. The prosecution also examined three doctors, namely, Dr. Mahashray Singh (PW-5) who conducted the post-mortem of Deepak Kumar on 19th April, 1998, Dr. Madhusudan Shukla (PW-6) who did the autopsy on the dead bodies of Kiran Kumari and Pooja Kumari on 19th April, 1998 and Dr. Ganga Narayan Singh (PW-7) who examined PW-1, PW-2 and PW-3 in the afternoon of 19th April, 1998.

6. It has come in the evidence of Prakash Kumar (PW-1) that he was 19 years of age at the time of the incident and is the son of Pawan Kumar Thakur (PW-3). PW-1 studied in the same school with the accused-appellant and they were classmates. The accused used to pay frequent visits at the house of PW-1 and during this period came in close contact with the family members of PW-1. Three to four years prior to the occurrence, the accused requested the family members of PW-1 to allow him to stay with them and in return he would pay Rs.500/- for lodging & boarding and since then he had started living with them. Five to six months before the occurrence, the accused stopped making payment but assured that he would get the money from his home and pay it. In the afternoon of 18th April, 1998, Ram Badai Singh, the other accused charged for the offence and father of the accused-appellant, Ajit Singh, brother of the accused-appellant and Chandra Prakash Pandey, a relative of the accused-appellant came to the residence of PW-1, at about half past four and enquired about his father on which he said that his father had gone to the market. At that very time, two other persons Aseshar Pandey and Sukhaj Pandey came to the residence and they conveyed the message that his father was supposed to deposit the money in the bank and not spend it. During the conversation, the accused and his relatives were present and thereafter the accused left the residence with the relatives. After dinner, PW-1 went to sleep

in his room on the second floor and his two sisters Kiran Kumari and Pooja Kumari and his younger brother Deepak Kumar were sleeping in another room adjacent to the said room. On the night intervening 18th and 19th April, 1998, he woke up to the sound of screaming, crying and knocking of the door. He saw the accused assaulting his younger brother Deepak Kumar and as a result thereof his brother got injured and fell down on the floor. When he tried to intervene, the accused gave him a blow on his head with a dabiya which resulted in a cut that extended below the left eye. Thereafter, he gave him a push. He saw his two younger sisters Pooja Kumari and Kiran Kumari crying in an injured condition. His father and mother were asleep on the 3rd floor and on hearing the commotion, they came down to the 2nd floor. The accused assaulted his father and mother with dabiya and thereafter fled towards the 3rd floor of the house. It is then said that he looked through the window and identified the father of the accused Ram Badai Singh, his brother Ajit Singh and relative Chandra Bhushan Pandey and two unknown persons who had come to his residence earlier during the day time and saw them fleeing towards the north direction towards the railway line. In the cross-examination, PW-1 admitted that during the period of last four years when the accused used to stay in his house the witness did not come across any enmity of the accused, nor did he get to know anything about his bad habits.

7. Another witness examined by the prosecution is PW-2 Geeta Devi, the wife of the informant. According to her, the occurrence took place at 2.30 in the midnight of 18th and 19th April, 1998. On 18th April, 1998, the accused came to the house and went to the 3rd floor of the house where his room was situated. The accused had been staying in their house for the past four years, he being the friend of her son PW-1. He used to pay Rs.500/- per month as monthly rent. Though he had not paid that amount for quite some time, a sum of Rs.4000/- was due from him. The accused had assured her husband that he would get the said amount from home. At 2.30 a.m., they woke up due to lot of noise and screaming by their children. They thought that their children were quarrelling among themselves so they descended from the 3rd floor to the 2nd floor. They saw that accused Prajeet Kumar with his dabiya assaulted their younger son Deepak who had succumbed to his injuries. The accused had also assaulted Pooja Kumari, Kiran Kumari and Prakash Kumar as a result of which they were bleeding profusely and were running inside the room here and there to save themselves. Her husband tried to prevent the accused and she approached her children to save them. But the accused intervened and attacked her on her head and on the right side of her shoulder with the dabiya as a result of which she sustained injuries and tumbled on the floor. The accused also assaulted her husband PW-3 with the dabiya as a result of which her husband sustained a deep cut injury on the right side of his face from the eye to the lower portion of the cheek and a deep cut injury was caused on the left side of his neck. The accused assaulted her husband indiscriminately with the intention to kill him who tried to avoid the assault with the help of a cricket stump. Thereafter, the accused fled to the 3rd floor. This witness stated that she fell unconscious after that. In her cross-examination, she said that the accused used to visit her room to watch T.V. and had been staying at their house for four years prior to the occurrence. She had never seen the accused indulging in any ill-minded activities.

8. According to the informant witness PW-3 Pawan Kumar Thakur, the occurrence took place at 2.30 in the midnight of 18th and 19th April, 1998, at which time he was sleeping in his room with his wife and woke up to the sound of screaming, which he thought was a quarrel between the children. He came to the 2nd floor and saw that the accused was holding a dabiya in his hand and had assaulted his younger son and had killed him. He also saw that the accused had assaulted his elder son Prakash Kumar, daughter Kiran Kumari and niece Pooja Kumari with an intention to kill them. He tried to prevent

the accused and his wife tried to rescue the children. In the process, the accused inflicted dab blows on the right rib of his wife; with the same dabiya, another blow was inflicted on the elbow of her left hand and she started bleeding profusely and she ultimately tumbled on the floor. Thereafter, Prajeet Kumar inflicted a blow on his face below the right eye with the same dabiya. He said that he defended himself with the help of a cricket stump. Thereafter, Prajeet Kumar fled to the upper floor of the house. The cross-examination of this witness has not brought out any material so as to doubt the veracity of the statements made by the eye-witnesses to the occurrence.

9. Deepak Kumar, Kiran Kumari and Pooja Kumari succumbed to the injuries sustained by them. The post mortem was conducted by PW-5 Dr. Mahashray Singh and PW-6 Dr. Madhusudan Shukla. All the three injured witnesses were examined by PW-7 Dr. Ganga Narayan Singh. On 19th April, 1998, PW-5 Dr. Mahashray Singh conducted post-mortem on the dead body of Deepak Kumar, aged about 16 years, and the following ante mortem injuries were found on the body of the deceased:

- (1) Incised wound over the right cheek 2" x 1" x muscle deep;
- (2) Incised wound over the occipital region of the head size 4" x 1" (torn) x bone deep;
- (3) Incised wound over the back of the neck transversely 4" x 1" x bone deep;
- (4) Incised wound over the right scapular region 4" x 2" x bone deep;
- (5) Incised wound from shoulder to the mid of upra 8" x 3" x bone deep;
- (6) one incised wound transversely over the shoulder joint 3" x 1" humeral head transversally;
- (7) Incised wound over the right elbow 2" x 1" bone deep;
- (8) Incised wound over the right forearm 3" x 1" bone deep;
- (9) Incised wound over the right hand 3" x = " bone deep;
- (10) Incised wound over the right forearm from the base of the middle finger to the lower part of the forearm 6" x 2" bone deep;
- (11) Incised wound over the left hand 2" x 1" x bone deep;
- (12) Incised wound over the left palm. All the thinner muscle up to carpel bone were cut;
- (13) Incised wound over the left temporal region of the (faint) 2" x 2" x up to bone.

All the injuries were ante mortem in nature and caused by sharp cutting substances. The doctor was of the opinion that the death was caused due to haemorrhage and shock due to above mentioned injuries. These injuries are sufficient to cause death in normal circumstances.

10. PW-6 Dr. Madhusudan Shukla conducted post mortem on the dead body of Kiran Kumari. The external appearances and injuries found on the dead body were to the effect that the eyes were closed, mouth open, fists clinched, bleeding from nostril. R. M. present, dried blood smear present on chest, neck and on feet. Stitched wound on front and left side of the neck. After opening the stitches, there was an incised wound 4" x = " x 1" deep. Trachea was found cut. The muscles and jubular vessels on the left side of the neck were found cut. The doctor stated that the above injuries were caused by sharp cutting substance and ante mortem in nature. In the opinion of the doctor, the cause of death was due to shock and haemorrhage due to the above noted injury.

11. On the same day at 5.30 p.m., PW-6 conducted post mortem on the dead body of Pooja Kumari, niece of PW-3. The following injuries were found on the dead body:

Injury No 1: Stitched wound on the right side of the face. After opening the stitches there was an incised wound of 5" x >" x bone and brain cavity deep. The wound extends from right ear to the skull. The parietal bone of the right side was found cut and brain matters were found peeping out from the cut portion

of the bone.

Injury No. 2: Stitched wound on upper portion of right arm. After opening the stitches the wound was an incised wound 3" x 1" x none deep. The head of humerus was found cut through and through.

Injury No. 3: Stitched wound on upper portion of right wrist on its dorsem. After opening the stitches, the wound was an incised wound 2 1/2" x >" x none deep. The bone beneath the wound were found cut.

Injury No. 4: Stitched wound on the dorsem of the left hand. After opening the stitches, the wound was an incised wound 1" x >" x none deep. The vessels and bones beneath the wounds were found cut.

The doctor stated that the above injuries were ante mortem in nature and caused by sharp cutting substance. In his opinion, the cause of death was due to shock and haemorrhage as a result of above noted injuries. The injuries found on the dead body were sufficient to cause death in ordinary course.

12. PW-7 Dr. Ganga Narayan Singh in his deposition stated that he examined PW-3 Pawan Kumar Thakur on 19th April, 1998 in the M.J.K. Hospital in emergency room and found following injuries on the person:

- 1) Incised wound on right cheek extending from right angle of mouth to right temporal region 10" x 1" x muscle deep.
 - 2) Incised wound on left side of neck 1" x =" x muscle deep.
- Age of injuries was stated to be within 12 hours, caused by sharp cutting weapon and grievous in nature. Disfiguration of face was stated to be caused by sharp cutting weapon and dangerous to life.

On the same day and place at about 2.10 a.m., Geeta Devi (PW-2) was also examined by PW-7 and the following injuries were found:

- 1) Incised wound on scalp right side 1" x =" x scalp deep.
- 2) Incised wound right shoulder region 1" x 1" x muscle deep.
- 3) Incised wound left elbow and forearm 1" x 1" x muscle deep.

It was stated by the doctor that the age of injuries was within 12 hours; the injuries were caused by sharp cutting weapon and were simple in nature; and if timely and proper treatment had not been provided the patient might have died.

On the same day and place at about 2.50 a.m., PW-7 examined Prakash Kumar (PW-1). The following injuries were found on his person:

- 1) Incised wound on the left side of the skull 1" x =" x scalp deep.
- 2) C.T. scan of cranium. Report given by the radiologist P.M. C.H. dated 24th April, 1998 shows that one bony window fractured of left parietal bone no. 230/1998.

Injury No. 2 was noted as grievous.

13. PW-17 Dr. Bishnu Kant Pandey stated that on 19th April, 1998 he was working on the post of R.S.O. in the unit of Dr. Ramesh Prasad Singh. He stated that on the basis of the discharge ticket it appears that on 19th April, 1998 Geeta Devi, Pawan Thakur and Prakash Thakur were admitted in the said unit for treatment.

14. The evidence of the three eye-witnesses is cogent and points to the guilt of the accused-appellant. They were injured in the same incident wherein the three persons were killed. They were residing in the house where the incident happened and their presence at the time of the commission of crime cannot be doubted. The evidence of the informant-PW3 is supported by the First Information Report which was recorded at 4.00 a.m. by SI of town P.S. Bettiah at M.J.K. Hospital, where they were taken by the patrolling party which had arrived at the place of the incident after receiving the information. The statements of the witnesses implicating the accused-appellant in the commission of crime and the injuries caused to them and the deceased persons are fully supported by the medical evidence. PW-1, PW-2 and PW-3 having been the residents of the same house,

their presence at the place of occurrence in the dead hours of night and they having witnessed the incident, cannot be ruled out. These witnesses are close and direct relations of the deceased children and, therefore, implicating a false person, leaving out the actual culprit, is highly improbable and unacceptable. These witnesses corroborate each other in the material particulars and the manner in which the incident happened. PW-3 and PW-2 at the relevant time were in their room on the 3rd floor and came down on hearing the noise to the 2nd floor where they watched the drastic act being committed. When they tried to intervene, they were also attacked. PW-1 was in the adjoining room where the incident happened and he came to the place of incident immediately after hearing the noise. Nothing has been brought about in the cross-examination to disbelieve the ocular version of the witnesses. Two courts below on detailed scrutiny of the evidence of these witnesses, did not find any infirmity in the evidence pointing finger towards the accused-appellant. We have also considered the evidence of PW-1, PW-2 and PW-3. We have no doubt that the statements of the witnesses fully proves the guilt of the accused-appellant in the commission of murder of three persons and causing grievous injuries to the witnesses.

15. The next question is as to what punishment should be imposed on the accused-appellant.

16. It is submitted by the learned counsel for the State that considering the nature of the offence committed by the accused-appellant, the punishment of death sentence will be appropriate punishment, whereas it is urged by the learned Amicus Curiae that in the facts and circumstances of the case the case does not fall within the four corners of the 'rarest of the rare case' and, thus, the imposition of death sentence would not be appropriate sentence.

17. A Constitution Bench of this Court in the case of Bachan Singh v. State of Punjab, (1980) 2 SCC 684, has laid down certain guidelines for imposing death sentence which have been culled out by a 3-Judge Bench of this Court in Machhi Singh and Others v. State of Punjab, (1983) 3 SCC 470, and accordingly the following propositions emerge from Bachan Singh:

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the "offender" also require to be taken into consideration along with the circumstances of the "crime".

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

The Court thereafter observed that in order to apply these guidelines, the following questions may be answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

18. In Machhi Singh, a 3-Judge Bench following the decision in

Bachan Singh observed that in rarest of the rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, the Court said that the community may entertain such a sentiment in the following circumstances:

- I. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
- II. When the murder is committed for a motive which evinces total depravity and meanness.
- III. (a) When murder of a member of a Scheduled Caste or minority community, etc., is committed not for personal reasons but in circumstances, etc., which arouse social wrath. (b) In cases of "bride burning" and what are known as "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.
- IV. When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.
- V. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder, (b) a helpless woman or a person rendered helpless by old age or infirmity, (c) when the victim is a person vis-à-vis whom the murderer is in a position of domination or trust, (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

19. The guidelines laid down in Bachan Singh and Machhi Singh have been followed by this Court time and again in various cases and the courts are considering the imposition of death sentence in the light of the guidelines laid down aforesaid.

20. In the present case, the accused-appellant was living as a family member of PW-3 and PW-2 and was provided with shelter and meals, although for a sum of Rs.500/- per month, being a friend of PW-1. He lived with the family not for a month or two, but for a continuous period of four years. There does not appear to be any apparent provocation or reason for committing the ghastly brutal murder of three innocent defenceless children who were aged 8, 15 and 16 years. We can safely assume that the time at which the incident happened, the children must be asleep and were not in a position to defend themselves. It has come in the evidence of PW-1, PW-2 and PW-3 that the accused-appellant had assaulted them when they were running here and there to save themselves. The medical evidence led by the prosecution indicates the brutality in the commission of crime. Several incised wounds were caused to the deceased persons. The victims apparently did not have any weapon with them. When PW-3 (informant) and PW-2 (his wife) on hearing the noise came down to find out the cause for it and entered the room, they were also brutally attacked without the slightest of consideration by the accused-appellant that he had lived with them for four years. Not only that, when his friend on whose account he was accommodated in the house reached the place of incident on hearing the noise of his brother and sisters, he was also attacked and seriously injured. It is clear from the material placed on record by the prosecution that all these persons were unarmed and the accused-appellant was the only person in the room having the deadly weapon in his hand. He could have escaped from the place giving the threat to the persons without causing any harm to the witnesses, but he acted in a different manner. The enormity of the crime is writ large.

The accused-appellant caused multiple murders and attacked three witnesses. Thus, all the members of the family who were present on that day in the house became the victims of the accused. The brutality of the act is amplified by the manner in which the attacks have been made on all the inmates of the house in which the helpless victims have been murdered, which is indicative of the fact that the act was diabolic of the superlative degree in conception and cruel in execution and does not fall within any comprehension of the basic humanness which indicates the mindset which cannot be said to be amenable for any reformation.

21. In view of the aforesaid facts, we are of the view that there would be failure of justice in case death sentence is not awarded in the present case. The case falls in the category of the rarest of the rare cases. The Session Court and the High Court were justified in imposing death sentence on the accused-appellant.

22. For the aforesaid reasons, the appeal is dismissed.