

CASE NO.:

Appeal (crl.) 243 of 2003

Appeal (crl.) 242 of 2003

PETITIONER:

Prem Sagar

RESPONDENT:

Dharambir and Ors.

DATE OF JUDGMENT: 29/10/2003

BENCH:

DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:

J U D G M E N T

ARIJIT PASAYAT, J.

These two appeals are interlinked being directed against the same judgment of the Punjab and Haryana High Court. While Criminal Appeal no.242/2003 is by the convicted persons, Criminal Appeal no.243/2003 is by the informant. The three appellants in Criminal Appeal No.242/2003 have been found guilty of offence punishable under Section 302 read with Section 34 and 120-B of the Indian Penal Code, 1860 (for short the 'IPC'). While accused-appellants Dharambir and Joginder were awarded death sentence by learned Sessions Judge, Hisar, appellant-Karambir was sentenced to undergo imprisonment for life. Each of the accused persons was asked to pay a fine of Rs.25,000/-each. In appeal before the High Court, the death sentence was commuted to life sentence in case of accused-Dharambir and Joginder. The convictions, however, were maintained. It is to be noted that accused-Joginder, as per the information given to this Court by learned counsel for the appellants, has died during pendency of the appeal and, therefore, the appeal so far he is concerned, has abated.

The background facts are as under:

Appellants (Dharambir, Joginder Singh and Karambir) along with their two real brothers Jagbir Singh and Jasbir Singh and their mother Vanaspati, in all six accused, were charged sheeted by the learned trial Court on the allegations that about 7-8 days prior to the date of occurrence i.e. 29.6.2000, in the area of village Mayyar, resolved to do an illegal act to commit the murder of Dalbir, Vijender and Smt. Kitabo and they murdered them in pursuance of the said agreement and thereby committed offence under Section 120-B IPC. The second charge against the appellants was that on 29.6.2000 at about 10.30 p.m. in the area of the said village and in pursuance of their conspiracy, they murdered Dalbir, Vijender and Smt. Kitabo and thereby committed an offence punishable under Section 302 read with Section 120-B IPC. Thirdly, on the same day, time and place, appellant-Dharambir in furtherance of common intention of co-accused Joginder and Karambir committed murder by intentionally causing the death of Dalbir and thereby he committed an offence punishable under Section 302 IPC while his co-accused Joginder and Karambir committed an offence punishable under Section 302/34 IPC. Fourthly, on the same day and in the said area of village Mayyar and in furtherance of common intention Dharambir and Joginder committed murder by intentionally causing the death of Kitabo and thereby they committed an offence punishable under Section 302 read with Section 34 IPC. Fifthly, on the same day, time and place

and in furtherance of their common intention, all the three appellants did commit murder by intentionally causing the death of Vijender and thereby committed an offence punishable under Section 302/34 IPC.

Interestingly, in this case the first information report was lodged by accused-appellant Dharambir before ASI Vinod Kumar (PW12) but during investigation he found that Dharambir along with two others were the assailants and after investigation charge sheet was placed.

During trial and before the High Court, prosecution relied on the version of Prem Sagar (PW15) who claimed to be an eyewitness. The trial court and the High Court found his evidence to be credible, cogent and acting on it directed conviction and imposed sentence as aforesaid. In view of the death sentence imposed on two persons, reference was made to the High Court for confirmation under Section 366 of the Code of Criminal Procedure, 1973 (for short the 'Cr.P.C.'). As noted above, the High Court converted the death sentence into life sentence. While accused persons have questioned the correctness of the judgment so far as their conviction and sentence are concerned, the informant has contended that the High Court was not justified in altering the death sentence to life sentence. It is accepted by the learned counsel for the State that no appeal has been preferred by the State for alteration of death sentence to life sentence.

We have heard learned counsel for the parties at length. Learned counsel for the appellants submitted that the evidence of PW15 does not inspire confidence, and is highly doubtful. His conduct after the occurrence, when he is supposed to have travelled his village side at great distance on foot, when transport facilities were available, to have returned to the place of occurrence on foot or by an inconvenience mode of transport is highly unusual and lacks credibility. It is further submitted that so far as accused Karambir is concerned, the prosecution has not established his role. He has been convicted by application of Section 34 IPC. In fact, PW-15 has clearly stated that he was not present when Kitabo and Dalbir were assaulted. He is supposed to have followed deceased Vijender and to have prevented him while he was trying to run away. PW-15 in his cross-examination has clearly accepted that it was accused-Dharambir who caused his fall. It is also submitted that in the circumstances noticed by the High Court there is no scope for interference with the life sentence awarded. Learned counsel for the State submitted that Section 34 is clearly applicable for the accused-Karambir. The slip of tongue committed by PW15 to say that accused-Dharambir had caused fall of deceased-Vinod cannot be magnified to such an extent as to rule out involvement of accused-Karambir. Learned counsel for the informant-appellant, Prem Sagar submitted that in a case of such brutal murders where three person lost their lives death sentence had rightly been awarded by the trial court and the High Court should not have interfered.

We have perused the judgment and the evidence on record. The evidence of PW15 has been rightly acted upon by the trial court and the High Court. This witness is relative of both the deceased and the accused. Therefore, there is no reason as to why he would falsely implicate the accused persons. Added to that in spite of the elaborate cross-examination nothing fragile in his testimony has surfaced. His evidence is cogent, truthful and trustworthy. Therefore, the conviction so far as accused-Dharambir is concerned, cannot be faulted. Similarly, in the case of accused-Joginder in respect of whom the appeal has abated because of his death. So far as accused-Karambir is concerned, in view of the scenario as highlighted by learned counsel for the appellants, the prosecution has not linked him with the occurrence in a manner as to attract applicability of Section 34 IPC. When the eye-witness (PW-15) himself has stated that it was accused-Dharambir who caused fall of deceased-Vijender it was not for the High Court to say it was a slip of tongue. Had it really been so, different course was to be adopted

before the trial court, which the prosecution did not do. That being so, the conviction of accused-appellant Karambir cannot be maintained and is set aside. He be set at liberty forthwith if not required in connection with any other case.

Coming to the appeal filed by the informant we find that the High Court has taken note of various decisions of this Court and the principles laid down as to when death sentence would be appropriate. Brutality is inbuilt in every murder but in case of every murder death sentence is not imposed. Life imprisonment is the rule and death sentence is the exception. The latter sentence is imposed in rarest of rare cases. Taking note of the mitigating circumstances indicated by the High Court, we do not find any scope for interference with the life sentence awarded and to alter same to death sentence.

In the result, Criminal Appeal no.242/2003 is allowed to the extent of acquittal so far as accused-Karambir is concerned, but conviction of accused-Dharambir is affirmed. The Criminal Appeal no.243/2003 filed by the informant-Prem Sagar is dismissed.