

PETITIONER:
VIKRAM SINGH

Vs.

RESPONDENT:
RAJ SINGH & ORS.

DATE OF JUDGMENT: 21/11/1997

BENCH:
G.T. NANAVATI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

THE 21ST DAY OF NOVEMBER, 1997

Present:

Hon'ble Mr. Justice G.T.Nanavati

Hon'ble Mr. Justice S.P.Kurdukar

O.P.Rana, Sr.Adv., Girish Chandra, Adv. wit him for the appellant.

Vidya Dhar Gaur, Adv. (A.C.) B.S.Mor, Kusum Singh, M.S.Dahiya, Advs. for Respondent No.1

J.P.Goyal, Sr.Adv., A.K.Gupta, Rajesh, Advs. with him for the Respondent No.3

A.S.Pundir and T.N.Sing, Advs. for the State.

J U D G M E N T

The following Judgment of the Court was delivered:
S.P. KURDUKAR, J.

Seven persons were done to death during the night intervening between 19th and 20th February, 1981 in the house of Bramha Pal Singh (P.W.4) and also caused assault on Km. Mukesh (P.W.3). These deceased persons belonged to the family of Bramha Pal Singh (P.W.4). The appellant/complainant - Vikram Singh (P.W.1), who is the brother of Bramha Pal Singh (P.W.4) lodged the FIR at Nowana Police Station on 20.2.1981 at about 8.30 a.m. against Samai Pal Singh (A-1), Raj Singh (A-2). Rampal Singh (A-3) and two uncentified persons in respect of this crime. These four accuses persons were tried for offences punishable under Section 302/34 and 307/34 IPC. The trial court found them guilty on both counts and awarded death sentence to A-1 to A-4 for an offence punishable under Section 302/34 IPC and for an offence causing injuries to Km. Mukesh (P.W.3) each of the accuse was sentenced to suffer RI for ten years. The trial court then made a Reference to the High Court under Section 366 Cr. P.C. The condemned prisoners also filed the appeals to the High Court against the judgment and order of the trial court challenging their convector and sentences. The Reference and the appeal were heard together and the High Court by its judgment and order dated May 26, 1983 accepted the Reference in respect of Samai Pal Singh (A-1) and dismissed his criminal appeal but however, rejected the Reference in respect of Raj Singh (A-2), Rampal Singh (A-3) and Lal Singh (A-4). The High Court allowed the criminal

appeals of A-2, A-3 and A-4 and acquitted them of all the charges. We are told that the appeal filed by Samai Pal Singh (A-1) to this Court was dismissed and consequently the death sentence awarded to him was executed. The appellant/complainant has filed these criminal appeal against Raj Singh (A-2), Rampal Singh (A-3) and Lal Singh (A-4) who are respondent Nos. 1 to 3 in these appeals. The respondent No. 4 is the State of U.P. During the pendency of these appeal Rampal Singh (A-3) was reported to be dead the appeal abated against him. The net result, therefore, is that these appeal survive only against respondent Nos. 1 and 3 who were accused Nos. 2 and 4 before the trial court.

(2) Bramha Pal Singh (P.W.4) had two wives. Samai Pal Singh (A-1) was born from his first wife and from second wife he got four sons and three daughters. Samai Pal Singh (A-1) was insisting that he should be given 1/2 share in the property, however, Bramha Pal Singh (P.W.4) gave him as his share 7-1/2 bighas of agriculture land and 1/3rd share in his residential house. Samai Pal Singh (A-1) was not at all satisfied with this partition and according to the prosecution there used to be quarrels between him and Bramha Pal Singh (P.W.4) and his other family members.

(3) Bramha Pal Singh (P.W.4) and his brother Vikram Singh (P.W.1) at the time of occurrence had grown sugarcane crook in their agriculture lands and on 19.2.1981 these two brothers had decided to sell the same to the Mawana sugar mill. Accordingly, they loaded the sugarcane in their Buggies and decided to start early in the morning on the next day. Accordingly Vikram Singh (P.W.1) and Kirat Pal Singh came to the house of Bramha Pal Singh (P.W.4) at about 3.30 or 4.00 a.m. when they heard the shrieks coming from inside the house of Bramha Pal Singh (P.W.4). They raised an alarm which attracted Bhanwar Singh, Babu Ram (P.W.2) and Om Pal. All these persons came near the house of Bramha Pal Singh (P.W.4) and raised the alarm. The miscreants who were inside the house came out and started running away when they came to be identified. Samai Pal Singh (A-1) had a Table and a torch, Raj Singh (A-2) had a Pharsa. Ram Pal Singh (A-3) has a Balkati. The 4th accused could not be identified. All the miscreants then fled away. Vikram Singh, Babu Ram and others who had gathered there then entered into the house of Bramha Pal Singh (P.W.4) and noticed that five children of Bramha Pal Singh (P.W.4) were done to death. Smt. Sukhbiri, the wife of Bramha Pal Singh and Smt. Seeso, the sister of Bramha Pal Singh (P.W.4) were also killed. Km. Mukesh (P.W.3), the daughter of Bramha Pal Singh (P.W.4) who had sustained incised injuries was found under the cot. She told the details about the incident. Vikram Singh (P.W.1) after seeing the ghastly murders of seven persons lodged the complaint at Nowana Police Station on 20.2.1981 at about 8.30 against Samai Pal Singh (A-1), Raj Singh (A-2) and Rampal Singh (A-3) but however, could not name the other two accused persons who had fled away. After recording the FIR. SI Suraj Singh (P.W.7) reached the place of occurrence and commenced the investigation. After completing the investigation a charge-sheet came to be filed against the fourth accused persons for the offences punishable under Section 302/34 and 307/34 IPC for committing the murders of seven persons and attempt to commit the murder of Km. Mukesh (P.W.3).

(4) The accused persons denied the allegations levelled against them and pleaded that they have been falsely implicated in the present crime and they be acquitted.

(5) At the trial the prosecution examined as many as twelve

witnesses of whom Km. Mukesh (P.W.3) was an eye witness whereas Vikram Singh (P.W.1) and Babu Ram (P.W.2) had identified the assailants when they came out of the house of Bramha Pal Singh (P.W.4) and were running away. In addition to the above evidence the prosecution also placed reliance on the recovery of certain incriminating articles at the instance of the accused persons.

(6) On the conclusion of the trial the Sessions court accepted the evidence of Km. Mukesh (P.W.3) as credible despite the fact she was a minor. She had identified A-1 to A-3 as assailants and her evidence stood corroborated from the evidence of Vikram Singh (P.W.1) and Babu Ram (P.W.2) who had identified A-1 to A-4. Consistent with these findings the trial court found A-1 to A-4 guilty of committing the murders of seven persons and causing injuries to Km. Mukesh (P.W.3) and accordingly convicted them under Sections 302/34 and 307/34 IPC and awarded capital punishment to each one of them on first count and 10 years RI on second count and made a Reference under Section 336 Cr.P.C. to the High Court.

(7) The High Court heard the Reference as well as the criminal appeals filed by A-1 to A-4 and on reconsideration of the evidence of Km. Mukesh (P.W.3), Vikram Singh (P.W.1) and Babu Ram (P.W.2) found it trustworthy as regards A-1 and consequently accepted the Reference and dismissed the appeal filed by him. As regards A-2 to A-4 the High Court, however did not accept the evidence of these three witnesses as conclusive on the question of identification and resultantly acquitted them of all charges. The criminal appeal filed these accused were allowed and Reference came to be rejected. The present appeals by Social Leave are filed by the appellant (complainant).

(8) We heard learned counsel for the parties at great length and perused the judgments of the courts below as well as the oral and documentary evidence on record. In our considered view the impugner judgment is unsustainable against A-2 and A-4. We may first set out the reasons for acquittal rendered by the High Court.

(9) The first given by the High Court is that the evidence of Vikram Singh (P.W.1) is inconsistent with that of Bramha Pal Singh (P.W.4) when he testified that they were to go together to sell their sugarcane to the sugar mill. Bramha Pal Singh (P.W.4) contradicted this fact. The High Court observed:

"If it had been agreed between him and Vikram Singh that they would take their Buggies to the mill he would not have taken his Buggi of sugarcane to the crusher, because there is better payment made for the sugarcane at mills and then if it was agreed between Bramha Singh and his brother that they would go together with their sugarcane therefore before going to the crusher Bramha Singh was bound to have informed his brother Vikram Singh that he would not go to the mills and was going to the crusher. But no such information was given to Vikram Singh. In spite of the prearrangement it is said that Bramha Singh went to the crusher which would indicate that it was not agreed between these two

brothers that they would take their Buggis together to the mills and if it was not a greed that both of them would take their Buggis together then there was no reason for Vikram Singh to come to the house of Bramha Singh at 4 A.M. in the morning. If Vikram Singh had no reason to go to the house of the Bramha Singh early in that morning he could not have raised any alarm on which P.W.2 Babu Ram reached the spot. The presence of these two witnesses PW.1 Vikram Singh and PW.2 Babu Ram at the spot is. therefore, greatly doubtful".

(10) The High Court, therefore, discredited the evidence of these two witness and held that kirat pal singh who claimed to have gone with Vikram Singh (P.W.1) and had raised an alarm and saw the assailants when coming out of the house could not be believed. Kirat Pal Singh was not examined by the prosecution and, therefore, the claim of Babu Ram (P.W.2) having come to the place of occurrence could not be accepted.

(11) Secondly, while discarding the evidence of Km. Mukesh (P.W.3) on the question of identity of A-2 and A-4, the High Court held that although her presence in the house could not be disputed because she had sustained injuries on her person but their dim light of that lantern which was burning in the house was doubtful. The High Court accepted her evidence as regards Samai Pal Singh (A-1) being assailant on the ground that he being her brother she could recognised hm in the dim light. The High Court did not accept the evidence of Vikram Pal Singh (P.W.1) as he had no reason to go to the house of Bramha Pal Singh (P.W.4) and, therefore, his assertion that he had Kirat Pal Singh went there was rendered doubtful. Consequently his evidence about raising an alarm and therefore reaching at the place of occurrence was also rendered doubtful. The High Court disbelieved their evidence as regards mediation by A-2 with Bramha Pal Singh (P.W.4) for giving larger share to A-1. The evidence of joint cultivation by A-1 with A-2 was also not accepted by the High Court. As regards the identification of A-2 and A-4 by Vikram Singh (P.W.1) and Babu Ram (P.W.2) the Court held that there was no mention in the FIR about the availability of light. This omission was brought on record by the defence. The improvements made by the these two witnesses in this behalf were significant and, therefore, it would not be safe to accept their evidence as credible as regards the identify of A-2 and A-4. The High Court, therefore, gave the benefit of doubt to A-2 and A-4 and acquitted them of all the charges.

(11) It is well settled that this Court would be slow to interfere with the order of acquittal passed by the High Court unless it is shown that the view taken by the High Court is totally unreasonable and contrary to the evidence on record. Bearing in mind this principle we have very carefully scrutinized the evidence of Km. Mukesh (P.W.3), Vikram Singh (P.W.1) Babu Ram (P.W.2) and Bramha Pal singh (P.W.4). It has come on record that Smt. Seeso, the sister of Bramha Pal Singh (P.W.4) had come to his house for her delivery and she had given birth to a female child three days prior to the occurrence. It was, therefore, duties reasonable to accept the evidence of K. Mukesh (P.W.3) when she testified that the lantern was burning in the house. Km.

Mukesh in her evidence had stated that she identified Samai Pal Singh (A-1) and Raj Singh (A-2) in the dim light. She also stated about the weapons carried of the same village and Samai Pal Singh had good equation with him. It is because of this Km. Mukesh (P.W.3) could identify these two accused persons. It was contended on behalf of respondents that it was impossible for Km. Mukesh (P.W.3) to identify Raj Singh (A-2) in such a dim light and that the investigating officer had not seized the lantern during investigation. In view of these facts the identification by Km. Mukesh of Raj Singh (A-2) was highly doubtful. We do not agree with these contentions. The evidence of Km. Mukesh was corroborated by Vikram Singh (P.W.1) and Babu Ram (P.W.2) who had stated that they saw A-2 coming out of the house on 20.2.1982 at about 4.00 a.m. and thereafter he fled away. They identified A-2 in the light of the lantern that was coming from the door. In view of this positive evidence on recorded the doubt entertained by the High Court in our considered view was wholly unjustified.

(12) It also needs to be mentioned that in T.I. Parade all these three witnesses had identified A-4. It is true that the Test Identification Parade was held one month after the arrest of A-4. There was nothing in the evidence of Investigating Officer (P.W.7) or Kirat Pal Singh (P.W.9) which would indicate that A-4 was shown to the witnesses before he was put up for T.I. Parade. No question was put to the Investigating Office as to why the T.I. Parade was held after one month of the arrest of A-4. In the absence of any evidence on record we are not persuaded to reject the same.

(13) It was then contended on behalf of the respondents/accused that Vikram Singh (P.W.1) and Babu Ram (P.W.2) had no reason to go the house of Bramha Pal Singh (P.W.4) as the latter was to go to the crusher whereas the earlier was to go the Mawaa sugar mill. In view of this evidence it was urged on behalf of the respondents/accused that the claim of Vikram Singh (P.W.1) that he had gone to the house of Bramha Pal Singh (P.W.4) between 3.30 to 4.00 a.m. was totally unbelievable. In this behalf reliance was placed on the Parchi which was obtained from the sugar mill by Vikram Singh (P.W.1). It is true that there is some inconsistency but in our opinion the same is very minor and does not in any way affect the substratum of the prosecution case. Much emphasis was led by the learned counsel for the respondents/accused on time factor which in our opinion is not that serious infirmity to discard his evidence.

(14) It was then contended for the respondents/accused that the evidence of Km. Mukesh (P.W.3) regarding seeing the actual incident by her was quite doubtful because she herself had sustained injuries and admitted that she was niding under the cot and thereafter became unconscious and she regained the consciousness only when Vikram Singh (P.W.1) gave a call to her at about 6 a.m. Relying upon this evidence it was urged for the respondents/accused that Vikram Singh (P.W.1) might have reached at the house of Bramha Pal Singh (P.W.4) at 6.00 a.m. and his claim of going to the house of Bramha Pal Singh (P.W.4) and further assertion that he saw accused running away was totally doubtful. It was further contended that the injuries caused to K. Mukesh (P.W.3) were so serious that she might have become unconscious immediately and might not have seen the incident at all. We see no substance in any of these contentions. She had testified all particulars how the assailants causes assault on the inmates.

(15) We have very carefully gone through the evidence of

Vikram Singh (P.W.1), Babu Ram (P.W.2) and Km. Mukesh (P.W.3) and we are satisfied that the evidence of all these three witnesses is trustworthy and cannot be rejected on any ground. The High Court in our opinions had not read the evidence of these witnesses in proper perspective and as a result thereof committed a serious error while acquitting A-2 and A-4. As stated earlier Rampal Singh (A-3) is reported to be dead.

(16) For the aforesaid conclusions the appeals are allowed. The order of acquittal passed by the High Court in respect of A-2 and A-4 is quashed and set aside. Raj Singh (A-2) and Lal Singh (A-4) stand convicted for the offences punishable under Sections 302/34 and 307/34 IPC. Having regard to the passage of time it would not be proper to award the extreme penalty to them and instead A-2 and A-4 are sentenced to suffer life imprisonment for an offence punishable under Section 302/34 IPC and RI for 10 years for an offence punishable under Section 307/34 IPC for causing injuries to Km. Mukesh (P.W.3). Substantive sentences to run concurrently. Consequently Reference under Section 366 Cr.P.C. is rejected but their convictions recorded by the trial court for charges offence are upheld. A-2 and A-4 who are on bail shall surrender to their bail bonds forthwith to serve out the remaining part of their sentences.