

PETITIONER:
RAMJI RAI & ORS.

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 13/10/1999

BENCH:
N.S.Hegde, G.B.Patmaik

JUDGMENT:

SANTOSH HEGDE, J.

The Ist Additional Sessions Judge, Motihari, East Champaran District, State of Bihar by his Judgment dated 28th of July, 1992 delivered in Sessions Trial No.180/29 of 1991 convicted 21 persons, for the offences punishable under Sections 302, 302/149, 148, 324, 380, 307/149 and punished them as follows :

Accused Banka Rai, Durbal Rai, Bacha Rai and Hira Rai were convicted for offence under Section 302 IPC and were sentenced to death. Accused Chhota Rai, Krishna Rai, Ramprit Rai, Mofil Rai, Wakil Rai, Baijnath Rai, Dharmjeet Rai, Lal Babu Rai, Ambika Rai and Bindeshwar Rai were convicted under Section 302 read with Section 149 IPC and were sentenced to undergo rigorous imprisonment for life. All the above 14 accused were further found guilty of offence under Section 148 IPC and among them Banka Rai, Durbal Rai, Bacha Rai, Chhota Rai and Krishna Rai were also found guilty of offence under Section 307 read with Section 149 IPC. Accused Ramprit Rai, Krishna Rai and Banka Rai were convicted for offence under Section 324 IPC and accused Ramprit Rai was further convicted under Section 380 IPC but in view of the capital sentence or life imprisonment awarded on them separate sentences on the above counts were not awarded. Among the rest of the accused, namely, Jamadar Rai, Nathuni Rai, Darshan Rai, Laxman Mahto, Bishnudeo Mahto and Ramjeet Rai were convicted under Section 148 IPC and were sentenced to undergo three years rigorous imprisonment on that count. Accused Jamadar Rai, Nathuni Rai and Darshan Rai were further convicted under Section 380 IPC and they were sentenced to undergo rigorous imprisonment for three years each. Lastly, accused Hira Rai was convicted for offence under Section 147 IPC and sentenced to undergo rigorous imprisonment for two years. The sentences passed on different counts were directed to run concurrently. The trial court acquitted 10 other accused persons giving them the benefit of doubt. Against the said judgment and conviction, the aggrieved persons preferred three Criminal Appeals, CrI.A.Nos. 281, 285 and 321 of 1992 before the High Court of Patna and consequent to the awarding of death sentence against four of the accused, named above, a Reference Case No.883-A of 1990 was also preferred before the High Court at Patna. The High Court as per its judgment

dated 18th of August, 1995 dismissed the appeals preferred by the convicted accused persons and also rejected the reference made to it for confirmation of the death sentence and consequently modified the said sentence of death imposed on the four of the appellants to that of life imprisonment. Against the said judgment of the High Court, the convicted accused have preferred the above noted criminal appeals. This Court, while entertaining the above appeal, issued suo motu rule for enhancement of sentence of life imprisonment to death sentence in regard to accused persons Bacha Rai, Banka Rai and Durbal Rai who were three of the four persons sentenced to death by the trial court. The prosecution case as narrated in the courts below stated briefly is as follows :-

PW-16 Rajendra Rai son of one of the deceased, namely, Jaimangal Rai lodged a complaint Ext.5 in Police Station Chhauradano, alleging that about 100 to 150 persons came to the Village Murli on the evening of 4th of August, 1990 armed with deadly weapons like Kharia, Pharsa, Garasa, guns, rifles, sword, lathi etc. and caused the death of Jaimangal Rai, Jatan Sah and Sheo Bachan and caused grievous hurt to Amir Rai and also caused hurt to Ram Naresh Rai and Mauna Devi. Based on the above complaint, the concerned police registered a case under Section 147, 148, 149, 302, 307, 323, 324, 326, 307, 302, 380 IPC and Section 27 of the Arms Act against the 35 accused persons named by the informant in his complaint. After investigation a charge-sheet for the above offences including an offence under Section 452 of the IPC was laid and the accused so charge-sheeted were committed for trial in the Court of Sessions. The prosecution in support of its case has examined 17 witnesses in all, they are PW-1 to PW-17. In the statement under Section 313 of the Criminal Procedure Code, some of the accused denied the allegation in total while some have specifically stated that they were falsely implicated because they had made certain allegations of black marketing in sugar against some of the prosecution witnesses. We are informed that out of the 21 appellants in the above appeals, appellants Chhota Rai and Krishna Rai who have been shown at serial Nos.11 and 15 respectively in Criminal Appeal No.285/92 before the High Court have absconded from jail while serving the sentence imposed on them. Therefore, we deem it appropriate that their name be deleted from the array of appellants and their appeal stands dismissed. Consequently, the conviction and sentence passed against them, stand confirmed. On behalf of the appellants, Mr. Ashok Panda, learned senior counsel and Mr. Ranjan Mukherjee, learned counsel have contended that the courts below have not given a clear finding regarding the common object of the assembly allegedly formed by these appellants. In the absence of the same, they could not have been convicted with the aid of Section 149 IPC. They have also contended that the prosecution having failed to establish any motive there could not have been a conviction against these appellants. It was also their contention that the eye-witnesses are inter-related, hence, are interested witnesses so their evidence ought not to have been relied upon. On behalf of the State, Mr. K B Sinha, learned senior counsel has supported the judgments of the courts below, countering the attack made by learned counsel for the appellants on the judgments of the courts below. We have carefully examined the evidence on record and considered the arguments of both the sides. The prosecution case as placed before the trial court shows that way-back on 6.8.1990

Rajendra Rai son of Jaimangal Rai who is cited as PW-16 appeared before the Chhauradano Police Station and lodged a complaint which was recorded by Sub-Inspector D N Thakur who was examined as PW-17. In the said statement, he had stated that on 5.8.1990 at about 7 p.m. when he was sitting along with his father Jai Mangal Rai, one Jatan Sah of village Pakaria had come to talk to his father and while they were so talking, he saw suddenly a crowd of 100-150 persons belonging to the Bihar Kisan Samiti heading towards them; armed with Lathis, Bhala, Kharia, sword, Nalkatti gun and rifles and out of them he identified as many as 33 of the accused persons whom he named in his complaint. He also narrated in the said complaint the individual weapons carried by these accused persons. It was mentioned in the said complaint that these accused persons were shouting Maro Sale Ko and surrounded his house from all four sides. Having seen the mob coming towards them, he, his father and Jatan Sah went inside the house and closed its eastern door. The complainant goes on to say that from amongst the accused persons, Hira Rai, Daroga Rai, Mofil Rai, Sk. Motlif, Ali Imam, Durbal Rai, Banka Rai, Bacha Rai, Wakil Rai and Baijnath Rai with the help of some others broke open the northern door of his house while some of the accused removed the Tatti of the eastern door of the house and entered the house. He states that he climbed atop the roof through a ladder kept in the Angan while the accused persons got hold of his father Jai Mangal Rai and Jatan Sah. According to him, they dragged his father out to the northern side of the house and the above named accused persons killed his father by cutting with the weapons like Kharia and Farsa. In the said process of killing, they also chopped his fathers right leg above the ankle and also chopped the upper portion of his neck. Thereafter, some of the accused persons got hold of Jatan Sah and took him towards the roadside assaulting him. In regard to the assault on Jatan Sah, the complainant identified Dharamjeet, Lal Babu, Ambika, Bindeshwar, Harihar Mahto and Sk. Shakeel, among others. Those persons, it is stated, killed Jatan Sah by chopping his body with weapons like Kharia and Farsa. He mentions that his brother Mahendra Rai was also hiding with him on the roof and both were able to witness the attack. The complainant further says that after murdering his father and Jatan Sah, all the accused persons went towards the house of Sheo Bachan Rai son of Kuldeep Rai and broke open the door of his house, dragged him out and murdered him by cutting his head and neck. At that point of time, when Amir Rai son of Kalyug Das came out of his house, the aforementioned accused persons attacked him in the courtyard of his house and inflicted injuries on his body. While Amir Rai was being attacked, the assailants also attacked Muni Devi wife of Sheo Bachan Rai. After the said assault, it is stated that all the accused persons fled from the scene of occurrence. The complainant has named, among others, Jawahar Rai, Ram Babu Rai and Deep Lal Rai; all residents of Murli village as having witnessed the incident. He also stated that at the time of fleeing away, some of the accused persons, who have been named in the complaint separately, also took away two tin boxes containing one gold hasuli valued at Rs.8,000/-, silver chandharar valued at Rs.1,600/-, Tika of gold valued at Rs.2,000/-, Payal of Chandi valued at Rs.800/-, certain sarees and blouses and cash of Rs.3,000/- and a motorcycle of Jatan Sah which was parked near the front door of his house. The prosecution through the evidence of PWs.6 and 7 - the doctors who conducted the post mortem on the deceased Jai Mangal Rai,

Jatan Sah and Sheo Bachan Rai has established that the aforesaid deceased died a homicidal death due to the injuries caused to them by sharp cutting weapons and other hard blunt substances similar to the weapons carried by the accused persons, as stated by the prosecution witnesses. The doctors have opined that the death was the result of haemorrhage caused by the injuries found on the person of the said deceased. Through the evidence of PWs.5 and 6, the prosecution has also established that PWs.4, 8, 12 and 17 had also suffered injuries attributable to the weapons carried by the accused persons out of which PW-8 alone had sustained 17 injuries on his person which were caused by sharp edged weapons and hard blunt substances and one of its injuries was so severe as to cause complete damage and loss of his right forearm. The prosecution through the evidence of the investigating officer, PW-17, has established that the incident in question had occurred at the place as mentioned in the complaint. From the evidence of the eye-witnesses out of which many are either injured witnesses or the relatives of the deceased persons whose presence at the time of the incident cannot be doubted, it is clear that the incident under reference has occurred as presented by the prosecution case. Their evidence is quite consistent and has withstood the test of cross-examination. It cannot be doubted that these witnesses had identified the convicted accused persons, hence, the courts below were justified in placing reliance on their evidence to come to the conclusion that the accused appellants were the members of an unlawful assembly, the common object of which was to cause the death of the aforesaid deceased and cause injuries to others. In the process of achieving the said object, they had also looted the property belonging to the witnesses. Since the incident in question has taken place for a considerable long time at different places near about the house of PW-1, the witnesses were in a position to see and identify the accused and their participation in the crime. Hence, on a careful reading of the reasoning of the courts below and our considering the evidence on record, we are of the opinion that the findings of guilt recorded by the courts below are consistent with the evidence adduced in the case and do not call for any interference. Consequently, the appeals filed by the accused-appellants are dismissed. This brings us to the next question as regard to the enhancement of sentence with regard to the three named accused in the order of this Court dated 23.10.1996 wherein while granting leave to appeal, this Court suo motu issued Rule to show cause why the sentence of life imprisonment awarded by the High Court on Bacha Rai, Banka Rai and Durbal Rai be not enhanced to death sentence. These three appellants along with another appellant named Hira Rai were awarded the maximum penalty of death by the trial court while sentencing them for offences punishable under Section 302 IPC. The trial court while considering the awarding of sentence with reference to the four accused persons sentenced to death held thus :-

Such barbarous gruesome activity of attack and murder in mass way by unruly militant groups in villages and other regions of this state is getting encouragement because in such crime the criminals are not brought to book because the witnesses being terrified of same consequences at the hands of such criminals is they stand as eye witnesses in the court of law against them. In the present set up of society where people are constitutionally given full liberty of physical and mental acts an expression for all round progress of all individuals in right direction but the

perverted assumption of this liberty is being applied in, indulging in criminal activity in the nature one found in the present and such activity is getting momentum. If such perverted approach of life against the society is allowed to flourish in the mind of people that be endangering the very core of constitutional frame of the society we are living in, and create havoc in mind of all leading to chaos. Such nature of crime must be checked and in the present society where moral-ethical sense is on diminishing trends that can be checked by awarding exemplary punishment in rigorous form of capital sentence to remind such criminals in the society that human life is very precious and one who dares to take life of others, has to lose his own life also by the court of law. The principle laid down by the Honble Supreme Court that the capital sentence to an accused in murder case be awarded in the rarest of rare cases and in my mind for the criminal behaviour of accused persons in nature of present case must be brought under said dictum of law of Honble Apex Court and accordingly four of the dreaded criminals viz. accused, Banka Rai, Durbal Rai, Bacha Rai and Hira Rai son of Jodha Rai deserve to capital penalty and they are sentenced to death u/s 302 I.P.C. and it is directed that each one of them be hanged by neck till he is dead. However, this capital sentence will not come in operation until the same is confirmed by the Honble High Court Patna. x x x

The High Court while rejecting the reference under Section 366 of the Code, did not discuss in detail why it came to the conclusion, the death sentence awarded by the trial court be not confirmed. It merely stated that the interest of justice would be fully served if the sentence of death is reduced to imprisonment for life. While we have noted that the trial court has given some reasons for awarding the death penalty on four of the accused, we think it would have been more appropriate for the High Court to have given reasons for differing from the view taken by the trial court rather than mechanically rejecting the reference. May be, it is for this reason that this Court felt it imperative to issue notice of enhancement. We have heard the learned counsel for the State as well as the four appellants concerned and carefully considered the material on record. It is a well settled law that while upholding a conviction for the offence of murder, the penalty of death is to be awarded only in rarest of the rare cases when the court comes to the conclusion that the lesser sentence of imprisonment for life would not meet the ends of justice. This Court in the case of *Gentela Vijayavardhan Rao & Anr. v. State of A.P.* (1996 6 SCC 241) after considering the law laid down by the earlier judgments of this Court, has held that no litmus is provided nor any test formulated to discern precisely what is the rarest of the rare cases in which the alternative option of awarding life sentence is, thus, foreclosed. In *Machhi Singh v. State of Punjab* (1983 3 SCC 470) this court held that in order to award death sentence the court should ask itself and answer the following questions : (i) Was there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence ? (ii) Were 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 ? Bearing in mind the above principles, we find that the trial court has not

applied its mind to the above principles and has proceeded more on philosophic than on realistic grounds. The reasons given by the trial court, which we have extracted hereinabove for awarding death sentence, in our opinion, do not conform to the guidelines laid in the above judgments of this Court. The acts attributed by the prosecution to these three appellants, who are the recipients of the notice for enhancement, cannot be said to be any different from the rest of the accused persons. Murder, as it is, is though liable for the sentence befitting the crime, we do not think the present case could be brought under the maxim rarest of the rare cases so as to award the extreme penalty of death on these appellants.

For these reasons, we are of the opinion that the sentence of life imprisonment imposed by the High Court on these three appellants was appropriate in the facts and circumstances of this case, hence, we discharge the notice of enhancement of sentence issued against Bacha Rai, Banka Rai and Durbal Rai. However, their conviction and sentence awarded by the High Court are confirmed, and all the appeals stand dismissed.