

Ram Singh Vs. State

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Court : Allahabad

Decided On : May-17-1960

Reported in : AIR1960All748; 1960CriLJ1536

Judge : Nasirullah Beg and ;S.S. Dhavan, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 666 of 1960

Appellant : Ram Singh

Respondent : State

Advocate for Def. : J.R. Bhatt, Dy. Govt. Adv.

Advocate for Pet/Ap. : Pratap Narain Misra and ;S.N. Mulla, Adv.

Disposition : Appeal dismissed

Judgement :

Dhavan, J.

1. Ram Singh and Gopal have been sentenced to death by the learned Sessions Judge, Mainpuri for the murder of Mr. Kunwar Krishna Kapoor. The case of the prosecution against them very briefly was this. At the time of his murder M.

Kunwar Krishna Kapoor was employed as senior engineer in Hind Lamp Works (Private) Limited, Shikohabad and was drawing a salary of Rs. 900/- and odd per mensem. He was married and had two children a son about 8 and a daughter about 4 years of age. Ram Singh was employed as a domestic servant by Mr. and Mrs. Kapoor. Gopal was in the domestic service of a gentleman by the name of Dr. Bhattacharya who was also employed by the same company which had provided residential quarters for its senior officers.

The bungalow of Mr. and Mrs. Kapoor adjoined that of Dr, Bhattacharya both facing south and being almost similar in size, construction and design. In the colony there also lived Mr. B.R. Kriplani who was also a senior engineer of the Company with a salary of Rs. 1250/- per mensem. The prosecution case is that on 5-10-1959 Mr. Kapoor drew his monthly salary of Rs. 900/- and odd which he brought home. Two days later during the night between 7-10-1959 and 8-10-1959 at or about 1 a.m. Ram Singh and Gopal entered the bed room of the Kapoors' and committed the murder. The family were sleeping indoors on a composite bed enclosed by a single mosquito net.

The bed was placed east to west, the head towards the east and feet towards the west. Mrs. Kapoor lay on the southern edge of the bed, Mr. Kapoor in the middle and their little girl on the northern edge. The wooden shutters of the door of the bed room were opened but the wire gauze shutters were closed and bolted from inside. An electric bulb of high power was switched on in the verandah in front of the bedroom door and another radiated its light from a braket fixed to the outer wall of the verandah. At or about 1 a.m. Mrs. Kapoor was disturbed and awakened by what she subsequently described as a groaning noise coming from her husband. She saw Gopal who was standing by the head of the bed, in the act of pulling out a knife from her husband's chest.

At that very moment she also saw Ram Singh who was Standing by the southern edge of the bed where she lay, attempting to stab her husband with a knife. Mrs. Kapoor threw herself on her husband and thereby succeeded in taking Ram Singh's knife blow OH the left side of her back. She, however, managed to grip Ram Singh accused and never let him go. At the same time she screamed for

help. She kept a firm hold all the time on Ram Singh whose knife fell from his hand. Ram Singh, however, made a desperate effort to free himself and dragged Mrs. Kapoor through the door of the bedroom into the verandah. During this struggle the other assailant Gopal gave her a blow with his knife which injured her left arm.

He managed to run out and escaped but Ram Singh was held by Mrs. Kapoor in her grip. Meanwhile, her cries had aroused others. Those, who reached quickly on the scene were, Mr. B.R. Kriplani, the senior engineer mentioned above, Ajab Singh, the head Durwan of the Hind Lamp Colony, and Rati Bhan a night watchman who was present near-by. They were just in time to see Gopal running away with a knife in his hand. They, however, got hold of and overpowered Ram Singh who had not been able to shake off Mrs. Kapoor. They shut him up in a room and proceeded to search for Gopal. Within a few minutes Ajab Singh and Rati Bhan secured Gopal who had retired to the servants room in the house of Dr. Bhattacharya. Mr. Kriplani then wrote out in English a report for the police which was taken to the police station Shikohabad by the Supervisor of the Lamp factory. The Sub Inspector reached the spot at or about 2-30 a.m. and made out the usual recovery list in the presence of the witnesses and prepared an inquest report.

He also made a sketch of the locality or siteplan as it is usually called. Mr. Kapoor's dead body was sent for post mortem. It appears that Gopal accused made a statement to, the Investigating Inspector which led to the recovery of the knife which he had thrown in the back garden of Mr. Kapoor's house before escaping and also some blood-stained clothes which Gopal was wearing at the time of the assault. :

2. Both Ram Singh and Gopal were charged with the murder of Mr. Kapoor and with attempt to murder under Section 307/34 I. P. C. The principal witness for the prosecution was Smt. Sudarshan Devi Kapoor the widow of the murdered man. She gave a detailed and graphic description of the assault and of her unsuccessful effort to save the life of her husband. She also described how she was able to catch hold of Ram Singh and prevented him from running away like Gopal. The other important witnesses were Mr. B.R. Kriplani, the senior engineer and Ajab

Singh both of whom had run to the house of Kapoor on hearing Mrs. Kapoor's loud cries for help. The evidence of these three witnesses was unshaken in cross-examination. In fact, there was hardly any cross-examination worth the name.

3. Both Ram Singh and Gopal denial the charge and stated that they did not commit the crime and did not know how Mr, Kapoor was killed and his wife injured. Ram Singh stated that he was sleeping in his room at or about 1.30 a.m. when he was arrested by the Investigating Officer. Copal stated that he too was sleeping in his own room in Dr. Bhattacharya's house when he was awakened by, the shouts of Mrs. Kapoqr, He also alleged that though, on hearing Mrs. Kapoor's cries his employer went to Mr, Kapoor's bungalow, he (Gopal) did not leave his room. He denied having made any statement to the Investigating Inspector that he had hidden any dagger and denied that there was any recovery of these articles in his presence.

When asked why Mrs. Kapoor, Mr. Kriplani and Ajab Singh had given evidence against them, both, Ram Singh and Gopal could not give any explanation. They produced no evidence in defence or in support of their alibi. The learned Sessions Judge convicted both of them of murder under Section 302/84 I. P.C, and sentenced, both to death, He considered the prayer on behalf of Ram Singh for lesser penalty of life imprisonment on the ground of youth. He is alleged to be of 17 years of age, but rejected it be-cause of 'the exceedingly brutul and dastardly nature of the murder and having regard to the fact that the accused, in associating himself with the murder of his own master, has grievously betrayed the sacred trust between master and servant'. He therefore, took the view, that Ram Singh also deserved death as punishment for his crime.

4. Both accused have appealed against their conviction and sentence, and there is the usual re-ference for confirmation of the death sentence by the learned Sessions Judge. Ram Singh is represented in this appeal by Mr. S.N.. Mulla. Learned counsel at the outset stated before the Count that it would be difficult for him to assail the evidence against his client and that he would confine himself to a plea for the reduction of the sentence. Gopal is represented by Mr. S.N. Chatterji who tried to show that there are aspects of the prosecution evidence which tend to

make the case against his client appear doubtful. We shall, therefore, consider the case of Gopal first.

(After discussion of evidence His Lordship proceeded) : We are of the opinion that the case against both the accused is fully established and they were rightly convicted.

5-8. As regards sentence, there is no question of any extenuating circumstance in favour of Gopal nor was any argument addressed to us that he is entitled to exemption from the extreme penalty. In our opinion, death sentence is the only possible punishment in his case.

9. As regards Ram Singh,, Mr. S.N. Mulla vehemently argued on his behalf that he may be given the lesser sentence of life imprisonment on account of his age and other circumstances. Learned counsel argued that age itself is proof of Ram Singh's immaturity and that it is likely that he had fallen under the influence of Gopal. Mr. Mulla also contended that up to a particular stage during the assault Ram Singh did not stab any one. He suggested the possibility that both accused were only interested in committing robbery and were searching for the keys of the Godrej safe which was kept in Mrs. Kapoor's bed-room. During their search they might have disturbed Mr. Kapoor's sleep and on a challenge by him Gopal stabbed him. This might have aroused Mrs. Kapoor which in turn led to the intervention of Ram Singh. This in brief is the picture of the assault which learned counsel tried to place before, us.

10. Mr. Mulla also contended that youth by itself can be a sufficient reason for not imposing a sentence of death after a conviction for murder. He relied, inter alia, on a recent amendment of Section 367 of the Cr. P. C. which deleted the clause requiring the Court to state its reasons whenever it decides not to impose the sentence of death imposed by law; He suggested that the removal of this condition shows that the Court now has a wider latitude in the matter of awarding or not awarding the death penalty and it may impose the lesser punishment on the ground of age even if it could not do so before the amendment of the section.

We do not think that the amendment of Section 367 Cr. P. C. affects the law regulating punishment under the Penal Code. This amendment 'related to procedure, and now Courts are no longer required to elaborate the reasons for not awarding the death penalty; but they cannot depart from sound judicial considerations in preferring the lesser punishment, A court may record no reason for not passing the death sentence, but if it awards life imprisonment for a cold-blooded and revolting murder the absence of reasons will not save its preference from being unjudicial. We have heard learned counsel at some length on this point because the fact that Ram Singh is young--in years has given us, we confess, many anxious moments.

11. It is certainly true that many a murderer escaped the death penalty partly because of his age. But youth by itself has never been -- at least we have not come across a single case where it was--held to be a sufficient reason for imposing the lesser sentence, ft is therefore necessary to understand the principles which have induced the High Courts In India not to impose the death sentence on youthful murderers.

12. The Penal Code has not created any special categories or classes of persons who can claim exemption from death sentence as a matter of right. Neither youth nor sex nor any other peculiarity is mentioned by Section 302 as entitling any person to claim exemption from capital punishment after his conviction for murder. It merely says, 'Whoever commits murder shall be sentenced to death or transportation for life (sic) and shall also be liable to fine'. The word 'whoever' forbids any classification of murderers into categories on the basis of youth or sex or any other ground for the purpose of deciding the question of appropriate sentence after conviction.

13. If the legislature had intended that the sentence of death is not meant for persons of young age, the Code would have contained a section or proviso exempting specified classes of persons from the death penalty, just as other provisions clothe certain categories of persons with complete, partial, or conditional immunity from punishment from all crimes. Sections 82 and 84 respectively exempt children under seven years and persons of unsound mind

from the criminal law and Section 85 confers a similar but conditional exemption on persons in a state of intoxication. Under Section 83 every youthful person below the age of 12 who have not attained sufficient maturity of understanding to judge the nature and consequences of his conduct is immune from punishment. But beyond the age of 12, all-persons are equally liable for punishment for any crime.

14. Chapter III of the Code which prescribes categories of punishments ranging from death to fine is equally impartial. There is no section in this, Chapter enjoining that persons of a very young age shall be exempt from the punishment of death. This is significant. If youth or tender age alone was intended, to be a ground for exemption from the death penalty, one would have expected a provision exempting absolutely or subject to conditions, persons between ages of say, 12 and 15 from capital punishment. But, there is no such provision. It follows that every person subject to the Code is liable to every category of punishment, that no class of murderer is exempt from the death penalty, and that a sentence of death may be passed on a young person if justice so requires it.

15. Section 302 provides two categories of, punishment. It does not specify which must be imposed in what cases. It has left to the judicial discretion, of the Court to award the appropriate penalty in a case of murder. In suitable cases it may award the lesser punishment of life imprisonment, but what is a suitable case is within the Court's discretion which must of course be exercised judicially, and not arbitrarily or on irrelevant considerations. The conduct of the murderer, the nature of the temptation to which he yielded, the manner in which the crime was committed are some of the considerations which will weigh with the Court.

But it is clear that the Code provides no exemption for young persons on the ground that they are young. Youth may lead) to certain presumptions in favour of the murderer which, if not displaced by evidence, may induce the Court not to impose a death sentence. But youth alone does, not entitle him to claim the lesser punishment, if the murder is brutal and cold-blooded and there are no extenuating ' circumstances. In such' a case the law requires that the sentence should be death.

16. It is for the legislature to change the principles governing the imposition of the death penalty by amending the Code and providing exemption from the death penalty in the case of very young persons between the ages of 7 and a specified minimum age. It may be that a change in the law is due in the matter of inflicting the punishment of death on very young persons, particularly when capital punishment itself is troubling the conscience of large sections, of humanity and has disappeared from the Criminal Codes of several civilised states. But any change in the socia-philosophic foundations of capital punishment is a matter for society and the legislature, not the judiciary. But under the present Code youth in itself will not save a murderer from the death penalty if there is nothing else in his favour.

17. Age has been taken into account by the Indian Courts really on the principle that persons of young age are ordinarily immature, or unable to understand the full implications of their crime or easily misled by others, or subject to violent emotional disturbances which induce them to leap without looking into the pit of crime. Such weaknesses of character leading to temptation are not confined to young persons and may affect others too. Young blood is ordinarily more susceptible than old. But the point to note is that, not youth, but the presumptions arising from it are the real reasons whenever a young person is not awarded the sentence of death for murder.

18. But if the evidence reveals that the criminal, though young in age fully understood what he was doing and the murder was cold-blooded, deliberate and planned, and there are no extenuating circumstances, his age alone will not save the murderer from the sentence of death. He will then be given the extreme punishment as a normal case.

19. The principle enunciated above appears to have served as a guide to the High Courts in India both in cases where they exempted a murderer from a capital sentence on the ground of age, and when they refused to do so. In *Emperor v. Bhagwan Din*, AIR 1931 Oudh 89 (1) Raza and Pullan JJ. held that there is no law which justifies a court in not passing a sentence of death on any persons merely because he is young. This case is of some importance, for the Court enhanced a

sentence of life imprisonment into one of death on an application by the State. The sessions judge had refrained from awarding the sentence of death on three reasons: (1) the accused was a young lad of about 18; (2) he might still reform; and (3) the murder was committed without premeditation. The first two grounds were rejected as irrelevant by the then Chief Court which observed;

'Youth may be a circumstance to be taken into consideration in offences where the accused person is not fully able to understand the nature of his act, or has been influenced by older persons. But this is a case in which a youth has deliberately murdered a small Boy for motives of greed, and there is no suggestion that he was prompted to the crime by any motive except his own base nature'.

After examining the evidence the court came to the conclusion that it was a case of brutal murder and held that there were no extenuating circumstances and that the accused had rendered himself liable to the full penalty prescribed by the law. In *Sheo Dina v. Emperor* : AIR1933 All939 , Bennett and Bajpai JJ. refused to reduce the sentence of death passed on a young man of 22 years of age because they came to the conclusion that he had acted with deliberation and had followed his victim his mother-in-law with an axe in hand. In *Moti Ram Bhoja Ram v. Emperor*, AIR 1983 Lah. 998, Bhide and Currie JJ, rejected the accused's claim for exemption from the death penalty on the ground of youth because they felt the murder had been deliberately planned and carried out and there were no extenuating circumstances.

The accused, who had been having illicit relations with a married woman, was sentenced to death for murdering her husband. In *Saddiq Nawab v. Emperor*, AIR 1943 Lah 104, Tek Chand and Sale JJ. observed that youth and hot-headedness were unsound reasons for awarding the lesser punishment for murder but they refrained from issuing a notice of enhancement because the Crown had not applied for enhancement and the evidence of premeditation was not clear. In *Allah Bakhsh v. Emperor* AIR 1933 Lah 956 the Court ignored the fact that the accused was 'a raw youth aged only about 19', because it held that his crime appeared to be a heinous one and the murder was carefully planned and carried out in a cruel and treacherous manner' and observed that youth alone could not be considered

an adequate ground for mitigation of punishment in that case.

In *Jangli v. Emperor* AIR 1934 Oudh 19, *Srivastava and Allsop JJ.* held that though the accused were comparatively young men, one being 20 and the other 22 years of age, the capital sentence was proper as the murder was deliberate and cruel and there were no extenuating circumstances. In *Tiri v. Emperor*, AIR 1931 Rang 171, the Rangoon High Court rejected a prayer for the reduction of the death sentence passed on a boy under 18 years -- he had given his age as 16 -- and after a review of the case law enunciated what they considered to be the 'correct principle' that youth alone is not an extenuating circumstance which would justify the imposition of the lesser penalty for murder but should be considered with the other facts of the case. They took the view that in a case of cold-blooded and premeditated murder they would not be justified in inflicting the lesser penalty solely on the ground of the youth of the appellant.

20. There appears to be no reported authority in support of the contention that a young murderer can claim exemption from the death sentence on the ground of his age alone. This reason is negated by the language of Section 302 itself which says that whoever commits murder shall be punished with death or imprisonment for life and suggests that the choice between the extreme and the lesser penalty is not to be made on classification of murderers into categories on the basis of youth, sex and so on.

21. We shall now examine some of the decisions in which the youth of the murderer was considered a good reason for not inflicting a sentence of death, commencing of course with the Supreme Court. In *State of U. P. v. Hari Kishan Bakshi*, Cri. Appeal No. 27 of 1956, D/- 9-9-1958, (SC), the Court after observing that the accused had committed the crime of the murder of two defenceless women which they described as atrocious, reduced the sentence of death to life imprisonment for two reasons: (1) the youth of the accused at the time of the murder and (2) the fact that over four years had elapsed since the respondent was acquitted by the High Court.

It would be difficult to assert with certainty which weighed most with their Lordships, the youth of the murderer or the lapse of time. We venture to suggest

that it was the second reason and that the Supreme Court felt that it would not be proper to hang a man four years after he had been declared a free man by the High Court. But their Lordships fully approved of the death sentence passed on Bakshi by the trial court for they observed, 'the additional judge had rightly imposed the sentence of death on him'. The reduction of the sentence by the Supreme Court was, we venture to suggest, really prompted by subsequent events and in particular by a feeling that it would be inhuman to send a man back to the gallows four years after the High Court had granted him the right to live.

They were really expressing their distaste for the idea, tolerated in America, of executing a man after keeping him in the condemned cell, for tense and expectant, for several years during which, as Lord Justice Birkitt recently said of Caryl Chessman, 'he must have died a thousand deaths'. But the Supreme Court approved of the death sentence passed on Bakshi by the trial Court, which makes it impossible to interpret their judgment as enunciating the principle that the youth of the murderer by itself calls for the lesser punishment. In *Dalip Singh v. State of Punjab* : [1954]1SCR145 , the Supreme Court observed that for murder the death sentence should ordinarily be imposed, but the Court has the discretion to impose the lesser punishment for reasons which a judicial mind could accept.

22. In *Ghunnai v. Emperor* : AIR1934 All132 , a boy of 15 or 16 years of age committed a murder which the Division Bench in appeal described as "brutal and horrible'. They however observed that 'however horrible the crime, a boy of his age should not be hanged, that at the age of 15 and 16 when a boy had just come to the age of puberty he may do many things which he would never dream of doing when he was older and that the sentence of death should be remitted to transportation for life'. In that case the murderer, a boy whose age was described as under 15 by the Civil Surgeon, had murdered a boy of 8 years of age by chopping off his hands for the sake of some ornaments which the boy was wearing. The learned Judges observed his appearance and came to the conclusion that he would not have done this horrible deed if he had been older.

This does not appear to have been a case where the assailant had planned to kill. He wanted to obtain the ornaments of the smaller boy and chopped off his hands

in callous and brutal disregard of the likely effect of this amputation on his victim. There was no other injury on the body of the boy. The learned judges remitted the death sentence on the ground that the crime was due to the immaturity of the accused. The facts of that case were peculiar and quite different and distinguishable from those in the case before us. The accused Ram Singh was not 15 but 17 years of age and it is not possible to draw the inference of immaturity in view of the manner in which the murder was planned.

Moreover with respect to the learned Judges, if they intended to lay down any broad principle that youth in itself is a sufficient reason for not imposing the capital punishment, the principle is against the overwhelming weight of judicial authority and is not borne out by the scheme of the Penal Code.

23. These cases were not cited at the bar but we examined them ourselves during the hearing and, in our opinion, there is overwhelming authority for the principle that youth in itself is not a ground for imposing the lighter sentence.

24. In our opinion, Ram Singh can claim the lesser penalty only if it can be shown that there are extenuating circumstances which entitle him to claim exemption from the death sentence. It is, therefore, necessary to examine the circumstances in which this murder was committed. Ram Singh was the domestic servant of Mr. and Mrs. Kapoor. He started on an initial salary of Rs. 15/- per month which was subsequently increased to Rs. 24/- plus free board and clothing. He was obviously well-treated and had no cause for harbouring any ill-feeling nor does he say that he had any towards his master and mistress. In spite of this he entered into a conspiracy to murder his employer which was carried out in a callous, cold-blooded manner and according to plan.

The first step was to provide themselves with daggers or knives. Ram Singh stole a knife which Mr. and Mrs. Kapoor had brought while holidaying in Kashmir in June 1959. Mrs. Kapoor has deposed that the knife disappeared one month before the murder, which indicates that the plans for the murder had matured before the date on which it was committed. The assassins then waited till Mr. Kapoor brought home his pay for the month of May 1959. This he did on 5th June and they struck on the night of the 7th. They chose the small hours of the morning when sleep lulls

all living begins and they knew that their intended victims were likely to be in deep slumber.

The order in which they picked their victims was shrewd. First they proceeded to liquidate the only male member in the house the head of the family who alone could offer powerful resistance to them. He was killed in his sleep. What they would have done next if Mrs. Kapur had not been awakened by her husband's death-groan is not difficult to guess. Their object appears to have been robbery which could have been carried out undisturbed only if the other adult person was also disposed of. That they were in a mood to stick at nothing is shown by Ram Singh's conduct after the other murderer had plunged his knife into Mr. Kapur's chest. Ram Singh raised his hand to deliver a second knife thrust presumably to make sure of the victims death.

But Mrs. Kapur, in a rare act of courage, sacrifice, and devotion which will inspire many hearts, threw herself on her husband and by making her own body his shield took the knife thrust on herself. Her shrieks must have made the assassins realise that help was on the way and the game was up. Then Gopal, in an attempt to destroy the only eye-witness of their murder aimed his knife at Mrs. Kapur but succeeded only in stabbing her in the upper arm. What probably saved her was the assassin's desire to escape before help, which was on its way, arrived.

These were the circumstances in which Ram Singh and his associate committed this murder. We have given every possible consideration to the fact that Ram Singh is alleged to be of 17 years of age, but we are unable to find any extenuating circumstance in this crime. We have given due weight to Mr. Mulla's eloquent plea that Ram Singh does not deserve the death sentence as he may have done the deed under the influence of Gopal. But we are unable to agree that he was misled or influenced by his associate in crime. There is not a scrap of evidence to suggest this, on the contrary there are indications that without his active help the murder could not have been committed.

As the domestic servant of Mr. and Mrs. Kapur he was in a position to move about the house and know their habits. He must have revealed to the other assassin the position of the bedroom and of the Godrej safe in it, and even the usual positions

of their victims in bed. While Gopal was plunging his knife into his victim's chest. Ram Singh was ready with his own weapon to finish the murder. His knife thrust was not on any signal or call for help from Gopal, he was standing poised to complete the job of killing. Unlike Gopal, he was bound to his employers by ties of duty and confidence which even in this age of dissolving loyalties have some meaning for decent people. Mr. Kapur had raised his wages and he must have been treated well, for he had stayed with them for three years. In the annals of crime it would be difficult to find many cases to match the conduct of this person in treachery and infamy. He was an active accomplice in this crime and there is nothing to distinguish his case from that of Gopal except his age. We are, therefore, of the opinion that the learned Sessions judge was right in his view that Ram Singh deserved the punishment of death,

25. For these reasons we confirm the deatissentences and dismiss both the appeals. The reference by the learned Sessions Judge is confirmed. The sentence of death shall be executed in accordance with law.

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