

State of Orissa Vs. Kiran Kumar Bedi

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Court : Orissa

Decided On : Jan-25-2006

Reported in : 2006CriLJ1381; 2006(I)OLR262

Judge : S.B. Roy, C.J. and; M.M. Das, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 307 and 324; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161 and 366; [Constitution of India](#) - Article 21

Appeal No. : DSREF No. 1 of 2004 and Jail Criminal Appeal No. 15 of 2004

Appellant : State of Orissa;kiran Kumar Bedi

Respondent : Kiran Kumar Bedi;state of Orissa

Advocate for Def. : D. Panda,; D.P. Dhal,; G.R. Mohanty, A.K. Parida and

Advocate for Pet/Ap. : D.C. Mohanty, Government Adv. in DSREF No. 1 of 2004 and; D. Panda,;

Disposition : Appeal allowed

Judgement :

M.M. Das, J.

1. In Sessions Trial Case No.185 of 2002, the appellant-Kiran Kumar Bedi has been convicted under Section 302 I.P.C. for committing murder of the deceased Mahendra and Sumitra and under Section 307 I.P.C. for attempting to murder the injured Bhubaneswari. He has been sentenced with a punishment of death for the offence committed under Section 302 I.P.C. along with fine of Rs.2,000/-, in default, to undergo R.I. for six months and has been further sentenced to undergo R.I. for ten years and to pay a fine of Rs.1,000/-, in default, to undergo R.I. for three months for the offence committed under Section 307 I.P.C. by the learned Sessions Judge, Puri.

2. The convict has also preferred JCRLA No.15 of 2004 from the prison challenging the conviction and sentence as stated above. The sentence of death having been passed against him, the matter has been referred to this Court under Section 366, Cr.P.C. in DSREF No.1 of 2004 for confirmation of the said sentence.

3. One Bhramarlal Purohit, the father of the two deceased persons who originally belongs to the State of Rajasthan, has been carrying on wholesale bangle business at Red-Cross Road, Puri town since the year 1977. It is the case of the prosecution that the accused-Kiran Kumar Bedi was supplying bangles to the said Bhramarlal Purohit for which said Bhramarlal developed acquaintance with the accused. Sometimes the accused was staying in the house of Bhramarlal during his visit to Puri. The accused came to the house of Bhramarlal on 3.12.2001 around 8.30 P.M. and stated before him that as he could not invite them to his marriage which has taken place in the meanwhile, he had brought some sweets (Ladu) and distributed the same to the inmates of the house of Bhramarlal. He took food in their house and slept in one room in the ground floor. Two other bangle dealers, namely, Kedar Mohan Dora (P.w.4) and Keshab Dora (P.w.5) of Brahmagiri had also come to the house of Bhramarlal in connection with their business that day. The injured-informant-Bhubaneswari Purohit (P.w.6) who is the daughter of said Bhramarlal (P.w.14) and her elder sister Sumitra (deceased) had slept in one cot whereas her elder brother Mahendra (another deceased) slept in another cot in one room in the first floor of the house. Bhramarlal and his wife slept in the first floor of the house in a separate room. At about 1 A.M. in the night, the accused asked for drinking water which was provided to him by the informant

(P.w.6). After giving water to the accused, the informant went and slept in the first floor. The prosecution further alleges that at about 2 A.M. in the night, the accused went to the first floor and assaulted Mahendra Purohit by means of a knife while he was asleep. Hearing the alarm raised by Mahendra, the informant got up and protested. On such protest, the accused gagged her mouth and assaulted her by means of the said knife. Thereafter, the elder sister of the informant Sumitra also got up and the accused dealt knife blows on Sumitra. As a result of such assault, he fell down on the ground with profuse bleeding. After the incident, the accused came down to the ground floor. After hearing noise, the other persons who were sleeping in the ground floor came to the first floor and saw the incident. The deceased Sumitra, deceased Mahendra and Bhubaneswari (P.W.6) were taken to the District Headquarters hospital, Puri by the police who arrived at the spot soon after the incident on being informed by the watch-man (P.W.3). Sumitra died in the hospital at Puri next day. Deceased Mehendra and the injured-informant were shifted to the S.C.B. Medical College, Cuttack where Mahendra succumbed to the injuries after three days. While at the hospital at Puri, P.W.6 lodged a written report on 4.12.2001 at about 4.30 A.M. in the early morning at Kumbharapara Police Station on the basis of which a case was registered and the police took up investigation. After completion of investigation, charge-sheet was filed against the accused under Sections 302, 307, 324 I.P.C. In due course, the case was committed to the Court of Session and the charges under the above sections were framed against the accused.

4. The plea of the accused was one of complete denial of the occurrence.

5. The prosecution examined as many as 23 witnesses. The sole eye-witness to the occurrence is the injured-informant Bhubaneswari (P.W.6).

P.W.6, the alleged eye-witness during her examination in Court has stated that on 3.12.2001 at about 10 F.M. the accused came to their house and offered sweets to her, he? sister Sumitra and her mother. The mother of this witness consumed a little of the sweets, but this witness as well as her sister did not take the sweets. She further stated that her brother-Mahendra (deceased) also ate the sweets. When she along with her sister Simitra and brother Mahendra were sleeping in

one room on the first floor, around mid night, P.W.4- Kadirmohan Dora called over telephone and informed her that he will be coming to their house a little late. On receiving such call, she came to the ground floor and tried to wake up the accused, Prahallad Das (P.w.10) and one Tutu who were sleeping there. Only the accused got up and took out the key of the gate from under the pillow of Prahallad and handed over the same to this witness who opened the grill-gate. After Kadirmohan Dora (P.w.4) entered inside, she locked the gate and went up-stairs. She has stated that the accused told her to keep the bed-room doors open as he and Mahendra (deceased) were to go to the temple in the morning. At about 2 A.M. in the night, hearing the cry of her brother, this witness got up and saw the accused stabbing her brother with a knife. When she tried to rescue her brother, the accused assaulted her. By this time, her sister Sumitra got up and when she attempted to rescue them, the accused picked up the knife which has fallen on the ground and stabbed her giving 13 to 14 strokes on different parts of her body. Thereafter, the accused went out of the room. This witness called her parents and told them that the accused had stabbed both Mahendra and Sumitra. She has further stated that the accused thereafter went to the ground floor with the knife. Mohan (P.W.4) got up and came to up-stairs who was also told by this witness that the accused stabbed her brother and sister. Hearing the whistle sound of the watch-man of the street (P.W.3), this witness stated that she came down and opened the gate for the watchman to come inside. She also disclosed before the said watchman that the accused assaulted her sister and brother. Locking the gate, P.W.3 accompanied this witness to the upstairs, saw the place of occurrence and thereafter went out of the house. This witness was carried to the hospital when the police arrived after about half an hour and the written report was scribed by a person in the hospital, to the dictation of this witness, which has been marked as Ext.-6. She has identified the knife (M.O.I.) which was seized by the police on being given discovery by the accused while in police custody. From the cross-examination of this witness except confronting her with some of the statements given before the I.O. under Section 161 Cr.P.C., nothing substantial has been elicited to discredit her.

Dr. Pramod Ch. Swain (P.W. 1) is the doctor who conducted the post mortem on the body of deceased Sumitra. According to him, 14 external injuries were found

on her body and on dissection 3 internal injuries corresponding to 3 external injuries were also seen. Out of the said 14 injuries, seven injuries were on the hands and legs (thigh) and the other injuries were incised injuries on the back, chest and abdomen. On the opinion of the doctor, the cause of death was due to shock and haemorrhage due to the effect of injuries to the organs. Another Dr. Sraban Kumar Nayak conducted post mortem on the body of deceased Mahendra. It appears that the said doctor by the date of trial of the case resigned from the Government Service and his whereabouts was not known. The prosecution examined Dr. Nayan Kishore Mohanty (P.W.20) to prove the post mortem report prepared by the said Dr. Sraban Kr. Nayak. In his examination-in-chief, P.W.20 has stated that he is acquainted with the hand-writing and signature of Dr. Sraban Kr. Nayak who conducted post mortem on the body of deceased Mahendra on 7.12.2001. It is revealed from the said report Ext. 42 that in all five external injuries were found on the body of deceased Mahendra; two of the said injuries were found on the body of deceased Mahendra; two of the said injuries were on the neck and opined to be stab injuries; the other two injuries were stitched by the time the post mortem was conducted and they were on the neck and clavicular region and the other one injury was multiple small superficial cut wound on the neck. Two stab injuries were found to have gone up to the muscle without causing injury to any vital organ. On removing the stitches from the other injuries, the doctor found the said injuries to be muscle-deep gone in an oblique upward and lateral direction up to the posterior aspect of oesophagus in the root of neck without cutting the trachea. In cross-examination of both the doctors, nothing substantial has been elicited so as to discredit their testimonies.

P.W. 11 is Dr. Prabhat Kumar Sahu who was working as an Asst. Surgeon in the District Headquarters Hospital, Puri when on police requisition, the father of the deceased Bhramarlal (P.W.14), one Kailash Behera (P.W.12) and the informant-Bhubaneswari (P.W.6) were examined by him. He did not find any injury on the person of Bhramarlal and Kailash. However, it appears from this statement given in Court that he found four injuries on the person of Bhubaneswari (P.W.6). All the said injuries were incised wounds, out of which two injuries were on the head, one on the neck and the other on the forearm. It appears from his statement that he examined the deceased Mahendra who was alive by then. He found two injuries

on his person; one stab injury over front lower neck and another stab injury over right back of the neck. The first injury, according to this witness, was grievous in nature and the second one was a simple one.

P.Ws. 2, 7, 8 and 16 are seizure witnesses, P.Ws. 9 and 14 are the parents of the deceased, P.Ws 4, 5 and 10 are the bangle dealers who were sleeping in the ground floor on the date of occurrence, P.W.12 is the servant working in the house of the deceased, P.W.13 is the police constable who carried the dead body of deceased Sumitra for post mortem examination, P.W.17 is the Scientific Officer, D.F.S.L., Puri who collected incriminating articles from the spot, P.W.18 is the Police Officer who conducted inquest on the dead body of deceased Mahendra, P.W.19 is an A.S.I, of Police who is a post-occurrence witness, P.W.21 is another doctor who was requested by the police to record the dying declaration of the deceased Mahendra and has stated in Court that as the deceased Mehendra was in a delirious stage, his dying declaration could not be recorded, P.W.3.is the watchman who went to the spot immediately after the alleged occurrence and P.Ws. 20 and 23 are the Investigating Officers.

6. We have carefully perused and scanned the evidence of these witnesses from which we find that they have materially corroborated the evidence of the eye-witness-P.W.6 and nothing has been elicited during their cross-examination to discredit their statements. We are, therefore, in agreement with the finding of the learned Sessions Judge in coming to an irresistible conclusion that the prosecution has proved beyond reasonable doubt that the deceased Sumitra and the deceased Mahendra were murdered by the accused Kiran Kumar Bedi who also caused injuries on the person of the informant Bhubaneswari (P.w.6). We, therefore, find no reason to interfere with the conviction of the accused as recorded by the learned Sessions Judge under Sections 302 and 307 I.P.C. Accordingly, JCRLA No.15 of 2004 filed against the judgment of conviction of the accused is dismissed.

7. Before proceeding to discuss as to whether the death sentence imposed by the learned Sessions Judge on the accused Kiran Kumar Bedi should be confirmed or the same should be commuted to life imprisonment, though large number of

decisions were Cited by the learned Counsel for the accused, for the sake of brevity, we do not like to refer to each of the said cited decisions as the position of law with regard to imposition of capital punishment is fairly settled.

Amnesty International, a human rights organization in United Kingdom, opined that the death penalty is a violation of the right to life and the ultimate cruel, inhuman and degrading punishment and it opposes the death penalty unconditionally. Justice P.N. Bhagwati, the then Chief Justice of India, observed as follows :

There are no objective standards regulating the imposition of the death penalty. Life is too precious a thing to be submitted to the subjective decision of a judge.

8. Indian penology is basically guided by the principle of punitive justice guarded by deterrence and revenge. This is, no doubt, contrary to the well settled principle of retribution, rehabilitation and the dictum that one should hate the sin and not the sinner. Death penalty was challenged as being unconstitutional before the Supreme Court in the case of *Bachan Singh v. State of Punjab* : 1980 CriLJ636 and has been retained on the ground that it can be awarded only in 'rarest of rare cases' and 'for special reasons'. It was held that death penalty is not unconstitutional and does not offend Article 21 of the [Constitution of India](#). A three-Judge Bench of the Apex Court in the case of *Machhi Singh v. State of Punjab* : 1983 CriLJ1457 , following the decision in the case of *Bachan Singh* (supra) observed that the rarest of rare cases is 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 or when the murder is committed for a motive which evinces total depravity and meanness, where the murderer is in a dominating position or in a position of trust, or a murder is committed in the course of betrayal of the motherland etc; The Apex Court has laid down the following principles :

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

(ii) The circumstances of the 'offender' also requires to be taken into consideration along with the circumstances of the 'crime';

(iii) Life imprisonment is the rule and death sentence is an exception; and

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

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 and

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

The Supreme Court, however, has made its intentions clear by refusing to lay down a stark distinction of what constitutes the 'rarest of the rare cases' and left it to the discretion of the judges hearing the case.

9. In the case of Bachan Singh (supra), the Supreme Court has laid down certain circumstances as 'aggravating' and 'mitigating' circumstances. Going through various judgments of the Supreme Court, we find, the same do not provide a clue as to what constitute 'rarest of the rare'. No mathematical formula can be applied so as to deduce that in a particular circumstance nothing but the death penalty can be imposed. The decisions of the Apex Court are, however, unanimous that the Court while exercising such a discretion, on the facts and circumstances of the case, should assign good reasons as to why a case falls under the category of 'rarest of the rare cases' and the capital punishment should be imposed.

10. Learned Government Advocate was called upon by the Court to submit on the question of confirming or commuting the death penalty. He, however, quoted the dialogue of the character 'Portia' before the Venice Court of justice in Shakespeare's Merchant of Venice, which is quoted hereunder:

The quality of mercy is not strain'd, it droppeth as the gentle rain from heaven upon the place beneath : it is twice blest; it blessth him that gives and him that takes: 'Tis mightiest in the mightiest: it becomes the throned monarch better than his crown; is scepter shows the force of temporal power; the attribute to awe and majesty; wherein doth sit the dread and fear of kings; but mercy is above this sceptred sway; it is enthroned in the hearts of kings; it is an attribute to God himself; and earthly power doth then show likest God's when mercy seasons justice. Therefore, Jew, though justice be thy plea, consider this, that, in the course of justice, none of us should see salvation; we do pray for mercy; and that same prayer doth teach us all to render the deeds of mercy. I have spoke thus much to mitigate the justice of thy plea; which if thou follow, this strict Court of Venice must needs give sentence 'against the merchant there.

We, are, however, constrained to observe that 'mercy' is something foreign to the Indian penology and administration of criminal justic by the Courts in our country and therefore, we refuse to take into consideration the above dialogue which is more 'literature' than 'law'.

11. From the evidence on record, we find that in the written report drawn up to the dictation of the informant (P.W.6), nothing was stated with regard to the accused offering sweets (Ladu) to the inmates of the house of the deceased. This witness also did not state this fact before the Investigating Officer though she has stated so in her deposition in Court. Similarly, the mother of the deceased Mahdnera and Sumitra, though stated in Court that the accused offered sweets to them, did not state the same before the Investigating Officer in her statement recorded under Section 161 Cr.P.C. The other witnesses, who were alleged to have been offered sweets by the accused, also did not state the said fact during the course of investigation before the Investigating Officer. P.W.8 is a seizure witness in whose presence some packets were seized along with other articles under the seizure list. The Investigating Officer (P.W.22) is stated to have seized the sweets packets and also a steel container containing some sweets (Ladu), under Ext-7. He further stated that he seized a black cloth bag containing some sweets (Ladu) which were kept in a packet with the writing 'MURARIBALA KUAN BADA BAZAR SAMLEE' along with other articles.

12. The evidence of the witnesses with regard to the allegation that the accused offered sweets to the inmates of the house of the deceased is not trust-worthy as we find material contradictions in those statements. No evidence whatsoever has been adduced by the prosecution to connect the black cloth bag containing sweets (Ladu), with the accused. None of the witnesses examined by the prosecution has also stated that the accused brought the sweets or distributed the sweets from the said black cloth bag. We, therefore, cannot place reliance on the allegation of the prosecution that the accused offered sweets to the inmates of the house of the deceased and some of the said sweets Were kept in the said black cloth bag seized by the police.

13. On examining the judgment of the learned Sessions Judge with regard tot the reasons assigned for imposing death penalty on the accused after holding that the case comes under the category of 'rarest of rare cases', we find that the learned Sessions Judge has surmised that the said black cloth bag containing sweets (Ladu) kept in a packet with the writing on it 'MURARIBALA KUAN BADA BAZAR SAMLEE' was brought by the accused from Delhi and he made a calculated plan right from his place of journey and mixed intoxicants with the sweets with a view to execute his plan of murder without any hindrance. We find that upon coming to such a finding, the learned Sessions Judge came to the conclusion that the offence committed by the accused was pre-planned, calculated and cold blooded which can be taken as an aggravating circumstance. The learned Sessions Judge appears to have been carried away by the materials brought before the Court that the accused touched the feet of Bhramarlal, the father of the deceased persons and in concluding that such act shows that the accused is a hypocrite.

14. Considering the mitigating circumstances in favour of the accused, we find that the accused is a young man of about 30 years and there is all probability of the accused being reformed and rehabilitated. We, therefore, find no special or extraordinary circumstance in this case by which it can be treated in a separate manner so as to bring it within the fold of 'rarest of rare cases'. In our considered opinion, therefore, the present case cannot be termed as a 'rarest of rare cases'. Keeping in mind the broad guidelines laid down by the Apex Court in the case of Bachan Singh (supra) and Machhi Singh (supra), in our opinion, the extreme

penalty of death should not be imposed on the accused. We, therefore, decline to confirm the death penalty imposed by the learned Sessions Judge in his judgment and commute the same to life imprisonment. The other sentences imposed by the learned Sessions Judge remain unaltered.

The death reference is answered accordingly.

S.B. Roy, C.J.

15. I agree.

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