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**Subash Chander Etc. Etc. Vs. Krishan Lal and ors. Etc. Etc.**

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**Court** : Supreme Court of India

**Decided On :** Mar-29-2001

**Reported in** : AIR2001SC1903; 2001(1)ALD(Cri)749; 2001ALLMR(Cri)1257(SC); 2001(2)ALT(Cri)131; 2001CriLJ1825; 2001(2)Crimes193(SC); JT2001(4)SC444; 2001(3)SCALE130; (2001)4SCC458; [2001]2S; [2001] 2 SCR 864

**Judge** : K.T. Thomas and; Mr. R.P. Sethi, JJ.

**Acts** : Indian Penal Code (IPC), 1860 - Sections 57, 120B, 148, 149, 302, 307 and 450; Indian Arms Act, 1959 - Sections 27; Crimianl Procedure Code, 1973 - Sections 313 and 401; Prison Act

**Appellant** : Subash Chander Etc. Etc.

**Respondent** : Krishan Lal and ors. Etc. Etc.

**Advocate for Pet/Ap.** : Mr. Ranjit Kumar,; Mr. U.R. Lalit, Sr. Advs.,; Ms. Aparna B

**Judgement** :

**Sethi, J.**

1. Legends reveal and the people believe that in the ancient Indian society Bhagwan Krishna took birth to reprieve the suffering humanity from the terror let loose by the demon named Kansa. The birth of Lord Krishna, Janmasthami, is celebrated every year to commemorate the birth of truth for elimination of

repression and atrocities. Ironically, thousands of years thereafter, on the day of Janmasthami in the year 1992, the accused, unfortunately named Krishan, along with others, became a devil and like vultures pounced upon the family of Bhagwan Ram, the deceased. After committing a ghastly crime, the accused persons left the scene of occurrence, satisfied with their design of killing the whole of the family. To their misfortune, two of the injured survived who appeared against the accused as PWs 2 and 3. The deceased included Bhagwan Ram, his son Sunder Ran, and Chando Devi, his mother. Spree of killing was resorted to, for eliminating the prosecution witnesses against some of the accused persons who earlier, on 25th June, 1987, had committed the crime of murder of Om Prakash, another son of Bhagwan Ram.

2. Apparently with the police connivance, the charge-sheet was filed against accused Krishan Lal and four others, namely, Bikar Singh, Mangu Singh, Major Singh and Om Prakash, the later four being not even named in the FIR or in the statements of PWs 2, and 3, recorded under Section 161 of the Criminal Procedure Code. It was only on the judicial intervention that ultimately charge-sheet was filed against 12 persons including the convicted appellants. The trial court concluded that offence under Sections 302 307 148 450 read with Sections 149 120B and Section 307 read with Sections 149 and 120B IPC had been proved against the accused persons, namely, Krishan Lal(A1), Mangu Singh(A2), Bikar Singh(A3), Major Singh(A4), Vishu(A6), Banwari(A7), Prithvi(A8), Bri Jal(A9), Dhokal(A10), Bhagirath(A11) and Het Ram(A12). One of the accused persons, namely, Om Prakash(A5) was, however, acquitted. Upon conviction, the trial court awarded death sentence to all the accused persons who were convicted under Section 302 read with Sections 149 and 120B of the Indian Penal Code and fine of Rs.25,000/- each. All the convicted persons were also sentenced to life imprisonment and fine of Rs.2000/- each for the commission of the offence under Section 307 read with Sections 149 and 120B IPC, seven years rigorous imprisonment with a fine of Rs.2000/- each for the offences punishable under Section 450 of the IPC. They were further sentenced to three years rigorous imprisonment and a fine of Rs.2000/- each for the offence punishable under Section 148 and a 6 month rigorous imprisonment and a fine of Rs.1000/- each for the offence under Section 27 of the Indian Arms Act. It was further directed that

after recovery of tine, the full amount be paid as compensation to injured Subash Chander (PW2). Reference was made to the High Court for confirmation of the capital sentence awarded to the accused persons. Feeling aggrieved all the convicted persons filed appeals in the High Court. The State did not file any appeal against the acquittal of Om Prakash, accused.

3. All the four appeals filed by the convicted persons and the reference arising out of the judgment of the trial court were disposed of by a common judgment now impugned in these appeals. The High Court upheld the conviction of convicts, namely, Krishan Lal(A1), Vishnu(A6), Bhanwari(A7) and Prithvi(A8) but commuted the death sentence to the imprisonment for life. Their appalls against the sentences in relation to other offences were rejected.

4. Not satisfied with the judgment of the High Court, Subash Chander, (PW2) has filed two sets of appeals bearing Nos.812-814 of 1999 and 815-816 of 1999 praying for setting aside the order of acquittal and awarding of death sentence to the convicted persons as was done by the trial court. The four convicted accused have filed two sets of appeals bearing Criminal Appeal Nos.817-818 of 1999 and 819-820 of 1999 praying for their acquittal by setting aside the conviction and sentence awarded to them by the trial court and the High Court. Criminal Appeal Nos.821-822 of 1999, 1017 of 1999, 98 of 1999 and 290 of 2001 have been filed by the State of Rajasthan seeking quashing of the order of acquittal and for award of death sentence to the convicted persons. It may be noticed, at this stage, that Subhash Chander in his appeals has not challenged the acquittal of the accused persons, namely, Bikar Singh(A2), Mangu Singh(A3), Major Singh(A4) and Om Prakash(A5). The State of Rajasthan has, however, prayed for setting aside the order of acquittal relating to Bikar Singh, Mangu Singh and Major Singh, as well.

5. We have heard the learned counsel for the parties appearing in the case at length and propose to dispose of all these appeals by this common judgment.

6. The facts of the case, as unfolded during the trial, are that the families of Bhagwan Ram, deceased and Krishan Lal, accused ('A1') had an old enmity. Om Prakash, son of Bhagwan Ram was murdered on 25th June, 1987 by A1 along with Vishnu (A6), Bhanwari (A7), Prithvi (A8) and one Gopi Ram. Bhagwan Ram,

his sons Sunder Ram and Subhash Chander (PW2) had been cited as eye-witnesses in that case. During the pendency of the trial A1, A6, A7 and A8 had been released on bail. A6 is the brother and A7 and A8 are uncles of A1.

7. On the intervening night of 21/22nd August, 1992, Subhash Chander (PW2), his father Bhagwan Ram, his brother Sunder Ram, his grand-mother Chando Devi, his sister Raj Kumari and his maternal uncle Chandu Ram were sleeping in the courtyard of the house when at about 1 (SIC) Clock in the night the aforesaid four accused along with Brij Lal (A9), Dhokal (A10), Bhagirath (A11) and Het Ram (A12) intruded into the house and started indiscriminate firing on the sleeping family members of Bhagwan Ram. On hearing the gun shots, Subhash Chander(PW2) woke up and he saw in his house A1, A6, A7, A8, A9, A10, A11 and A12. Krishan Lal A1 exhorted others to spare no family member of Bhagwan Ram, deceased. He fired gun shots from his pistol which hit the bone of the right side hip and abdomen of Subhash Chander. When he (PW2) ran from the place of occurrence to save his life, another shot was fired at him. His father, brother, grand-mother and sister also suffered gun shot injuries. During the spree of gun shots, the accused persons were calling each other by their names. When the accused were standing in the courtyard of the house of the deceased persons, PW2 had came out of his room with torch and flashed it on them which confirmed the identification of the accused. When everybody belonging to the family of Bhagwan Ram fell after receiving gun-shot injuries, A1 declared that the work is over, whereafter the accused persons left the place. PW2 came out of the room and saw that due to sustaining of various injuries, the condition of his grand-mother was serious, whereas his father and brother had died. After the accused fled away, PW2 along with his sister Raj Kumari (PW3) went to the house of Mani Ram who is his father-in-law and narrated him the whole story. Mani Ram and his son took PW2 and his sister(PW3), in their jeep and got them admitted in the hospital. On the basis of the statement of PW2 FIR No.279/92 was registered at Police Station Pili Banga and investigation commenced.

8. During the investigation PWs2 and 3 were got medically examined. Empty cartridges of copper, empty shells of 12 bore dot-gatte, rubber, live cartridges, pellets, lathi, gandasi, blood smeared earth and plain earth were recovered and

sealed by the investigating agency. Inquest report and Panchayatnama of the dead bodies of Bhagwan Ram, Chando Devi and Sunder ram were prepared. Post mortem was got conducted on the dead bodies. Blood stained clothes of Subhash Chander (PW2) and Raj Kumari (PW3) were also seized.

9. On 7.2.1992 A1 voluntarily appeared in the police station and was arrested. He produced a pistol and two cartridges of 315 bore which were taken into police custody as evidence. A1, A2 and A3 were arrested on 11.9.1992. A(SIC) was arrested on 22.9.1992. On completion of investigation (SIC) challan was produced against Krishan Lal (A1), Bikar Singh (A2), Mangu Singh (A3), Major Singh (A4) and Om Prakash (A5). The investigating agency found the other 7 accused persons not involved in the case which included A6, A(SIC) and A8. Even though the accused, apparently with the con(SIC) of the police, attempted to mislead the court by filing a case against A2 to A5, yet their attempt was foiled by the court, who after hearing the arguments on protest petition filed by Subhash Chander (PW2) took cognizance against all the remaining 7 suspect persons and summoned them as accused in the case. After committal, the accused persons were charged for the various offences under the Indian Penal Code and the Indian Arms Act. The accused persons denied the charges and claimed trial. To prove its case, the prosecution examined 12 witnesses and relied upon various documents exhibited as Exhibit P-1 to Exhibit P-80.

10. In his statement recorded under Section 313 of the Cr.P.C., Het Ram (A12) submitted that he was innocent and that he along with Om Prakash, Sheshkaran and Kashi Ram had gone to Sardarpura at 8.00 a.m. on the day of the occurrence and returned home at 12.30 in the night after leaving Kashi Ram in his village, Bhagirath (A11), Dhokal (A10) and Brij Lal (A9) pleaded alibi. Banwari Lal (A7) stated that on the fateful night he was in the Dhani of Lado Ram at Chak (SIC) LKS as Lado Ram had died. Vishnu (A6) submitted that on the day of Janmasthami he had gone to Ganganagar and for the night he stayed there in the house of Krishan son of (SIC)Bhola Ram. Other accused persons pleaded innocence and took a plea of total denial. In their defence, the accused persons produced 10 defence witnesses and relied upon documents marked Exhibit D-1 to D-7.

11. The trial court convicted all the accused persons and sentenced them to death whereas the High Court convicted only four appellants vide the judgment impugned in these appeals, as noticed earlier.

12. After going through the statements of witnesses and the record produced in the case we have come to the conclusion that there did not exist any evidence against A2 to A5 of whom A5 was rightly acquitted by the trial court and A2 to A4 by the High Court. We have noticed with pain that the aforesaid four accused persons were impleaded not only to mislead the court but also to provide protection to the real culprits being sure that ultimately no court could convict and sentence any of the aforesaid four accused persons. Mr.Ranjit Kumar, learned Senior Counsel appearing on behalf of Subhash Chander, appellant has been fair to concede that there is no evidence against the aforesaid accused persons warranting their conviction and sentence. We, therefore, confirm the acquittal of the aforesaid accused persons and dismiss the appeals filed by the State against the acquittal of A2 to A4.

13. Out of the Accused Nos.9 to 12, Dhokal (A10) is stated to have died during the pendency of these appeals. The trial court had convicted and sentenced A9 to A12 on the basis of the statements of PW2 Subhash Chander. Finding that his version of occurrence, in so far as those accused persons are concerned, was not supported by Raj Kumari (PW3), High Court acquitted them. It is true that the names of A9 to A12 are mentioned in the FIR lodged by PW2 and reiterated by him in his deposition in the trial court but Raj Kumari (PW3) categorically stated that after receiving the gun shot injuries she, along with Subhash Chander (PW2) had hidden themselves in the room and when Subhash Chander came out of the room with torch, gun shots were again fired at him which forced him to return back. At that time 'Krishan, Vishnu, Banwari, and Prithvi were calling each other by their names and said that work is over, let us go. The fact of going was said by Krishan'. At the trial, the court observed that 'while identifying correctly to the accused persons namely Krishan, Banwari, Vishnu and Prithvi the witnesses stated that these are the 4 accused persons who fired gun shots'. PW3 has been categoric in the stating that only four accused, namely, A1, A6, A7 and A8 were the persons who had come on the spot and fired gun shots. She has neither named any other

person nor identified the rest of the accused persons in the court. She has not even stated that the aforesaid four accused persons were accompanied by any other person also. By referring to the statements of PWs2 and 3 the Division Bench of the High Court observed:

'A critical examination of the testimony of two eye-witnesses PW2 Subhash Chandra and PW3 Raj Kumari shows that as regards the four accused persons, namely, Krishan, Vishnu, Banwari and Prithvi, there is no variance in the testimony of these two eye-witnesses. The testimony of PW3 Raj kumari has not been shaken in the cross-examination and, therefore, on the basis of the testimony of Raj Kumari corroborated by PW2 Subhash Chandra these 4 accused persons can be held to be present at the scene of occurrence and it can be safely held that they have used gun shots as alleged by this witness and as corroborated by PWe Subhash Chandra. In relation to the other four accused persons, namely, Dhokal, Brij Lal, Het Ram and Bhagirath a doubt is created as to whether they were in fact present or not because had they been present Raj Kumari would have definitely named them. May be that they were present and Raj Kumari had missed their presence but if an injured witness misses to name the four accused persons then such absence goes in favour of the accused persons and, therefore, notwithstanding the testimony of PW2 Subhash Chandra the presence of these four accused persons is held to be doubtful. May be that they were not present on the scene of occurrence at the time of the incident. In this background of doubt, it can be said that the presence of the four accused Krishan, Vishnu Banwari and Prithvi is held proved. Presence of four accused Dhokal, Brij Lal, Het Ram and Bhagirath is held doubtful.'

14. We also agree with the conclusions arrived at by the High Court regarding the role played by A9 to A12 and find no reason to interfere with the judgment of acquittal passed in their favour by giving them the benefit of doubt. The appeals filed by Subhash Chander and the State in so far as A9 to A12 are concerned, are dimissed.

15. Both the trial court as well as the High Court have, upon appreciation of evidence, concurrently found accused Krishan Lal (A1), Vishnu (A6), Bhanwari

(A7), Prithvi (A8) guilty of the offences with which they were charged. Involvement of the aforesaid accused persons is fully established by the testimony of Subhash Chander (PW2) and Raj Kumari (PW3). Subhash Chander (PW2) has stated that on the day of occurrence he, along with other members of the family, was sleeping in the courtyard of his house. On hearing the sounds of gun-shot firing, he woke up along with others and saw A1, A6, A7 and A8 along with others firing with their weapons. A1 fired pistol shots which hit the witness. A1 exhorted others that nobody from the family of Bhagwan Ram should escape. When the witness tried to escape by running towards his room, he was again fired at. Raj Kumari (PW3) also sustained bullet injuries. He saw the accused persons in the torch light and also recognised them as they were calling each other by their names. In consequence of the gun shot injuries Bhagwan Ram, Sunder Ram and Chando Devi died. The crime is stated to have been committed on account of the enmity, with the object to eliminate the prosecution witnesses cited against the accused in the murder case pertaining to the death of the brother of the witness, namely, Om Prakash. To the same effect is the statement of Raj Kumari. The High Court has accepted the testimony of both the witnesses so far as A1, A6, A7 and A8 are concerned. Learned Senior Counsel appearing for the aforesaid accused persons could not point out any material infirmity in the depositions of the aforesaid witnesses which could persuade us to take a different view. Upon analysis of the evidence and the other relevant record produced in the case, we have no doubt in our mind regarding the involvement of the aforesaid accused persons for the offences with which they were charged, convicted and sentenced.

16. Mr.Ranjit Kumar, Senior Counsel who appeared for Subhash Chander, (PW2) vehemently argued that the trial court was not justified in commuting the death sentence and awarding the life imprisonment to the aforesaid accused persons. He has submitted that the present case was one which could be termed as rarest of the rare case warranting the extreme penalty imposable upon them under law. It is contended that mere fact that some of the accused persons were acquitted could not be made a ground for converting the death sentence into the life imprisonment. The manner in which the crime was committed on the helpless sleeping members of a family and design of the accused to eliminate the whole family justified the grant of death sentence. The reason given by the High Court for

not awarding the death sentence being vague and irrelevant, the judgment impugned to that extent is sought to be modified. In support of his contention the learned senior counsel has relied upon the judgments of this Court in Nirmal Singh & Anr. v. State of Haryana 1992 (2) 133, State of U.P. v. Dharmendra Singh & Anr. : 2000 CriLJ5 , Ram Deo Chauhan @ Raj Nath Chauhan v. State of Assam : 2000 CriLJ3954 and Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra : 2000 CriLJ4640 .

17. There is no denial of the fact that the accused convict-appellants, who were earlier involved in the murder of Om Prakash, son of Bhagwan Ram left no stone unturned to eliminate the whole family of said Bhagwan Ram including three eye-witnesses in that case, namely Bhagwan Ram, Sunder Ram and Subhash Chander. It is also established that the aforesaid accused persons attacked the deceased and the injured at the dead hour of the night when they were sleeping being incapable of defending themselves. The means adopted in execution of the evil designs speak of the mental condition of the accused persons whom the trial court found to have been involved in the commission of a crime termed by it as rarest of the rare cases. The High Court, while commuting the death sentences, appears to have completely ignored various pronouncements of this Court dealing with the yardsticks to be adopted while awarding the death sentence. Merely because 8 persons, convicted by the trial court, were acquitted, by itself cannot be termed to be a justified ground for commuting the death sentence. However, as the High Court, presumably on general conspectus and upon consideration of facts of the case, found that accused persons should not be awarded with death sentence, we feel that for interfering with the discretion of the court, further exceptional grounds are required to be made out. When two views are possible about the quantum of sentence, a view which favours the grant of life in comparison of death is generally accepted. But for the exercise of the powers by the High Court in commuting the death sentence we had some reservations about the sentence awarded vide the impugned judgment but in view of the exercise of discretion in commuting the death sentence we are not inclined to interfere with the sentence awarded to the accused persons specially Vishnu (A6), Bhanwari (A7), Prithvi (A8).

18. Mr.Ranjit Kumar, Senior Counsel alternatively contended that if a desperate accused like Krishan Lal (A1) is not awarded death sentence, he is likely to eliminate the remaining family members of Bhagwan Ram, as is evident from his past conduct and behavior. It is submitted that to protect the lives of innocent surviving family members of Bhagwan Ram, it is necessary to atleast deprive Krishan Lal (A1) of his life. We feel that the apprehensions expressed by the senior counsel are not without substance.

19. Faced with the situation Mr.U.R. Lalit, Senior Counsel appearing for the aforesaid respondents submitted that instead of depriving Krishan Lal (A1) of his life, the Court can pass appropriate orders to deprive the aforesaid accused person of his liberty throughout his life. Upon instructions, the learned Senior Counsel submitted that the said Krishan Lal, if sentenced to life imprisonment, would never claim his pre-mature release or commutation of his sentence on any ground. We record such a submission made on behalf of the said accused, upon instructions.

20. Section 57 of the Indian Penal Code provides that in calculating fractions of terms of punishment of imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. It does not say that the transportation for life shall be deemed to be for 20 years. The position at law is that unless the life imprisonment is commuted or remitted by appropriate authority under the relevant provisions of law applicable in the case, a prisoners sentenced to life imprisonment is bound in law to serve the life term in prison. In Gopal Vinayak Godse v. State of Maharashtra & Others : 1961 CriLJ736a , the convict petitioner contended that as the term of imprisonment actually served by him exceeded 20 years, his further detention in jail was illegal and prayed for being set at liberty. Repelling such a contention and referring to the judgment of the Privy Council in Pandit Kishori Lal v. King Emperor 1944 (1) 72 LR IndAp this Court held:

'If so, the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the Indian Penal Code, Code of Criminal Procedure or the

Prisons Act. Though the Government of India stated before the Judicial Committee in the case cited supra that, having regard to s. 57 of the Indian Penal Code, 20 year's imprisonment was equivalent to a sentence of transportation for life, the Judicial Committee did not express its final opinion on that question. The Judicial Committee observed in that case thus at p.10:

'Assuming that the sentence is to be regarded as one of twenty years, and subject to remission for good conduct, he had not earned remission sufficient to entitle him to discharge at the time of his application, and it was therefore rightly dismissed, but in saying this, their Lordships are not to be taken as meaning that a life sentence must and in all cases be treated as one of not more than twenty years, or that the convict is necessarily entitled to remission.'

Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words 'imprisonment for life' for 'transportation for life' enable the drawing of any such all-embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.'

21. In State of Madhya Pradesh v. Ratan Singh & Ors. : 1976 CriLJ1192 this Court held that a sentence of imprisonment for life does not automatically expire at the end of the 20 years, including the remissions. 'The sentence for imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government choses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure', observed the court. To the same effect are the judgments inSohan Lal v. Asha Ram & Others : AIR 1981 SC174a , Hagirath v. Delhi Administration : 1985 CriLJ1179 and the latest judgment inZahid Hussein & Ors. v. State of West Bengal & Anr. : 2001 CriLJ1692 .

22. Agreeing with the plea raised by the senior counsel of the convict-respondents and in view of the circumstances of the case particularly awarding of lesser punishment by the High Court, we are not inclined to award death sentence to any of the accused persons. While dismissing their appeals we confirm the conviction and sentence awarded to the aforesaid accused persons, namely, Krishan Lal (A1), Vishnu (A6), Bhanwari (A7), Prithvi (A8).

23. However, in the peculiar circumstances of the case, apprehending imminent danger to the life of Subhash Chander and his family in future, taking on record the statement made on behalf of Krishan Lal (A1), we are inclined to hold that for him the imprisonment for life shall be the imprisonment in prison for the rest of his life. He shall not be entitled to any commutation or premature release under Section 401 of the Code of Criminal Procedure, Prisoners Act, Jail Manual or any other statute and the Rules made for the purposes of grant of commutation and remissions.

24. In view of what has been stated hereinabove, the conviction and sentences awarded by the High Court to Krishan Lal (A1), Vishnu (A6), Bhanwari (A7), Prithvi (A8) are upheld with the rider that Krishan Lal (A1), for the rest of his life, shall remain in prison.

25. All the appeals filed by Subhash Chander, accused persons and the State are dismissed with a rider that Krishan Lal (A1) shall remain in prison for the rest of his life.

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