

Panchiya Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-22-1993

Reported in : 1993CriLJ2036; 1993WLN(UC)204

Judge : B.R. Arora and; N.K. Jain, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : D. B. Criminal (Jail) Appeal No. 312 of 1985

Appellant : Panchiya

Respondent : The State of Rajasthan

Advocate for Def. : V.R. Mehta, Public Prosecutor

Advocate for Pet/Ap. : Swanand Jasmatiya, Adv.

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. These two appeals arise out of the judgment dated August 23, 1983, passed by the Sessions Judge, Banswara, by which the learned Sessions Judge convicted the accused-appellant for the offence under Section 302, I.P.C. and sentenced him to undergo imprisonment for life and a fine of Rs. 1,000/-and in default of

payment of fine further to undergo three months simple imprisonment.

2. D. B. Criminal (Jail) Appeal No. 312 of 1985, has been filed by the accused-appellant challenging his conviction and sentence passed by the learned Sessions Judge, Banswara, while D. B. Criminal Appeal No. 245 of 1986, has been filed by the State for the enhancement of the sentence.

3. On September 15, 1984, in the night at about 11.00 p.m., Khatiya, Smt. Seeta, Manek, Rami and Kesar were murdered in their house situated in village Dunglawani Poslikheda in Banswara district. The report of the incident was lodged on 16-9-1984, at 8.00 p.m. by one Mangla at Police Station, Peepalkhunt. The case of the prosecution is that in the night of 15-9-1984, at about 11.00 p.m., accused Panchiya murdered his parents Khatiya and Smt. Seeta, brother Manek, brother's wife Smt. Rami and niece Kesar, by Bansla (a sharp-edged iron weapon) while they were sleeping in the house. The incident was witnessed by PW2 Itri (wife of the accused) and PW3 Dhulki -- the sister-in-law (younger brother's wife) of the accused. After the incident, PW2 Itri went to the house of Jeewna to call him for help. Jeewna was not present in his house and, therefore, she took Manki W/o Jeewna with her and both of them went to the house of Nariya, but Nariya was also not in the house and, therefore, Itri and Manki went to the house of Mangla and informed him about the incident and requested him for help. Mangla took Manji, Binjiya and Chokla with him and went to the house of Itri along with Itri and Manki. When Mangla, Binjiya and Chokla reached the house of Khatiya, Manek and Smt. Seeta were found succumbed to the injuries while Khatiya was still alive. The accused was also present in the house and was carrying on a Bansla as well as a peg. They sent Chokla to call Kasna. Kasna and Chokla came with a cot and thereafter Chokla, Manji and Kasna put Khatiya on the cot and took him to the house of Kasna. Mangla and Binjiya went to police out-post, Ghantali, to lodge the FIR, from where they were sent to Police Station, Peepalkhunt by the in charge of the Police Out Post, Ghantali, as it was a murder case. From Ghantali Police Out Post, Mangla and Binjiya went to Police Station, Peepalkhunt and lodged the report at about 8.00 a.m. The police, after necessary investigation, presented the challan against the accused. The accused was tried by the learned Sessions Judge, Banswara. The prosecution, in support of its case, examined eighteen

witnesses and placed reliance over thirty-two documents. The accused did not examine any witness in defence. The learned Sessions Judge, Banswara, by his judgment dated August 23, 1985, convicted and sentenced the accused-appellant for the offence under Section 302, I.P.C.

4. The nature of the evidence produced by the prosecution consists of two eyewitnesses, namely, PW2 Itri (wife of the accused) and PW3 Dhulki -- the sister-in-law of the accused, which is sought to be corroborated by the evidence of PW1 Mangla, to whom Itri, immediately after the occurrence, gave information regarding the incident and called him for help. PW4 Binjiya, PW6 Kasna and PW11 Manji are the persons who were called by Mangla and who took the injured Khetiya to the house of Kasna. PW12 Hakra and PW13 Dharji are the persons who took injured Khetiya to the Government Hospital, Banswara. PW7 Mohan Lal, PW8 Waliya, PW10 Hema and PW14 Sajjan Singh are the four Motbir witnesses. PW7 Mohan Lal came at the place of occurrence after hearing the voice of drum and at that time the accused was present there. He, along with the help of other persons, caught hold the accused and tied him with a rope. PW8 Waliya is a Motbir witness for the recoveries of the dead bodies of four persons. PW10 Hema is a Motbir witness to the site plan, recovery of Bansla and peg of the cot at the instance and on the information supplied by the accused. PW14 Sajjan Singh and PW13 Dharji are the witnesses to the Panchnama Lash Ex.P.21 of deceased Khetiya. PW15 Jai Singh, A.S.I. Police, Police Station, Peepalkhunt, PW16 Khushal Singh, PW17 Deena Ram and PW18 Dinesh Chandra are the four police witnesses. PW15 Jai Singh is the A.S.I. Police, Police Station, Peepalkhunt, who registered the FIR and went at the place of the occurrence. He saw Khetiya lying in an injured condition and along with a Tehrir, he sent Khetiya to Banswara for medical treatment. Before he could reach there, Head Constable Vishan Singh of the Police Out Post, Kantali, along with one constable had already reached there and had sent Khetiya to Banswara for treatment. He prepared the site plan Ex.P.2, site inspection memo Ex.P.3 and recovered the blood-smeared soil vide Ex.P.4, arrested the accused vide Ex.P.5, recovered his Dhoti and Bush-shirt from the person of the accused which were found stained with blood and sealed them. He also recovered Bansla and the peg vide Ex.P.7 at the instance and on the information supplied by the accused. Dead bodies of Rami, Seeta, Manek and Kesar were also recovered vide

Panchnama Lash Ex.P.12, Ex.P.13, Ex.P.14 and Ex.P.15, respectively. The dead bodies were sent for post-mortem examinations to the Government Hospital, Banswara. He also recovered the sample soil and sent all these articles for FSL examination to the State Forensic Science Laboratory, Jaipur. PW16 Khushal Singh was the Station House Officer, Police Station, Banswara, on 17-9-1984, who prepared the Panchnama Lash of Khetiya through A.S.I. Sajjan Singh at the Government Hospital, Banswara, and sent all the relevant papers for further investigation to the S.H.O., Police Station, Peepalkhunt, vide Ex.P.24. PW17 Deena Ram was the Constable posted at Police Station, Peepalkhunt, on 15-11-1984, who brought the sealed articles from Police Station, Peepalkhunt to the S. P. Office, Banswara, got them checked and thereafter took these articles for handing them over to the State Forensic Science Laboratory, Jaipur, for FSL examination and deposited the same there and took the receipt thereof. PW18 Dinesh Chandra was the L.C. Police working in the Office of the Superintendent of Police, Banswara, in the Crime Branch on 15-11-1984. Eleven packets in sealed conditions relating to FIR No. 50 of 1984 were brought by Deena Ram LC, which were checked by him and were sent along with the forwarding letter for FSL examination to the State Forensic Science Laboratory, Jaipur, through PW17 Deena Ram.

5. The prosecution case mainly rests upon the evidence of PW 2 Smt. Itri and PW 3 Dhulki the two eye witnesses of the occurrence, which is sought to be corroborated by the evidence of PW 1 Mangla, PW 4 Binjiya, PW 5 Manki and PW 6 Kasna and the recoveries of the bloodstained clothes and the weapon of offence which were recovered at the instance and on the information supplied by the accused-appellant. PW 2 Smt. Itri, who is the wife of the accused, has stated that on the fateful night, she was sleeping on her cot along with Smt. Rami and Dhooli and her three sons and one daughter. Her husband Panchiya was sleeping in the Ori along with Manek. Her mother-in-law and father-in-law were sleeping in the Padal. Suddenly she was awoken at about 10.00/11.00 p.m. on hearing the cries of Manekiya. She called Rami and Dhuli, also. Rami did not awake but Dhuli got-up and went on the Dagla. Her husband entered into the room but she escaped. The accused, at that time, was armed with the Bansla. She saw her mother-in-law Smt. Seeta and brother-in-law lying dead in the Padal and her father-in-law

Khetiya was lying injured there. Thereafter she went to the house of Jeewna but Jeewna was not in the house. From there she went to the house of Nariya along with Manki W/o Jeewna but Nariya was also not there in the house and thereafter she went to Mangla and informed him that her husband Panchiya has killed her mother-in-law, father in-law and brother-in-law. From there Mangla, Binjiya, Chokha and Manji came to her house. She further stated that the accused killed Manek and Seeta by Bansla and after killing them, he entered in the room where she and her two sisters-in-law (Devranies) her sons and daughter were sleeping. As soon as her husband entered, she took her daughter with her and went to the place where the catties are usually tied and hid herself. She has further stated that she had seen her husband killing her father-in-law, mother-in-law, brother-in-law and sister-in-law. A lengthy cross-examination has been conducted with this witness by the defence counsel, but nothing could be elicited which could have shaken her testimony. The witness remained intact throughout. She is the wife of the accused-appellant and nothing could be brought on record as to why she is deposing against the accused-appellant. She is a most truthful witness and has stood to the test of cross-examination.

6. Similar is the statement of PW 3 Dhulki -- the sister-in-law (brother's wife) of the accused. PW 3 Dhulki has stated that on the fateful night, she was sleeping along with her sisters-in-law Itri and Rami and Kesar -- the daughter of Rami. Her father-in-law was sleeping in the Padal along with his wife. Panchiya and Manek were sleeping in the Ori. At about 12.00 O'clock in the night, her sister-in-law (Jethani) called her and Rami and informed them that Panchiya has killed Manek, Khetiya and Seeta. She got up and went on the Dagla. In the meanwhile the accused opened the door and entered into the room. Rami and her daughter Kesar were sleeping there. At that time the accused was carrying a Bansla. Itri went outside the room. Panchiya accused inflicted injuries on the neck and face of Rami by Bansla and peg of the cot. He also killed Kesar. She saw this incident from the Dagla. The accused after killing both of them, slept along with his sons and the people of the village came there. When the people of the village came, the accused came out of the house and went towards the jungle. After the accused went away, she came down from the Dagla and saw her husband and mother-in-law dead. Khetiya was also badly injured and he was taken to Kasna's house. A

lengthy cross-examination has been conducted upon this witness by the learned counsel for the accused but the evidence of this witness remained unshaken and the witness stands to the test of cross-examination. There is nothing unnatural in the statement of this witness. Both of these witnesses were present at the place of the occurrence at the time of the incident and their presence in the house was most natural at these odd hours. They had seen the occurrence and saw the accused-appellant Panchiya inflicting injuries on the deceased persons and they are the eye witnesses of the occurrence. They have no grudge, enmity or motive to falsely implicate the accused-appellant and they have narrated what they have actually seen. The evidence of these witnesses further find support from the recoveries made at the instance and on the information supplied by the accused. Human blood was found on Bansla and the Dhoti and Bushhirt of the accused. Blood group on the clothes of the accused and that on the clothes of the deceased was of the same origin though the blood-group on the Bansla could not be determined as it was disintegrated. The evidence of these two eye witnesses, namely, PW 2 Itri and PW 3 Dhulki stand corroborated by the evidence of Mangla, Binjiya, Kasna and Manji. The case of the prosecution, therefore, stands proved beyond a reasonable manner of doubt. The learned lower Court has appreciated the evidence on record in the right perspective and rightly convicted the accused for committing the murders of Khetiya, Seeta, Manek, Rami and Kesar.

7. The next question which requires consideration in the present case is : what sentence should be awarded to the accused-appellant The learned trial Court awarded the sentence of imprisonment for life to the accused-appellant, against which the State has preferred an appeal for enhancement of the sentence. According to the learned Public Prosecutor, the accused killed five members of his own family including his father, mother, brother brother's wife and niece and it is one of the rarest of the rare cases in which the capital punishment should be awarded to the accused-appellant. The accused, in the night when his father, mother and brother were sleeping in the Dhaliya, mercilessly killed them by Bansla. After killing his father, mother and brother, he entered into the room and killed his brother's wife and niece, who were also sleeping inside another room. The act of the accused appears to be premeditated and deliberate one. Though Section 354(3) gives the trial Judge a discretion to choose between the capital

sentence and life term and it is only in the rarest of the rare cases that the capital punishment should be awarded, but the present is a case where the accused, with a pre-knit design, brutally killed five members of his own family, including his mother, brother, father and as such he deserves capital punishment. According to us, it is a rarest of the rare cases in which the capital punishment should have been awarded to the accused, but the delay in the hearing of the appeal restricts us in passing the sentence of death. The incident in the present case took place on 15-9-84, and the accused was arrested on 16-9-84. The trial was concluded on 23-8-85, and the accused was sentenced to imprisonment for life. The State filed an appeal for enhancement of the sentence, but the appeal could not be heard and more than eight years have elapsed. Though the sentence of death was the proper sentence for the crime committed by the accused, but as more than eight years have elapsed between the date of the judgment passed by the trial Court and the date of hearing of the appeals and during this period the accused has been serving the sentence of imprisonment for life passed by the learned Sessions Judge and, therefore, we do not think it proper, after such a long lapse of about eight years, to impose the sentence of death on the accused-appellant. In view of the delay in hearing the appeal we, therefore, have no option but to dismiss the appeal filed by the State for enhancement of the sentence.

8. In the result, we do not find any merit in both these appeals and the same are hereby dismissed.