

State of Rajasthan Vs. Heera

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Court : Rajasthan

Decided On : Jan-30-1985

Reported in : 1985CriLJ1153

Judge : S.K. Mal Lodha and; S.S. Byas, JJ.

Appellant : State of Rajasthan

Respondent : Heera

Judgement :

S.S. Byas, J.

1. By his judgment dated Oct. 13, 1984, the learned Sessions Judge, Banswara has convicted the accused Heera under Sections 302 and 324, I.P.C. and sentenced him to death with a fine of Rs. 500/- and six months' simple imprisonment on the respective counts. He has submitted the proceedings under Section 366(i), Cr. P. C., for confirmation of the death sentence. As usual, the accused has come up in appeal to challenge his conviction. We have, thus, two matters before us, namely (1) the reference for confirmation of the death sentence and (2) the appeal of the accused.

2. Briefly stated, the prosecution case, which is short and simple, runs as under:

Accused Heera was living with his wife Mst. Ratan, infant son Laxman and minor daughter Mst. Tulsi in village Anandpuri in district Banswara. Late in the afternoon of Sept. 29, 1983, the accused brought beef of the dead cow of P. W. 9 Rattu Aadivashi and started cooking it in his house. Mst. Ratan was then sitting with Laxman in her lap near the door of the Kotha. She asked the accused why he had brought the beef. The accused got infuriated, took up a dagger lying beneath a cot nearby and struck numerous blows with it on the various part of her body, including the head, neck and chest. The infant Laxman who was in her lap, also, sustained one injury on his head. P. W. 2 Mst. Tulsi, who was there in the house, tried to pacify the accused and made an attempt to catch hold of him. She also received an injury at the hands of the accused. She raised cries. Hearing her screams, P. W. 3 Mst. Kuri, P. W. 4 Gautam and P. W. 8 Shanker came running on the spot and they tried to intervene, but the accused kept them away by pointing the dagger at them. P. W. 1 Shanker, who is the brother of the accused, on being apprised of the incident by his wife P. W. 5 Mst. Manni, came on the spot. He caught hold of the accused and tied him with a tree with the help of others. There was profuse bleeding from the wounds of Mst. Ratan and infant Laxman. Both of them passed away instantaneously on the spot. Shanker (P. W. 1) immediately went to Police Station, Anandpuri and verbally lodged report Ex. P. 1 at about 6.30 P.M. on the same day. The Police registered a case and proceeded with the investigation. S. H. O. Nathusingh (P. W. 13) arrived on the spot and arrested the accused at about 11.00 P.M. The Baniyan and Dhoti, which he was wearing at that time were found stained with blood. They were seized and sealed. As night had overtaken, the investigating officer inspected the site on the next day, i.e. Sep. 30, 1983. He prepared the inquest of the dead body of Mst. Ratan and Laxman. Their blood stained clothes were seized and sealed. The blood-smeared soil from the place of occurrence was also seized and sealed. In consequence of the disclosure statements made by the accused on Sept. 30, 1983, the dagger and its handle were recovered. The various articles were sent for chemical examination and human blood was found on all of them, including the dagger. The autopsy of the dead bodies were conducted by Dr. Singhai (P. W. 16). He noticed as many as 26 ante-mortem injuries caused by a sharp-edged weapon on the dead body of Mst. Ratan. The injuries were extensive on the

various parts of her body. He also noticed one ante-mortem incised wound on the skull of Laxman. According to Dr. Singhai, the cause of death of Mst Ratan was syncope due to haemorrhage from extensive multiple injuries. According to him, the cause of death of Laxman was come consequent to homicidal head injury. The post-mortem examination reports prepared by him are Ex. P. 28 and Ex. P. 29. On the completion of investigation, the police submitted a challan against the accused in the court of Munsif and Judicial Magistrate, Kusalgarh, who in his turn committed the case for trial to the Court of Session. The learned Sessions Judge framed charges under Sections 302 and 324, IPC against the accused, to which he pleaded not guilty. In support of its case, the prosecution examined 16 witnesses and filed some documents. In defence, the accused adduced no evidence. In his statement recorded under Section 313, Cr. P. C. the accused admitted that he had killed his wife and infant son. Virtually, he admitted the entire occurrence. He, however, stated that Mst. Ratan was a woman of easy virtues. On the conclusion of trial, the learned Sessions Judge found both the charges duly brought home to the accused. The accused was convicted and sentenced as mentioned at the very outset.

3. We have heard the learned Public Prosecutor and the learned amicus curiae. We have also gone through the case file carefully. We shall first take up the appeal of the accused.

4-5. In making an attempt to assail the conviction it was contended by the learned amicus curiae that the evidence adduced by the prosecution was not sufficient to seek the conviction. It was argued that the four ocular witnesses P. W. 2 Mst. Tulsi, P. W. 3 Mst. Kuri, P. W. 4 Gautam and P. W. 8 Shanker made no attempt to rescue the two victims. They stood silently when the accused (was) striking the blows to the two victims. That is against the normal human conduct and suggests that they had, in fact, not seen the incident. We find the contention wholly untenable. P. W. 2 Mst. Tulsi is the real daughter of the accused. She is an innocent child of ten years. On voir dire, she was found competent to testify. She understands the sanctity of oath and as such oath was administered to her. She also sustained an injury when she tried to intervene and catch hold of the accused. The occurrence took place in her own house. As such, her presence at the place

of occurrence is quite natural. She has given a graphic description of the incident and stated that the accused struck numerous blows on her mother Mst. Ratan and her infant brother Laxman with a dagger. When she tried to intervene, she also received an injury. P. W. 3 Mst. Kuri is the wife of the accused's real brother. She reached the place of occurrence on hearing the cries of Mst. Tulsi. She stated that when she reached there on the spot, the accused was inflicting injuries to his wife Mst. Ratan with a dagger. P. W. 4 Gautam and P. W. 8 Shanker are the neighbours residing nearby the place of occurrence. Site Plan Ex. P. 3 shows that their houses are situated quite near to the house of the accused. They also reached the place of occurrence on hearing the screams of Mst. Tulsi (P. W. 2). They deposed that when they reached the place of occurrence, they saw the accused striking blows with a dagger to his wife Mst. Ratan. The infant Laxman also sustained an injury at the hands of the accused. They have stated that they tried to intervene, but could not because the accused pointed the dagger at them and they, thus, got frightened. The evidence of these four ocular witnesses could not be shattered or shaken in cross-examination. The names of all these witnesses find mention in the FIR Ex. P.I. which was lodged within half an hour of the incident. That excludes the possibility of their false introduction in the case. They bear no grudge against the accused. We are unable to conceive that they would falsely rope in the accused for no rhyme or reason. P.W.2 Mst. Tulsi is the daughter of the accused. It is beyond our comprehension that she would also falsely depose against her father. The learned Sessions Judge put implicit faith on the evidence of these four ocular witnesses and on a careful scrutiny of what they deposed, we are unable to take a view different from that taken by him. The evidence of these four witnesses convincingly show that the two victims were done to death by the accused.

6. Apart from that, there is the statement of accused himself recorded under Section 313, Cr. P.C. during trial. In that statement, he has clearly admitted that he had killed his wife and infant son by inflicting injuries to them with a dagger. There is, thus, ample material on record to prove that the two victims were done to death by the accused and none else. We, therefore, find no merit in the contention of the learned amicus curiae that the accused was convicted on incredible evidence or insufficient material. The material on record is overwhelming to warrant the finding

that Mst. Ratan and infant Laxman were done to death by the accused. The first contention of the learned amicus curiae, thus, fails.

7. The learned amicus curiae made a feeble and faint attempt to show that Mst. Ratan was a woman of easy virtues and that the accused was insane when the offence was committed by him. We find no substance in either of these submissions. A suggestion was put to the prosecution witnesses in their cross-examination that Mst. Ratan was a woman of easy virtues. They categorically dismissed this suggestion as absolutely unfounded and baseless. A suggestion was also put to them in their cross-examination that the accused was insane and of unbalanced mind at the time of the incident. This suggestion was also categorically denied and dismissed by them. P.W.2 Mst. Tulsi, who is the real daughter of the accused, denied that the accused was insane or was of unbalanced mind. Thus, there is no material on record to show that Mst. Ratan was a woman of easy virtues or that the accused was insane at the time of the incident. We feel no hesitation in rejecting these two contentions of the learned amicus curiae.

8. For the reasons discussed above, we are of the considered opinion that the offences under Sections 302 and 324 IPC stand duly proved against the accused and he was rightly convicted thereunder. No interference as regards his conviction under these sections is called for.

9. The question which now survives for consideration is whether the sentence of death awarded to the accused should be confirmed. It was argued by the learned Public Prosecutor that there is a case of double murder where the mother and her infant male child aged about one year were done to death. The accused inflicted as many as 26 injuries on Mst. Ratan including vital parts such as head, neck and chest with a dagger. He, thus, virtually cut her to pieces. The infant child was inflicted a blow with a dagger on his face extending from right angle of jaw to back of skull. It is, thus, a case of ruthless and brute murders. There are no extenuating or mitigating circumstances. As such, it is a fit case for imposing the extreme penalty. It was, on the other hand, contended by the learned amicus curiae that the victims were the wife and son of the accused. The son was only one year old,

against whom the accused could have no ill-will. The relations between the accused and his wife Mst Ratan were sweet and cordial. When the wife objected to the accused's cooking the beef, he suddenly got infuriated and lost the balance of mind. That resulted in the tragedy. It was not a case of deliberate, motivated and pre-planned murders. The mere fact of causing numerous injuries with a dagger does not constitute 'special reasons' for awarding the capital sentence under Section 354(3) of the Criminal P.C. We have bestowed our thoughtful consideration to the submissions.

10. Section 354(3) of the Criminal P.C. reads as under:

When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life, or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded and in the case of sentence of death, the special reasons for such sentence.

11. A dissection of the sub-section makes it abundantly clear that where a person is convicted for an offence punishable with death or in the alternative for life imprisonment or a term of years, the reasons for punishment awarded (Sic), and where the convict is condemned to death, the 'special reasons' for awarding the sentence of death must be stated. Sub-section (3), thus, casts a mandate on the Court to record additional reasons when, instead of imprisonment, the capital sentence is awarded.

12. It would be useful to notice the observations of their Lordships of the Supreme Court made from time to time on the provisions of Sub-section (3). In : 1974 CriLJ683 Ediga Anamma v. State of Andhra Pradesh, it was observed.

Under the new Criminal P.C. (1973) the unmistakable shift in legislative emphasis is that life imprisonment for murder is the rule and capital sentence the exception to be resorted to for reasons to be stated.

13. In : 1976 CriLJ1716 Ambaram v. State of Madhya Pradesh their Lordships observed:

Under the Code of (1898) as it stood before 1955, the normal sentence to be awarded to a person found guilty of murder was death, and imprisonment for life an exception. The Amending Act 26 of 1955 deleted Sub-section (5) of Section 367. The result was that the Court was left with a discretion to inflict the death sentence or the sentence of life imprisonment each according to the circumstances and exigencies of each case. In keeping with the current penological thought, the new Code of 1973, which came into force on April 1, 1974, makes imprisonment for life a rule, and death sentence an exception in the matter of awarding punishment for murder.

14. The position is, thus, well settled that the imprisonment for life is the general rule and sentence of death is an exception in the matter of awarding punishment for murder.

15. As regards 'Special reasons', there are again weighty pronouncements of the Supreme Court made from time to time. In : 1976 CriLJ291 Balwant Singh v. State of Punjab the observations made are ; -

Under Section 354(3) the Court is required to state the reasons for the sentence awarded and in the case of sentence of death, special reasons are required to be stated. It would thus be noticed that awarding of the sentence other than the sentence of death is the general rule now under the new Code and only special facts and circumstances in a given case, will warrant the passing of the death sentence. It is unnecessary nor is it possible to make a catalogue of the special reasons which may justify the passing of death sentence in a case.

In : 1979 CriLJ792 Rajendra Prasad v. State of Uttar Pradesh, it was observed that the number of fatal wounds or the types of weapon or the degree of horror or the .number of victims put to death do not constitute 'Special reasons' to push the convict to the hanging pole. It was observed:

A family feud, an altercation, a sudden passion, although attended with extraordinary cruelty, young and malleable age, reasonable prospect of reformation and absence of any conclusive circumstance that the assailant is a habitual murderer or given to chronic violence these catena of circumstances

bearing on the offender call for the lesser sentence.

In : 1979 CriLJ841 Bishnu Deo Shaw v. State of West Bengal, the relevant observations read as under:

Prior to 1955, Section 367(5) of the Criminal P.C., 1898 insisted upon the Court stating its reasons if the sentence of death was not imposed in a case of murder. The result was that it was thought that in the absence of extenuating circumstances, which were to be stated by the Court, the ordinary penalty for murder was death. In 1955, Sub-section (5) of Section 367 was deleted and the deletion was interpreted, at any rate by some Courts to mean that the sentence of life imprisonment was the normal sentence for murder and the sentence of death could be imposed only if there were aggravating circumstances. In the Criminal P.C. of 1973, there is further swing towards life imprisonment. The discretion to impose the sentence of death or life imprisonment is not so wide now. Section 354(3) of the new Criminal Code has narrowed the discretion. Death sentence is ordinarily ruled out and can only be imposed for 'special reasons.' Judges are left with the task of discovering 'Special reasons'.

In AIR 1979 SC 1384 : 1979 Cri LJ 1058) Dalbir Singh v. State of Punjab, it was held that the mere fact that the number of casualties is large, will by itself, not warrant a death sentence.

16. Recently, in Bacchan Singh v. State of Punjab : 1980 CriLJ636 , it was observed:

In a sense, to kill is to be cruel and therefore, all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that 'Special reasons' can legitimately be said to exist.

In all these cases, the sentence of death was commuted to one of life imprisonment,

17. The position is, thus, well settled that there is no and cannot be a set formula as to what would constitute 'Special reasons' for awarding a sentence of death, It

depends on various (actors, such as whether the crime was motivated, pre-meditated, deliberate and a result of well-knit design, whether it was committed for lust or greed or whether it was committed at the spur of moment due to any sudden impulse or excitement. It is difficult to put 'Special reasons' in a straight-jacket and each case depends on its particular facts. From the numerous injuries alone on the victim's body, it is not proper to take it a case of chilling murder. The absence of apparent motive on the part of the accused in a murder case has a material bearing on the question of sentence.

18. Turning to the instant case in hand, the facts are that the accused was cooking the beef. The wife objected. The accused got excited. The dagger was lying under the cot which he had readily picked up. He made no search for the weapon. The child was in the lap of the mother. The accused started striking the blows to the mother. The child received the injury because one of the blows fell on him. There was no bad blood or ill-will between the accused and his wife Mst. Ratan. The relations between them, before the incident, were sweet and cordial. The child was only one year old. There was no question of the accused's having ill-will or animus against him. No motive has been alleged by the prosecution. These circumstances show that the accused got excited at the spot because the wife objected to his cooking the beef. The killing of the wife and the infant son was, thus, the result of hot blooded impulse on the part of the accused. His killing them was an impulsive act due to his getting excited. It is not a case where the murders were committed for lust or greed. The accused lost self-control and balance of mind. It appears that he was abnormally sensitive and could not digest the wife's protest against his cooking the beef.

19. A sentence of death is not to be resorted to unless there are compelling reasons. 'Special reasons' mentioned in Section 354(3), Cr. P.C. should be taken as equivalent and synonymous to compelling reasons. We do not find any special or compelling reasons for imposing the extreme penalty on the accused. It is not a fit case where the accused should be condemned to death. We, accordingly, commute the sentence of death to one of imprisonment for life.

20. In the result, we maintain the conviction of accused Heera under Section 302, IPC, but commute the sentence of death awarded to him to one of imprisonment for life. His conviction and sentence under Section 324, IPC are maintained. Both the sentences shall run concurrently. The appeal is dismissed subject to the modification regarding the sentence under Section 302, IPC. The reference for confirmation of the death sentence is rejected.

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