

State of Rajasthan Vs. Pawan and ors.

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Court : Rajasthan

Decided On : Mar-21-2003

Reported in : RLW2004(2)Raj765

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal Death Reference No. 1 of 2002

Appellant : State of Rajasthan

Respondent : Pawan and ors.

Advocate for Def. : S.S. Naruka, Adv.

Advocate for Pet/Ap. : Samundra Singh, Adv. and; Rajendra Yadav, Public Prosecutor

Judgement :

Sharma, J.

1. This is an unfortunate case where two persons were beheaded for a trifle cause. Appellant Pawan was the accused who faced trial for eliminating his neighbours Suresh and Bhana Ram by axing their necks, before the learned Additional Sessions Judge (Fast Track) No. 1, Jhunjhunu in Sessions Case No.

193/2001 (137/2001). He was found guilty, convicted and sentenced under Section 302 IPC to sentence of death and fine of Rs. 500A in default to further undergo one month simple imprisonment. The appellant was further directed to pay compensation in the sum of Rs. 25,000/- to the wife of the deceased Suresh and Rs. 25,000/- to the legal representative of deceased Bhanaram.

2. The learned Additional Sessions Judge (Fast Track) No. 1 Jhunjhunu made a reference under Section 366 Cr.P.C. for confirmation of death sentence whereas the appellant has assailed the findings of the learned Sessions Judge by preferring two appeals under Section 374(2) Cr.P.C. bearing criminal appeal Nos. 1665/2002 and 1622/2002.

3. It is well settled that on a reference for confirmation of the sentence of death, the High Court is under an obligation to proceed in accordance with the provisions of Section 366 and 368 Cr.P.C. The High Court must not only to see that the order passed by the Sessions Court is correct but also to examine the entire evidence itself independently of the Sessions Court's appraisal and assessment of that evidence.

4. Bearing in mind the above principle we may straightaway proceed to state, with gravity, the case of the prosecution presented for our scrutiny. Written report (Ex.P.6) was instituted by Harinarain on April 29.2001 with the Police Station Surajgarh that two persons Suresh Kumar and Bhanaram were killed by Pawan son of Jagmal, Darshan wife of Pawan, Sajjan son of Jagmal and Kallawati son of Sajjan. It was further alleged that Suresh Kumar and Bhanaram were beheaded around 9.30 a.m. with axes. This incident had been witnessed by Har Narain, Atam, and Somvir. Police Station Surajgarh on receiving the said report, registered a case under Section 302/34 IPC and investigation commenced. Site was inspected. Inquest reports had been drawn, dead bodies were subjected to autopsy. The appellant was arrested and at his instance axe was recovered. Statements of the witnesses under Section 161 Cr.P.C. were recorded. Other necessary seizure memos were drawn. On completion of the investigation charge sheet was filed only against appellant Pawan as the Investigating Officer was of the opinion that other three persons named in the FIR were not involved in the

offence. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No. 1 Jhunjhunu. Charge under Section 302 IPC was framed. The appellant denied the charge and claimed trial the prosecution in support of its case examined as many as 19 witnesses and got exhibited 54 documents. The appellant claimed innocence in his statement under Section 313 Cr.P.C. No witness in defence was however examined. On hearing final submissions the learned trial judge convicted and sentenced the appellant as indicated hereinabove.

5. Before dealing with submissions advanced by the learned counsel for the appellant we would like to indicate the nature of the evidence led by the prosecution in support of its case. To begin with there is a central evidence consisting of five eye witnesses Hari Narayan (PW. 3), Somveer (PW. 5), Vijay Pal (PW. 6), Atma Ram (PW. 13) and Smt. Saroj (PW. 15), who were allegedly present near the place of occurrence. This evidence is sought to be corroborated by Kan Singh (PW, 16) who investigated the case and recovered weapon of offence at the instance of appellant. Man Singh (PW. 4) and Suresh (PW. 7) are motbirs of recovery of weapon. Dr. Daya Ram (PW. 17) conducted the autopsy on the dead bodies and found the injuries antemortem in nature.

6. Let us now scan the credibility of the prosecution witnesses through whom the prosecution has to establish the case against the appellant beyond reasonable doubt. Coming to the testimony of Harinarain (PW. 3) it is to be noticed that he is the son of deceased Bhana Ram and real brother of deceased Suresh Kumar. In his deposition Hari Narain stated that around 9.30 a.m. Pawan caught hold of Suresh near transformer and pushed him down. On hearing hue and cry of children, Bhana Ram rushed to the spot. Har Narayan, his brother, Saroj and Vijay Pal also followed him. Pawan Killed Suresh with axe and beheaded him. When Bhana Ram made attempt to intervene, Pawan inflicted axe blow on his person as a result of which Bhana Ram fell down, then Pawan gave axe blow on the neck of Bhana Ram and beheaded him also. Pawan gave threatening to the persons gathered there by aiming blood stained axe towards them and after some time left the village with his wife Darshan and son and went towards Loharu. In cross examination when Hari Narayan was confronted with the FIR Ex.P.6 about

implication of Sajjan, Darshan and Kalawati, he explained that as he was stunned, he had also added their names.

7. Somveer (PW. 5) deposed that he was coming back from his field in a camel cart. As soon as he reached near the transformer of village Ladunda around 9- 10 a.m. he saw Pawan running with axe in his hand. Seeing Suresh there, Pawan gave axe blow on the person of Suresh who fell down. Another axe blow was inflicted by Pawan over his neck and beheaded him. When Somveer shouted, Pawan threatened him to kill and asked him to run away. Hearing his voice when Bhana Ram reached there, Pawan gave axe blow on his person. Finding Bhana Ram falling down, Pawan inflicted another axe blow on his neck. Pawan then challenged the persons gathered there by showing axe and proceeded towards Loharu.

8. Vijay Pal (PW. 6) Atma Ram (PW. 13) and Smt. Saroj (PW. 14) almost repeated the version given by Hari Narain (PW. 3) and Somveer (PW. 5).

9. Dr. Daya Ram (PW. 17) who conducted post mortem on the deadbody of Suresh and Bhana Ram, stated that as per post mortem report Ex.P.47 Suresh sustained following anti mortem injuries and the cause of death was shock and haemorrhage due to multiple injuries -

1. Incised wound 10x2x5 cm. 3 cm. below the lower lip cm. outer to angle of mouth (Canine tooth to 2nd premolar teeth bone area is also cut to 1cm. below the Rt. angle of mouth.

2. Incised wound 3 x 0.5 cm. on above and outer aspect of Rt. forehead.

3. Incised wound 3.5 x 1.5 cm. x 1.5 cm. on U. upper most part of chest near middle of body.

4. Cut wound 6 x 6 x 3 cm. on top of Lt. shoulder joint.

5. Neck totally avulsed from base skull to base of neck except small area 2 x 1 cm. of skin is present of Lt. side all vertebrae between base of skull to base of skull is not present 6 times attack of sharp weapon used to found from base of skull to

base of neck.

As per autopsy report Ex.P.48 Bhana Ram received following antemortem injuries and cause of death was shock and haemorrhage due to multiple incised injuries -

1. Incised wound 17.5 x 5x5 cm. from Lt. inner end of eye brow to posterior end of Parietal bone with fracture of bones.
2. Incised wound 10x2.5 cm. upto posterior end of body of vertebrae on back of neck Rt. 10 Lt. mostly on Lt. side of body.
3. Incised wound 10x7.5 x 8 cm. Lt. of mid line of body to upper end of Lt. lower Jaw with fracture of Jaw bone, 1st cervical vertebra, 2, 3 vertebrae (cervical) cut in two pieces horizontally 4 times attack found at this site.

10. Kan Singh (PW. 16) Investigating Officer stated that he arrested Pawan vide arrest memo Ex.P.49 and at his instance recovered blood stained axe vide recovery memo Ex.P. 11. Blood stained pant and bushirt allegedly wore by Pawan at the time of incident also got recovered at his instance vide memo Ex.P.13. In his cross examination Kan Singh explained that after investigation he reached to the conclusion that only Pawan was the accused and other three persons named in the FIR were not involved in the case. Man Singh (PW. 4) and Suresh (PW. 7) proved the recovery of blood stained axe at the instance of appellant Pawan.

11. Mr. Samundra Singh learned counsel for the appellant Pawan canvassed that the prosecution has failed to establish guilt against the appellant beyond reasonable doubt. The prosecution case is based on very weak motive and in the absence of any strong motive of the appellant the whole prosecution story which is based on biased investigation and strounded in mystery, should be disbelieved. Learned counsel further urged that the testimony of Hari Narayan (PW. 3) Somveer (PW. 5) Vijay Pal (PW. 6), Atma Ram (PW. 13) and Smt. Saroj (PW. 14) is not totally free from the partisan character and no reliance could have been placed on such evidence. These witnesses were not present near the place of occurrence and they had not seen the incident. Learned counsel, in support of his submission referred Rishikesh Singh v. The State (1), State (Delhi Administration)

v. Guizari Lal (2), and Palvinder Kaur v. State of Punjab (3).

12. Per contra Mr. Rajendra Yadav learned P.P. and Mr. S.S. Naruka learned counsel for the complainant supported the impugned judgment and contended that the appellant's conviction is not based on suspicion. The eye witnesses categorically stated against him and the medical evidence is consistent with the ocular evidence.

13. We have pondered over the rival submissions.

14. In regard to the capacity for absorption and retention of events of a witness their Lordships of the Supreme Court in Bhag Singh v. State of Punjab (4), indicated thus:- (para 10) 'It is a general handicap attached to all eye witnesses, if they fail to speak with precision their evidence would be assailed as vague and evasive, on the contrary if they speak to all the events very well and correctly their evidence becomes vulnerable to be attacked as tutored. Both approaches are dogmatic and fraught with lack of pragmatism. The testimony of a witness should be viewed from broad angles. It should not be weighed in golden scales, but with cogent standards. In a particular case an eye witness may be able to narrate the incident with all details without mistake if the occurrence had made an imprint on the canvas of his mind in the sequence in which it occurred. He may be a person whose capacity for absorption and retention of events is stronger than another person. It should be remembered that what he witnessed was not something that happens usually but a very exceptional one so far as he concerned. If he reproduces it in the same sequence as it registered in his mind the testimony can not be dubbed as artificial on that score alone.'

15. 'Much importance can not be attached to minor discrepancies appear in the statements of the witnesses', ruled Hon'ble Supreme Court in 'B.B. Hirji Bhai v. State of Gujrat' (5). Following guidelines were indicated in this regard:-

(i) By and large a witness can not be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(ii) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore can not be expected to be attached to absorb the details.

(iii) The powers of observation differ from person to person. What one's may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(iv) By and large people can not accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(v) In regard to exact time of an incident or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation and one cannot expect people to make very precise or reliable estimates in such matters. Again it depends on the time sense of individuals which varies from person to person.

(vi) Ordinarily a witness can not be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(vii) A witness though wholly truthful is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness some times so operates an account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him. Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.'

16. Keeping in mind the aforesaid guidelines if we scan the prosecution evidence we find consistency in the statements of Hari Narain (PW. 3), Somveer (PW. 5),

Vijay Pal (PW. 6) Atma Ram (PW. 13) and Smt. Saroj (PW. 14) we find the presence of these witnesses at the time of incident quite natural. Having viewed the testimony of these witnesses from broad angles and with cogent standards, we find it honest, true and consistent. The discrepancies appear in the testimony of these witnesses do not shake the basic version of the prosecution case. Mr. Samunder Singh learned Counsel for the appellant has drawn our attention to the various lapses of the, investigation but on this ground we can not discard the testimony of the witnesses as we find element of truth in it. Their Lordships of the Supreme Court in State of U.P. v. Sikander Ali (6), propounded thus:- (para 11)

'This court has repeatedly cautioned that the lapse of the investigation should not prevent the court from accepting the eye witnesses evidence if it is otherwise truthful.'

17. In view of ratio indicated in Meharban v. State of M.P. (7), and Khujji @ Surendra Tiwari v. State of M.P. (8), we find the recovery of blood stained axe at the instance of appellant Pawan as trustworthy. It corroborates the testimony of eye witnesses. The recovery is established by two independent witnesses Man Singh (PW. 4) and Suresh (PW. 7) and we see no ground to discard their evidence. We do not agree with the submission of Mr. Samunder Singh learned counsel that the genesis and the origin of the occurrence is shrouded in deep mystery. From the evidence on record we are of the view that appellant Pawan acted in a calculate manner to eliminate Suresh and Bhana Ram. On consideration of the ocular evidence from the point of view of trustworthiness we are satisfied that the eye witnesses had not spoken untruth and their testimony had not been polluted. It is no doubt true that some more persons who could have supported the prosecution case as independent witnesses have not been associated but the reason is not far to seek. The appellant, if he could commit the ghastly crime for the type which he had with the deceased Suresh and Bhana Ram, no independent person could cadre come and depose against him. We thus find charge under Section 302 1PC established against appellant Pawan.

18. That takes us to the quantum of sentence. For deciding just and appropriate sentence to be awarded for an offence the aggravating and mitigating factors are

to be delicately balanced in a dispassionate manner. In *Bachan Singh v. State of Punjab* (9), their Lordship of the Supreme Court moved by compassionate sentiments of human feelings ruled that sentence should not be passed except the 'rarest of rare cases'. During the hearing of Bachan Singh's case it was suggested that the following circumstances may be considered as guidelines for determining aggravating circumstances which would warrant the imposition of death penalty:-

(a) if the murder has been committed after previous planning and involves extreme brutality;

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant while such member or public servant was on duty.

19. It is well settled that in exercising its discretion the court may take into consideration the following circumstances as mitigating, on the basis of which the lesser punishment of imprisonment for life may be imposed:-

(i) that the offence was committed under the influence of extreme mental or emotional disturbance;

(ii) if the accused is young or old, he shall not be sentenced to death;

(iii) the probability that the accused would not commit communal acts of violence as would constitute a continuity threat to society;

(iv) the probability that the accused can be reformed and rehabilitated;

(v) that in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence;

(vi) that the accused acted under the duress or domination of another person;

(vii) that the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his

conduct.

20. In *Shri Bhagwan v. State of Rajasthan* (10), five persons of a family were battered to death without mercy by a young culprit aged about 20 years. Their lordships of the Supreme Court, commuted the death sentence imposed upon the accused into sentence of imprisonment for life and indicated that the accused shall not be released from the prison unless he has served out atleast 20 years of imprisonment including the period already undergone by him.

21. The acts of unparalleled evil and barbarity of the appellant Pawan as noticed by us in the instant case, can not be looked with equanimity. The crime committed by him tends to destroy one's faith in all that is good in life. Pawan, on the date of the offence was 28 years of age and in order to assess of true punishment in the facts and circumstances of the case we have to take into account the aspect of irresistible impulse in view of ratio indicated in *Brij Kishore Pandey v. The State of U.P.* (11), wherein it was indicated that plea of irresistible impulse may be taken into account in assessing the true punishment to be given in a given case. On a careful scrutiny of the entire evidence we find that the offence was committed under the influence of extreme mental or emotional disturbance. Looking to the young age of the appellant also, we do not think it to be one of the rarest of rare cases warranting death sentence. Hence even though we commute the death penalty, yet we are of the view that the punishment should have deterrent effect as well as no further chance to the appellant for relapsing into the crime and becoming danger to the society. Placing reliance on the ratio indicated in *Shri Bhagwan v. State of Rajasthan* (supra), we uphold the conviction of the appellant under Section 302 IPC but commute the death sentence imposed on the appellant Pawan and direct that he shall undergo the sentence of imprisonment for life. We further direct that the appellant shall not be released from the prison unless he has served out atleast 20 (twenty) years of imprisonment including the period already undergone by him.

22. The reference is answered accordingly and with the above directions and modification in the sentence the appeals of the appellant stand disposed of.

