

PETITIONER:  
UMASHANKAR PANDA

Vs.

RESPONDENT:  
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 28/02/1996

BENCH:  
VENKATASWAMI K. (J)  
BENCH:  
VENKATASWAMI K. (J)  
ANAND, A.S. (J)

CITATION:  
JT 1996 (2) 747 1996 SCALE (2)563

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. Venkataswami.J.

The appellant who is in Central Jail, Indore has sent through superintendent a Petition to set aside the impugned judgment of the Madhya Pradesh High Court, Bench at Indore confirming the death sentence imposed by the First Additional Sessions Judge, Ujjain. The said Petition was taken on file as Special leave Petition and this Court after granting leave called for the records from the trial court. The High Court was also requested to transmit to this Court the copies each of the judgment of the High Court as well as the trial court.

This appeal is directed against the judgment of the Division Bench of the Madhya Pradesh High Court, Bench at Indore in Death Reference No.2/95 and Criminal Appeal No. 173/95. The appellant accused was convicted under Section 302 I.P.C. for having committed murder of his wife Krishna Bai, daughter Jyoti aged 10 years, daughter Rekha aged 16 years and under Section 307 I.P.C. for attempt to commit murder of his daughter Komal aged 10 years, son Balakrishan aged 12 years and another Son Sonu aged 7 years on the intervening night of 20th and 21st February, 1994 in Village Laxmipura, Police Station Kayatha District Ujjain. The prosecution case is as follows :

On the intervening night of 20th and 21st February. 1994, the accused committed murder of his wife and two daughters and they died on the spot. The further caused injuries to Komal (daughter) and two sons Balakrishna and Sonu with intent to commit murder. However, these three survived even after sustaining grievous injuries. P.W.13, Satnam Singh. Station House Officer received an anonymous telephonic information that many persons have sustained injuries and some of them have died at the residence of the accused. On receiving such information, the Police Officer reached the spot and found Balakrishna, Sonu and Komal in seriously injured condition. Krishna Bai, Rekha and Jyoti

were found to be dead by that time. The accused was not found inside the house. The said Police Officer sent all the injured to hospital for treatment and registered case No.1/94, 2/94 and 3/94 regarding the death of the persons referred to above. He recovered blood stained sword on the spot. That clothes, lock and chappal were also found with blood stains and they were also seized. Stained and unstained earth were also collected from the spot. Site map was prepared. An inquest was held and various injuries were noticed on the bodies of the different persons. The accused was arrested on the same day and Panchnama was prepared and on questioning, the accused gave information about sword which he had kept in the wheat field belonging to Radheshyam. The clothes of the accused. Kurta and Pajama with blood stains were also recovered from a trunk. During investigation, it was found that the accused made extra judicial confession of having committed murder of his wife and children before Prahlad (P.W.6) and Rora (P.W.7).

The autopsy on the body of Rekha aged about 16, years was conducted by Dr. Arvind Dashottar (P.W.3) on, 21.2.1994 and the following injuries were found on the body of the deceased Rekha :

1. A big incised wound extending in four directions from left pinna as following:

(a) 4"x 2" over left temporo occipital region cut Piece of occipital bone measuring 1/4"x 1/4" present in the wound. Dura matter exposed.

(b) 4"x 2" from angle of the left eye towards left pinna. Mandible bone exposed.

(c) Incised wound 2"x1" from angle of left mandible upto left pinna.

(d) Incised wound 2"x1" from back of back of neck towards (L) pinna .

2. Incised wound 3"x1/2" below injury No.1 over occipital region.

3. Incised wound over skull (L) parietal region 3"x1/2".

4. Incised wound over front parietal region 5 1/2"x1". Parietal bone incised. 5 1/2" membrane cut at the middle with brain matter incised 1/2" below membrane parietal lobe of brain.

5. Incised wound over (L) shoulder on top 1/2"x1/2" muscle deep.

6. Incised wound over (L) base of (R) Thumb 1"x1/2".

7. Incised wound (L) Dorsal aspect of hand 2"x1/2".

8. Incised wound (L) fore arm dorsal aspect 2"x1/2".

9. Incised wound Palmar aspect of (L) hand 3"x1/2" below little and Ring finger. All these injuries were antemortem in nature.

In the opinion of the doctor, these injuries were sufficient to cause death.

Likewise the autopsy on the body of Krishnabai was conducted by P.W.3 with Dr. M.D. Sharma on 21.2.1994

and they found the following injuries:

(1) Incised wound over nose extending upto (L) frontal region 5 1/2"x2" from Rt. to (L) obliquely upwards, muscle deep. ends lapering.

(2) Incised wound over (L) parietal region 3"x1/2", bone exposed.

(3) Incised wound near injury No. 2 over vertex 2"x1/4" bone exposed.

(4) Incised wound 3"x1" over (R) parietal region bone exposed.

(5) Incised wound behind (L) ear 1"x1/2".

(6) Incised wound on left side face from (L) eye-brow extending backward and downwards towards tragus of ear 5 1/2" slicing effect, skin held out.

(7) Incised wound 3"x1/2" (L) side of neck at the base on pest aspect 3"x1/2".

(8) Incised wound 1/2"x4" back of chest in between scapular skin deep.

(9) Incised wound 1/4"x1/2" lateral aspect of (R) arm mid position.

(10) Incised wound dorsum of Hand (R) extending towards forearm from knuckles upwards tenders and muscles cut. Radius and ulna bones exposed and cut at the distal ends.

(11) Incised wound 3"x1/2" (R) forearm dorsal aspect above injury no.

(12) Incised wound 4"x1/2" over palmar aspect of (L) hand extending over wrist.

(13) Incised wound over dorsal aspect (L) forearm 3"x1" mid position.

(14) Incised wound (L) forearm 4"x1 1/2" muscle and vessels cut. Radius bone cut at mid.

(15) Incised wound over (L) shoulder 1/2"x1" muscle deep.

(16) Incised wound (L) Arm 1/4" skin deep mid position.

(17) Incised wound 3"x1/2" palmar aspect of (L) hand metacarpel cut thumb extending upto wrist.

(18) Incised wound 3"x1/4" over ulnar border of (L) hand: metacarpal bone cut below little finger.

(19) Incised wound 3"x1" over (L) thigh and knee joint.

(20) Incised wound over knee joint (R) 2 1/2"x1/2" muscle deep.

(21) Incised wound over (R) heel attached with a Lag of skin posteriorly complete tissue and calcaneous bone cut 3"x around the

heel.

On 21.2.94 P.W.3 conducted Post-mortem of the dead body of Jyoti and found the following injuries on the person of the deceased:

(i) Incised wound 2"x1/2" over skull right frontal region, skin deep, bona visible.

(ii) Incised wound 5 1/2"x1 1/2" over skull Top bone exposed.

(iii) Incised wound 3"x1/2" over vertex of skull.

(iv) Incised wound 3"x1" (L) side of neck from left border of mandible horizontal muscle, vessels cut.

(v) Incised wound below injury no.iv. 3"x1" tapering towards (L) angle of mouth. There was only a Tag of skin between injury no. iv and v vessels cut.

(vi) Incised wound Left hand palmar aspect extending from 2" over wrist towards palm 4th metacarpal and carpal bones cut.

(vii) Incised wound L side 3 1/2"x1/2" dorsum of hand extending from base of index finger arose hand 5th metacarpal bone cut.

(viii) Incised wound over elbow 1/2"x1/2".

(ix) Incised wound over (4) scapular region 1"x1/2".

(x) Liner abrasion 5" with incised wound at 2 1/2" from start 1/4" below (L) scapular.

P.W.4 Dr. R. S. Dangad found the following injuries while admitting Sonu in the Hospital:

(1) Incised wound 6"x1" deep and bone-cutting on the right parietal region.

(2) Incised wound 6"x1" bone deep on the right fronte parietal region.

(3) Incised wound 5"x1" bone deep exposing bone left parietal region.

(4) Incised wound 1 3/4x 1/4"x1/2" on the right nendible.

Dr. Nagar (P.W.12) examined Komal and found the following injuries.

1. Incised wound 3"x1" bone deep on the L cheek.

2. Incised wound 5"x1" on the neck.

3. Incised wound 4"x1" bone deep on the right knee muscles and vessels cut.

4. Incised wound 1"x1/2"x1/2" on the proximal of finger middle finger.

5. Ring finger was cut upto PIB joint.

6. Incised wound 1"x1/2"x1/2" on the index finger of left hand.

7. Incised wound 2"x1/2"x1/2" on the back of left hand.
8. Incised wound 4"x1/2"x1/2" on the back of left wrist hand finger.
9. Incised wound 1 1/2"x1/2"x1/4" on Rt. wrist dorsal surface.
10. Incised wound 2"x1/2"x1/2" on L hand dorsal surface.
11. Incised wound 2"x1/2"x1/2" oblique wrist dorsal surface.
12. Incised wound 1 1/2"x1/2"x1/2" oblique Lt. P.A. dorsal surface long cut.

P.W.12 Dr. Nagar examined Balakrishna on the same day and found following injuries:

1. All fingers amputated from M.P. joint excepting thumb.
2. Incised wound on right face extending upto right eye.
3. Incised wound on the left next 3" x 2"x2".
4. Incised wound 2"x1"x1" on Rt. chin.

The materials seized were sent for serologist examination and it was found that it contained human blood. After completion of investigation, chargesheet was filed against the accused. The case was committed to the court of sessions. The accused pleaded not guilty. The learned Trial judge convicted and sentenced the accused as mentioned above.

The learned trial judge has given special reasons for awarding death sentence. The accused preferred an appeal to the High Court. It was taken up for hearing with Death Reference. The High Court in its elaborate judgment found that the fact of commission of murder, by causing grievous injuries, to Balakrishna, Sonu and Komal had been proved beyond reasonable doubt and accused was rightly found guilty for the same. Regarding the sentence, the learned Judges after referring to several judgments of this Court and also a Division Bench of the Madhya Pradesh High Court found that the case of the accused fell within the cases of the 'rarest of rare cases' and there were no mitigating circumstances whatsoever for commission of gruesome murder of wife and two children. Accordingly while dismissing the appeal filed by the accused accepted the reference made by the learned Additional sessions Judge.

It is under these circumstances, the present appeal was filed by the accused who is in jail. Mr. Vimal Dave, learned counsel for the accused appellant finding the fool proof case of the prosecution did not attempt to challenge the conviction recorded by the learned Sessions Judge and confirmed by the High Court. However, he strenuously argued that there is a case for reducing the death sentence to one of life imprisonment in the peculiar facts and circumstances of this case. According to the learned counsel, the murder was not a pre-planned one and having regard to the time and place of the incident it must be taken that it was on account of sudden provocation and as suggested by the

defence in the cross-examination of the prosecution witnesses, that the suspicion entertained by the accused regarding the fidelity of his wife and answer said to have been given by her led to the incident. According to the learned counsel there was no mensrea and no motive

was suggested by the prosecution for committing the there murders and causing injuries to the children.

Learned counsel appearing for the respondent, however, submitted that the findings rendered by the trial court as well as by the High Court on appreciation of oral evidence will go to show that the appellant has committed the murder in a gruesome manner without any provocation and against helpless dependents. As per the decided cases of this Court, the death sentence awarded to the accused does not call for any interference.

We have considered the rival submissions. Before going into the facts of this case as found by the trial court and the High Court, it will be useful to set out the principles laid down by this Court in several cases for awarding death sentence.

In Anshad and others vs. state of Karnataka (1994)4 SCC 381, a two Judge bench of this Court presided over by one of us (Anand, J.) has observed as follows"

"Courts are expected to exhibit sensitiveness in the matter of award of sentence particularly, the sentence of death because life once lost cannot be brought back. This Court has in cases more than one emphasised that for determining the proper sentence in a case like this while the court should take into account the aggravating circumstances it should not overlook or ignore the mitigating circumstances. The manner in which the crime was committed, the weapons used and the brutality or the lack of it are some of the considerations which must be present to the mind of the court. Of course, the High Court has the power and jurisdiction to enhance the sentence of life imprisonment to death but that power has to be sparingly exercised, in "rarest of the rare cases" for 'special reasons' to be recorded. The courts must be alive to the legislative changes introduced in 1973 through Section 354 (3) CrPC. Death sentence, being an exception to the general rule, should be awarded in the "rarest of the rare cases" for 'Special reasons' to be recorded after balancing the aggravating and the mitigating circumstances, in the facts and circumstances of a given case. The number of persons murdered is a consideration but that is not the only consideration for imposing death penalty unless the case falls in the category of "rarest of the rare cases". The courts must keep in view the nature of the crime, the brutality with which it was executed, the antecedents of the criminal, the weapons used etc. It is neither

possible nor desirable to catalogue all such factors and they depend upon case to case."

In Jashubha Bharatsinh Gohil & Others Vs. state of Gujarat (1994) 4 SCC 358, this Court has observed as follows in paragraph 12 of the judgment:

"It is needless for us to go into the principles laid down by this Court regarding the enhancement of sentence as also about the award of sentence of death, as the law on both these subjects is now well settled. There is undoubtedly power of enhancement available with the High Court which, however, has to be sparingly exercised. No hard and fast rule can be laid down as to in which case the High Court may enhance the sentence from life imprisonment to death. Each case depends on its own facts and on a variety of factors. The courts are constantly faced with the situation where they are required to answer to new challenges and mould the sentencing system to challenges and mould the sentencing system to meet those challenges. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing appropriate sentence. The change in the legislative intent relating to award of capital punishment notwithstanding, the opposition by the protagonist of abolition of capital sentence, shows that it is expected of the courts to so operate the sentencing system as to impose such sentence which reflects the social conscience of the society. The sentencing process has to be stern where it should be."

Again in paragraph 14 of the same judgment it was observed that it is only after giving due weight to the mitigating as well as the aggravating circumstances, that it must proceed to impose the appropriate sentence'.

In Suresh Chandra Bahri vs. state of Punjab 1995 supp. (1) SCC 80, in paragraph 105, this Court observed as follows:

"The cold-blooded cruel murder of the innocent children by none else but by their own real father shows the enormous proportion with which it was committed eliminating almost all members of the family. We have given our serious thoughts and consideration and posed the question to ourselves whether there could be still a worse case than this where a husband could hatch a conspiracy and kill his wife in a most callous and ghastly fashion as in the present case only on a

trifling matter which could have been sorted out in an amicable manner for which to effort appears to have been made by suresh. Not only this but the appellant suresh became thirsty of the blood of his own children for absolutely no fault of theirs. in the facts and circumstances discussed above, in our opinion, so far as suresh bahari is concerned, the rule of the rarest of rare cases has to be applied as the present case falls within the category of the rarest of rare cases and for the perpetration of the crime of the nature discussed above there could be no other proper and adequate sentence except the sentence of death as there are no mitigating circumstances what soever. Having regard to all the facts and circumstances of the present case as far as suresh Bahri is concerned there is no cause for any interference in the vies taken by the two courts below in awarding the death sentence to him. We, therefore, affirm the conviction and sentence of death awarded to Suresh by the High Court. In the event of the execution of death sentence, the sentence awarded under Sentence awarded under section 201 of the IPC shall remain only of academic interest."

As the commission of the crime has been established beyond reasonable doubt and as the counsel for the appellant also fairly pleaded only for the reduction of sentence, we need not probe into the conviction aspect once again. We, therefore, proceed on the footing that the accused/appellant has committed murder of his wife and two children and attempted to kill the remaining three children, but (to the surprise of the accused) they escaped with grievous injuries. Our concern in the present appeal is about the manner of committing the murder, weapons used, the position of the victims and the circumstances under which the crime was committed and to find out whether the case falls under the category of "rarest of the rare cases" in the light of principles already noticed through the judgments of this Court.

Before that, we may also point out that we have independently and carefully gone through the evidence both oral and documentary and we are convinced that the convictions of the appellant for offences under Sections 302 and 307 I.P.C. awarded by the learned Sessions Judge and confirmed by the learned Judges of the High Court are unassailable and are quite in accord with oral, documentary and medical evidence.

Now, let us look into the way the accused had carried out the murder of his wife and two children and caused grievous injuries to the rest of his children in the course of his attempt to liquidate them also. From the evidence which has been accepted by the trial court and the High Court, the following emerges :

On 20th February, 1994, the accused, his wife and all the five children took their dinner together before going to the bed and had also viewed the programme on the television. The accused along with his family members slept in a room. At about 12-1 on the intervening night of 20th and 21st February, 1994, the accused started to kill his wife with the help of a sword and on hearing the shoutings the children woke up. The wife questioned the accused why he was trying to kill her and the accused without giving any answer inflicted more injuries on her head, hand and foot. By that time, the eldest daughter Rekha tried to save her mother and instead of leaving his wife from attack, he started inflicting wounds on his first daughter Rekha with the same sword. Not satisfied with that, he also inflicted injuries with the same sword to another daughter and finding that the sword he had used had been bent, he left that sword and took out another big sword, kept in a box in the room, and with the help of the second sword, he inflicted injuries to the other children. All the injured persons fell down and as seen earlier, the wife and two children succumbed to the injuries and the other three children succumbed to the injuries and the other three children escaped death. It is also in the evidence of P.W.7 Rora that the accused after committing the crime, confessed to him (PW 7) stating "I had slaughtered all of them, how the three left alive". The above attitude of the accused clearly reveals that he had caused injuries with a view to liquidate all the members of his family and he was not happy to find that inspite of his act his three children had escaped from death.

We have already given the injuries inflicted on the deceased persons as well as on the children who escaped death. We find that the accused had accused in all 64 sword injuries to all the six persons including the three deceased persons and those injuries speak for themselves about the gruesome nature of the crime committed by the accused. Be it noted that there was no provocation and there is nothing to suggested that there was any quarrel between the accused and his wife or among any one of the family members. The way in which the crime was executed clearly shows that it was a premeditated one and not on account of sudden provocation or any 'mental-derange'. The motive suggested in the course of cross examination of the prosecution witnesses is also not helpful to the accused inasmuch as he had pleaded alibi in his statement (under Section 313 Cr. P.C.) and that has also been taken note of by the trial court as well as by the High Court. As pointed out earlier, both the Sessions Judge and the High Court have given special reasons for awarding death sentence and we are also of the opinion that the crime indulged by the accused is undoubtedly gruesome, cold blooded, heinous, atrocious and cruel. We are also satisfied that on the facts established on the record, there appear so to be mitigating circumstance whatsoever, but only aggravating circumstance which justify the imposition of death sentence. If we look into the manner in which the crime was committed, the weapon used, the brutality of the crime, number of persons murdered, the helplessness of the victims, we cannot come to any other conclusion except the one, the Sessions Judge and the High court arrived at to award the capital sentence to the appellant.

In the result, the appeal fails and it is dismissed consequently.