CASE NO.:
Appeal (crl.) 824 of 2002

PETITIONER:
Om Prakash @ Raja

RESPONDENT:
State of Uttaranchal

DATE OF JUDGMENT: 05/12/2002

BENCH:
S. Rajendra Babu & P.Venkatarama Reddi.

JUDGMENT:

J U D G M E N T

P. Venkatarama Reddi, J.

The appellant-accused was working as a domestic servant in the house of retired Brigadier Shyam Lal Khanna. According to the findings of the Sessions court and the High Court, the accused put an end to the life of three members of the family including Mr. Khanna and endeavoured to kill the informant Mrs. Khanna. The ghastly incident occurred in the morning hours of 15.11.1994 in Vasant Vihar area of Dehradun. The appellant was charged under Sections 302 and 307 IPC. Another person by named Nitish with whose sister the appellant had illicit intimacy was also charged under Section 120 B IPC. The learned additional Sessions Judge, Dehradun, convicted the accused-appellant under Sections 302 and 307 IPC. For committing the offence of murder, death sentence was imposed. Under Section 307 IPC, he was sentenced to undergo R.I. for 7 years. The other accused was acquitted of the charge. The Sessions Judge made a reference under Section 366 Cr.P.C. for confirmation of death sentence. The appellant also preferred an appeal from jail. The High Court dismissed the appeal preferred by the accused-appellant and confirmed the death sentence and other sentences passed against him for the offences under Sections 302 and 307 IPC. It is against this judgment of the High Court dated 19.9.2001, the present appeal has been preferred by the accused through Jail authorities.

One of the victims a retired Brigadier working with ONGC at Dehradun was living in his house with his wife Rama Khanna the informant, and his son Sarit Khanna who had returned from U.K. after completing his studies two weeks earlier. The sister of the informant by name Bishna Mathur was also staying in the house at the relevant time. The appellant was engaged as servant at their house about six months earlier. According to the prosecution, the day before the incident, it was decided to terminate his services on account of his objectionable behaviour and he was informed of their decision. A day later, he indulged in the ghastly attack against the entire family. The crucial evidence on behalf of the prosecution is that of PW 1 Smt. Rama Khanna who gave the first information report to the police soon after the occurrence. The prosecution case as unfolded by her deposition is this :

The accused was residing in the servant's quarter, he having been employed about six months prior to the incident. There were instances in which the accused proved to be unreliable. He had stolen money from the purse of her husband once when she and her husband went to outstation. He killed her pet sparrow and also put feathers inside the nose of her hen. She and her husband discussed about the conduct and mentality of the accused and decided to dispense with his service from 1st December, 1994. To this effect her husband informed the accused. On 14.11.1994, the accused served bed tea at about 8 A.M. to her, her husband and her sister. At that time her son was sleeping in the bed room. After the bed tea, her husband left the house for a morning walk as usual. PW 1 and her sister went into

the bath rooms adjacent to each other. When she wanted to come out of the bath room, PW 1 found it was bolted from outside. From the window of the bath room, she communicated to her sister to open the bolt. As her sister just came out of the bath room, PW 1 heard her cries for about five minutes and then there was pin drop silence. At this PW 1 became suspicious that some untoward incident had happened. Then, the accused himself opened the bath room door in which PW 1 was confined; but, before fully opening the door and confronting the accused, she noticed that the accused was holding chilly powder in one hand and sword in another. The sword happened to be of her husband. As soon as the door was opened, the accused threw chilly powder on her and attacked with the sword. The sword luckily hit the golden bangle which she was wearing as a result of which her left wrist was fractured and in this process, the bangle got dented. She managed to get into the bathroom and bolted the door from inside. The accused kept banging the bath room door. At that juncture, her husband returned from morning walk and on hearing her panicky voice from the bathroom, he came straight to the bed room to which the bathroom was attached. She pleaded with her husband to open the door as the accused Raja (alias name of accused) was upto some mischief. Her husband replied that Raja was not there, but immediately thereafter, she heard the cries of her husband as the accused started attacking him with sword after throwing chilly powder on his face. She heard her husband remarking Raja "why are you doing this? We have not harmed you". After sometime, the cries of her husband subsided. Thereafter, the accused tried to injure her with the help of a danda from the window of the bathroom. In the meanwhile, her husband gathered strength to open the bathroom door from outside. Then PW 1 ran towards the main gate of the house and closed it from inside to prevent re-entry of the accused inside the house as he was standing outside at that time. At this, the accused started banging the main door repeatedly and thereafter left the spot. When she came inside the bed room, she found that her husband was lying injured with profuse bleeding and heavy breathing. She noticed the injuries on his neck and chilly powder smeared on his face. Then she rushed to the bed room of her son and found that he was lying dead in a pool of blood with his neck severed from his body. A stone slab was found on his legs. On entry into the room of her sister, PW 1 found that chilly powder was spilled all over the room and her sister was dead with severe injuries on her face and neck. On opening the drawing room window, she found Jamadar Raju (PW 4) approaching the house. She cried out and asked him to open the main gate and told him that the accused had murdered the inmates of the house. Then the neighbours gathered and took her and her injured husband to ONGC hospital. He was declared dead at the hospital. PW 1 was given first aid and then she was dropped back at the house. PW 8 who was known to the family of PW 1 was in the crowd and he scribed the complaint as per her dictation. She handed over the report at Vasant Vihar Police post at about 10.30 A.M. The police then inspected the place of occurrence, took photographs and sent the dead body for post-mortem. Again, PW 1 was taken to ONGC hospital and x-ray of her wrist was taken and she was treated for her fracture.

The photographs of various rooms in the house wherein the dead bodies lay and the weapons and other incriminating material were shown to PW 1 and she testified to the contents thereof. A khukri was found in the bed room of PW 1's son Sarit Khanna. A stone slab was also visible in the same bed room. PW 1 had stated that she had removed that slab from the legs of her son. A knife was found lying on the floor of the drawing room. In the bed room where her sister was lying dead the cover of the sword was found and the sword was recovered from the curtains of Puja room. Chilly powder jar which was kept in the kitchen was also found in the trolley used for serving the bed tea. Blood stained clothes worn by the deceased and bed sheets were also identified by her. The accused absconded and he was arrested nearly five years after the incident. From the room of the accused, the photograph was found in which the accused was in army Brigadier's uniform, which shows that he had stealthily removed his master's dress for the purpose of photograph.

Then, we have the evidence of PW 4 the Jamadar who used to come to the house of the deceased for cleaning. When he reached the house at

about 9 A.M., the main iron gate was locked from inside. He heard the screams of PW 1 as she was crying aloud that the accused Raja had murdered all inside the house. He entered the house by scaling the boundary wall. PW 4 stated that he had seen a person who was scaling the boundary wall and running towards south. He further stated that he had a glimpse of the person running away and it was the accused Raja. In the cross-examination, he deposed that he had seen the accused from a distance of 70 'paces'.

Coming to the medical evidence. PW 6 is the medical officer who conducted post-mortem of the dead bodies in the evening of 15th November, 1994 :

Out of injuries found on the body of Brig. Khanna two were incised wounds, six lacerated wounds, one subconjuctrial haemorrhage on right eye and one traumatic swelling over occipital region. One of the incised wounds was 7 cm x 3 cm. x bone deep over left side of scalp-2 cm. above upper border of upper left ear lobe. One of the lacerated wounds 6 cm x 3 cm. x bone deep was over mid scalp-2 cm. above injury no.1 with clotted blood. The rest of the injuries were on different parts of the body. According to him, the death had occurred due to shock and haemorrhage as a result of these ante mortem injuries.

Though he stated in the post-mortem report that death would have occurred about 12 hours back, he clarified that there was possibility of injuries being received at about 9 A.M.

Deceased Sarit Khanna was aged about 27 years. Four lacerated wounds were found as ante mortem injuries on his person. One lacerated wound 2 cm x 10 cm. was over anterior aspect of neck. Muscle tissues were exposed on both the sides. On internal examination, it was found that the wind pipe was lacerated and both the vessels of the neck were cut. The right chamber of heart was full while the left chamber was empty. The entire neck of the deceased was slit upto spinal cord. He would have been attacked with a sword or khukri or any other sharp edged weapon while the victim was sleeping, according to PW 6.

He died due to shock and haemorrhage as a result of ante mortem injuries.

Deceased Smt. Bishna Mathur was aged about 65 years. As many as eight injuries had been inflicted on her person and amongst them, six were incised wounds, one was punctured wound and the other was lacerated wound. Five of the incised wounds were on the neck. She, too, died due to shock and haemorrhage as a result of coma on account of ante mortem injuries.

It is the contention of the learned senior counsel who appeared as Amicus curiae that the appellant was roped in on mere suspicion, that there was no reliable evidence direct or circumstancial to connect the accused with the crime and that the appellant had no compelling motive to kill his master and his kith and kin and that it would be difficult to believe that the accused single handedly had killed so many persons at three different places using several weapons. It is further contended that more than one person would have been involved in these serial killings and that the prosecution has apparently not come forward with correct version of the incident. Finally it is submitted that in any case, death sentence is not warranted.

The most important evidence in the present case is that of PW 1 Smt. Rama Khanna whose husband, son and sister were brutally killed and who was also targeted for attack by the accused.

No doubt, she is not a direct witness in the sense that she had not witnessed the actual attack on the three victims. In the cross-examination she made it clear that she did not see the accusd killing her sister and her son. She further clarified that she had not seen the accused attacking her husband but heard the voice of her husband questioning the accused "Why are you doing so? We have not harmed you". So also, she heard the cries of her sister soon after she responded to PW 1's call to open the bolt of the bath room door and they stopped all of a sudden. Soon thereafter, she peeped out of the bath room door (after the bolt was opened by the accused) to find to her utter surprise the accused holding chilly powder and sword. The appellant then attacked her with the sword and she providentially escaped with an injury on the left wrist as her bangle bore the impact of the sword. She then managed to get into the bath room again and closed the door from inside. Even thereafter, the accused kept the bath room door banging and then tried to injure her with the aid of a danda from the bath room window. Thus, she was attacked by the accused with a deadly weapon at that juncture when her sister and son were lying dead and when she was questioning him about their safety. It follows from this sequence of events that there exists an inextricable nexus between the accused and the murderous assault on the victims. There was no one else in the house and none other than the accused was seen by PW 1. Who else other than the appellant would have killed the sister and son of PW 1? - is a question which conspicuously stares at the face of the accused. The circumstances do not err and they clinchingly point to the hand of the accused in the murders. The instantaneous act of the appellant in attacking PW 1when she questioned him about what was happening instead of saying a word about the victims establishes beyond reasonable doubt that the appellant and the appellant alone had committed the murders of the sister and son of PW 1 by the time her husband Brig. Khanna arrived. The circumstances speak for themselves and they point unerringly to the participation of the accused in the murders. True PW 1 did not hear the cries nor did she have any indication of her son who was sleeping in the bed room being attacked by anyone. But, the circumstances coupled with human probabilities ought to be taken into account. PW 1 deposed that at the time the accused served them bed tea, her son was sleeping. The occurrence had obviously taken place thereafter i.e. after Brig. Khanna left for morning walk. No one else entered the house excepting the accused who was actually seen by PW 1, when he tried to make a fatal assault on her. It cannot be imagined that some unknown person would have stealthily entered and killed Sarit Khanna in the meanwhile and the appellant resorted to a killing spree in respect of others. The argument sought to be advanced by the learned Amicus Curiae is highly unrealistic and inconsistent with the telling circumstances of the case.

When we come to the murder of Brig. Khanna, here again, the evidence of PW 1 is sufficient to establish that the accused is the culprit and none else. Her evidence reveals that the moment her husband returned home, she cried aloud to open the bath-room door and that Raja (accused) was upto some mischief. Her husband replied that Raja was not there but immediately thereafter she heard the cries of her husband and her husband remarking "Raja, why are you doing this? We have not harmed you". The cries subsided thereafter. Then, the accused tried to injure her with a 'danda' from the window of the bath-room. At that stage, her husband gathered strength to open the door from outside. However, she was not sure, whether her husband opened the door or the accused had opened it. Be that as it may, her evidence is clear that the bolt was opened. As soon as she got out of the bath-room, she having noticed the accused outside the main door of the house, acted with presence of mind in bolting the main door from inside to prevent the re-entry of the accused. Then, the accused started knocking at the door repeatedly. Even though PW-1 had not seen the actual attack on the husband, that is, throwing chilly powder on his face and attacking him with a dangerous weapon, the sequence

of events noted above would clinchingly and unerringly point to the fact that none other than the accused would have killed the husband of PW-1.

The circumstances and events unfolded by the evidence of PW-1 are incompatible with the innocence of the accused. It is worthy of note that the accused-appellant executed his plan to put an end to the lives of the entire family in a calculated manner : first, he directed his attack towards the son of PW-1 who was sleeping so that he will not be able to come to the rescue of others. It was easy for him to kill that sleeping young man. The fact that a stone slab was found on the body would lead to a reasonable inference that the accused would have hit him on the head with that stone so as to prevent any resistance being offered on hue and cry being raised. Then, he targeted the ladies who were in the bath-rooms. When Brig. Khanna returned home, he became the next victim. In this scenario, it is difficult to accept the contention of the learned counsel that it could not have been possible for the appellant to single-handedly commit three murders one by one by using different weapons. The doubt which is sought to be raised by the learned counsel does not rest on firm hypothesis.

It is next contended by the learned amicus curiae that the version given by PW-1 in her deposition is an improvement over the earliest version in the FIR. It is pointed out that the alleged cries of her husband "Raja, why are you doing this!" did not find mention in the FIR. Nor was it mentioned in the FIR that the accused replied to PW-1 saying "you have lodged complaint against me". These remarks attributed to the husband of PW-1 and the accused cannot be true, according to the learned counsel because they were not mentioned in the FIR. We find it difficult to accept this contention. It is axiomatic that the FIR need not contain an exhaustive account of the incident. It is to be noted that the report was given to the police within one and a half hours after the incident. PW-8, a known person, had drafted the report that she dictated. She had given all essential and relevant details of the incident naming the accused as culprit. We cannot expect a person injured and overtaken by grief to give better particulars. The possibility of PW-1 inventing a story at that juncture trying to implicate the accused is absolutely ruled out. The contents of the FIR, broadly and in material particulars, conform to the version given by PW-1 in her deposition. Another corroborating factor is the evidence of PW 4 - the sweeper who was regularly coming to the house for cleaning in morning times. He heard the earliest version of the incident from PW-1 and also noticed the accused running away after scaling the wall. His evidence was believed by both the courts. We do not think that the criticism of his evidence by the learned amicus curiae based on the alleged improbabilities is justified. Another circumstance to be borne in mind is that the appellant absconded and he was apprehended only after five long years. There was no apparent explanation for this.

As regards the motive for the crime, the High Court on an analysis of the evidence found that it could either be a frustrated attempt to commit robbery or it could be for taking revenge against the master and his family. It is in evidence of PW-1 that the decision to dispense with his services was conveyed to the accused on the previous day because the accused incurred the displeasure of the family on account of his misbehaviour viz., suspected theft and his killing or harming the pet birds. That apart, as stated by the accused in his statement under Section 313 Cr.P.C., he was asked to quit the job for having illicit intimacy with the sister of the co-accused and he was scolded on that account. The accused would have been aggrieved for one or all of these reasons. We are not concerned with the sufficiency or otherwise of the motive which would have prompted the appellant to commit the crime. The correctness of conviction cannot be tested on the touchstone of lack of sufficient motive, if the evidence establishes beyond reasonable doubt that the accused

committed the crime. Such evidence is available in abundant measure in the instant case.

Regarding the age of the appellant, a contention has been raised that he was juvenile at the time of commission of crime on 15.11.1994 because he gave the age as 20 years in his statement recorded under Section 313 Cr.P.C. on 07.03.2001. Apart from the fact that on behalf of the appellant no proof was adduced regarding his age, the High Court noted that he admittedly opened the bank account in Punjab National Bank at Dehradun on 9.3.1994. Pass book and cheque book were exhibited in trial . The High Court observed that the appellant would not have been in a position to open the account unless he was a major and declared himself to be so. That was also the view taken by the trial Court. The approach of the Trial Court as well as the High Court on this aspect cannot be faulted.

In view of the foregoing discussion, we affirm the conviction of the appellant-accused under Section 302 IPC. The question then is about the sentence. The trial court as well as the High Court categorized it as 'rarest of the rare cases' which warranted the death sentence. After giving our anxious consideration, we are in agreement with the High Court that the sentence of death is the appropriate and proper sentence in this case. As rightly observed by the High Court, the crime had been cleverly pre-planned and committed in a brutal and diabolical manner. Three out of the four inmates of the house in which he was employed, were eliminated. There was an attempt to kill the fourth person (PW-1) also. The accused had inflicted injuries on the young Sarit Khanna in such a cruel manner that his neck was practically severed from his body. Multiple injuries were inflicted on the vital parts of other victims. The cruel tendency of the appellant was writ large even in the manner of attack. His antecedents also reveal a cruel and savage behaviour on his part. The evidence on record reveals that he killed a pet bird and pierced feathers inside the nose of the hen. He was determined to kill all the members of the Khanna family to take revenge on a flimsy ground. Alternatively, he stooped to the ghastly crime in order to take away the valuables in the house. His conduct and behaviour is repulsive to the collective conscience of the society. It is fairly clear that he does not value the lives of others in the least. The crime committed by the appellant shocks the conscience of the society at large and of the Court and the facts and circumstances unfolded in the case leave the Court with an irresistible feeling that he is beyond reformation though young he is. As held in Amrutlal Someshwar Joshi vs. State of Maharashtra (1994 (6) SCC, 197), mere young age of the accused is not a ground to desist from imposing death penalty, if it is otherwise warranted. Moreover, in the present case, none is dependant on the appellant. There are no mitigating circumstances in his favour. The accused is a menace to the society and it seems to us that the death sentence is the most appropriate punishment in this case. On facts, the case on hand is closest to Amrutlal Someshwar's case (supra) where the death sentence was upheld. Accordingly, the sentence of death is confirmed. The appeal is dismissed.

We must place on record our appreciation of the valuable assistance rendered by the learned senior counsel Dr. Syamala Pappu who appeared as amicus curiae.