
(2007) 03 AHC CK 0086
In the Allahabad High Court

Devendra, Sundar, Naresh @ Lavesh and Kurri @ Kiran (In Jail) APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 16-03-2007

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2007) 03 AHC CK 0086

Hon'ble Judges : Imtiyaz Murtaza, J; A.K. Roopanwal, J

Bench : Division Bench

Judgement

A.K. Roopanwal, J.—Both these criminal appeals have been filed against the judgment and order of conviction recorded by the learned IIInd Additional District and Sessions Judge, Court No. 2, Bulandshahr in Sessions Trial No. 1140 /02, State v. Devendra and Ors. under Sections 148, 302/149, 324/149 and 457 IPC, Police Station Aurangabad, District Bulandshahr and Sessions trial No. 1424/02, State v. Sundar u/s 25-A of the Arms Act, police station Sikandarabad, District Bulandshahr by which the accused appellants Devendra, Sundar, Naresh alias Lavesh, Kurri alias Kiran, Veer Singh and Chandrapal were found guilty of the offences punishable under Sections 148, 302/149, 324/149, IPC and Section 457, IPC. Accused Sundar was further found guilty for the offence punishable u/s 25 of the Arms Act and accused Devendra, Sundar, Naresh alias Lavesh and Kurri alias Kiran were sentenced to death for offences punishable u/s 302, IPC read with Section 149, IPC and accused Veer Singh and Chandrapal were sentenced to life imprisonment and a fine of Rs. 5,000/ and in default of payment of fine, further imprisonment for one year for the offence punishable u/s 302, IPC read with Section 149, IPC. All the accused appellants were also sentenced to one year R.I. u/s 148 IPC, one year R.I. u/s 324, IPC read with Section 149 IPC and two year R.I. and a fine of Rs. 1,000/- u/s 457, IPC and in default of payment of fine further imprisonment for six months. The accused Sunder was also

sentenced to one year R.I. for the offence punishable u/s 25 of the Arms Act.

2. Criminal reference is for the confirmation of death sentence of the appellants Devendra, Sundar, Naresh alias Lavesb and Kurri alias Kiran.

3. Brief facts giving rise to these appeals are as under;

4. On 21.6.2002 complainant, Smt. Banas, wife of late Kamal Singh resident of village Khwajpur, police station Aurangabad, District Bulandshahr was sleeping in her house along with other family members. Her son Gopal and his wife Vimla were sleeping on the roof, while the younger son Krishnapal Singh and son-in-law, Harikishan Singh were sleeping on separate cots in the courtyard of the house. The complainant herself, her daughter Chandra and daughter-in-law Malvati were also sleeping in the courtyard along with children. A lantern was burning in the thatch. At about 2.00 A.M. on 22.6.02, accused Devendra, Sundar, Rajendra Singh, Chandrapal, Naresh son of Veer Singh, Kurri son of Karan, Chandrapal and Veer Singh entered into the "Gher" of the house. Due to noise, the complainant and her daughter, Chandra and daughter-in-law Malvati got up. They raised alarm at which Chandrapal and Veer Singh exhorted the other accused to kill the inmates of the house. Accused Sundar and Kurri climbed upon the roof and committed murder of Gopal with Dab (a sharp edged weapon) by cutting his neck. Accused Naresh and Devendra committed murder of Krishnapal by causing injuries on the neck and hand with dabs. After committing murder of Gopal, Sundar and Kurri came on the ground floor. Accused Narendra and Rajendra assaulted Harkishan with dabs in their hands and caused injuries on his neck. When Chandra came for the rescue of her husband, she was also assaulted by Sundar with Dab. The complainant and others raised hue and cry and tried to apprehend the accused at which accused Sundar took out a Tamancha from his pocket and fired upon the complainant in order to kill her but any how, the complainant had a narrow escape and the pellets hit her daughter Chandra. After committing occurrence, the accused persons ran away in the jungle towards the west of the house by giving threats to kill the whole family.

5. The complainant sent her injured son-in-law, Harikrishna to the hospital, Bulandshahr by the jeep of Mukesh Singh, Pradhan of her village and got the report of the incident written by Dr. Ram Singh. On the basis of this report chick FIR was lodged at police station Aurangabad on 22.6.02 at about 2.50 AM at crime No. 205/02 under Sections 147, 148, 149, 302, 307, 504, 506 and 457, IPC. The then S.O. Aurangabad, S.I., B.P. Singh was present at the time when the case was registered at the police station at G.D. No. 5 on 22.6.2002 at 2.50 AM and he himself took the charge of investigation in his hand. He came on the spot and prepared site plan of the place of occurrence. He also got prepared the panchayatnamas and other relevant papers of the deceased Gopal and Krishnapal under his supervision. He collected blood stained and plain earth and also collected the blood stained dari and banyan of deceased Krishnapal. He also took the possession of blood stained mattress and pieces of floor from the place where Gopal was murdered. The blood stained earth and bed sheet was also

taken in his possession by the I.O. from the place where Harikrishna was sleeping on the cot.

6. Harikishan also died later on, whose inquest report and other connected papers were prepared in district hospital, Bulandshahr on the instruction of S.O., B.P. Singh.

7. Accused Rajendra and Kurri were arrested by the I.O. on 22.6.2006 and on their pointing out two dabs were recovered on the same day at 7.15 PM. The I.O. recorded the statements of eye witnesses of occurrence and also of other witnesses.

8. Later on, the charge of investigation was taken up by S.O. Jogendra Singh of police station Aurangabad on the transfer of S.O. B.P. Singh. This I.O. recovered the weapons of assault on the pointing out of accused Devendra, Sundar and Naresh. After concluding the investigation the charge sheet under Sections 147, 148, 149, 302, 307, 504, 506 and 457 IPC was submitted against the accused appellants along with one Rajendra by the S.O. Jogendra Singh. The charge sheet u/s 25 of the Arms Act against Sundar was submitted by head constable, R.P. Sharma. The case of Rajendra was separated as he was a juvenile.

9. The autopsy on the dead body of Han Kishan Singh was conducted by Dr. Rajiv Kumar Gupta on 22.6.2002 at 4.30 PM at - mortuary, Bulandshahr. The deceased was about 35 years of age and was of average built. About half day had passed since the time of death. The following ante mortem injuries were found on the person of the deceased.

1. Incised wound 6 cm x 4 cm x Vertebrae deep on front and left side neck middle. Trachea and great vessels of neck cut.

2. Incised wound 3 cm x 1 cm x muscle deep on left side neck lower part.

3. Incised wound 10 cm x 2 cm x muscle deep left side upper chest.

4. Incised wound 10 cm x 4 cm x muscle deep on back of left shoulder

5. Incised wound 5 cm x 2 cm x muscle deep on outer aspect of left upper arm

6. Incised wound 4 cm x 2 cm x muscle deep dorsal aspect of left forearm middle.

7. Incised wound 3 cm x 1 cm x bone deep on left hand, 2 cm below left wrist.

10. In the internal examination the neck bone was found cut. Great vessels of the neck, trachea and vertebrae were also found cut. The heart and stomach were empty. In the opinion of the doctor, cause of death was shock and haemorrhage due to ante mortem injuries.

11. The autopsy on the dead body of Gopal was conducted by Dr. Rajiv Kumar Gupta on 22.6.2002 at 2.30 PM at mortuary Bulandshahr. The deceased was about 30 years of age. Half day had passed since the time of death. Rigor mortis was present all over the body. The following ante mortem injuries were found on

the person of the deceased.

1. Total amputation of the neck from middle, only skin tag (behind the neck) intact. Vertebra, Trachea and great vessels cut under injury.

2. Incised wound 4 cm x 1 cm x bone deep left chin. Left mandible cut present.

3. Incised wound 4 cm x 2 cm x right plural cavity deep on right lateral part of the chest 5 inch from right Axilla.

12. In the internal examination neck bone, Right Pleura and right lung were found cut. The heart was empty. In the doctor's opinion the cause of death was shock and haemorrhage due to the ante mortem injuries.

13. Autopsy on the dead body of Krishna Pal Singh was also done by the same doctor on 22.6.2006 at 3.00 PM. The deceased was about 25 years of age. He was an average built man. About half day had passed since the time of his death. Rigor mortis was present all over the body. The following ante mortem injuries were found on the person of the deceased.

1. Near total amputation of left hand 1 1/2 cm above left wrist joint only skin tag present on left radial side of left hand. All bones of left hand cut.

2. Incised wound 5 cm x 3 cm x vertebrae deep on front of neck middle, trachea and great vessels found cut under injury.

14. In the internal examination trachea and vessels of the neck were found cut. Heart was empty. In the opinion of the doctor, death had occurred due to shock and haemorrhage as a result of ante mortem injuries.

15. The injuries of Smt. Chandra were examined by doctor M.B. Gupta on 22.6.02 at 7.30 PM. The following injuries were found on her body.

1. Deep abrasion with contusion size 3 cm x 2 1/2 cm at Left side of face 1/2 cm below Left, Lower lid, painful swelling present

2. Deep abrasion with contusion sized 2 cm x 2 cm at upper left side nasal 3 cm below the nasal tip painful swelling present.

3. Clean lacerated wound size 1 1/2 cm x 1/2 cm muscle deep at base of left thumb, painful swelling.

4. Contusion size 5 cm x 3 cm at Lat. Dorsal side of left wrist joint, painful swelling present.

5. Deep abrasion size 4 1/2 cm x 2 1/2 cm at medial side lower end of left hand painful swelling present.

6. Deep abrasion size 1 cm x 1 cm with contusion 5 cm x 4 cm at Ant. Lat. Part of upper part of right arm 6 cm lat to clavicular joint, painful swelling.

16. All the injuries were inflicted by hard blunt object and friction against rough

surface and were fresh at the time of examination. The doctor has stated that these could be inflicted if the blunt part of the dab comes in contact with the body of the injured.

17. The accused appellants were charged under Sections 148 IPC, 302 read with Section 149 IPC, 307 read with Section 149 IPC and Section 457 IPC and Sundar was further charged u/s 25 of the Arms Act by the then Additional and Sessions Judge, Court No. 9, Bulandshahr. They denied the charges levelled against them and claimed to be tried.

18. Prosecution in order to prove the charges, examined PW-1 Banas, PW-2 Chandra, PW-3 Vimala, PW-4 Dr. Rajiv Kumar Gupta, PW-5 head constable Indrapal Singh, P.W. 6 S.I. B.P. Singh, PW-7 constable, Kripal Singh, PW-8, S.I. Faggan Singh, PW-9 S.I. Rajendra Prasad Sharma and PW-10 Dr. S.B. Gupta.

19. The statements of the accused were recorded u/s 313 Cr.P.C. in which they denied from the prosecution case and also stated that they had no enmity with the complainant. It was also stated by them that they have been implicated by the complainant with the consultation of Bal Mukund and Gangadas with whom the appellants had an old litigation. The accused persons examined PW 11 Dr. Ram Singh in their defence.

20. Out of witnesses examined by the prosecution, PW-1 Banas, PW-2 Chanda and PW-3 Vimla are the so called eye witnesses of the alleged occurrence. PW-4 Dr. Gupta is the person who had conducted the autopsy on the dead bodies of the deceased. PW-5 is the scribe of the chick FIR and GD of the registration of the case. PW-6 B.P. Singh is the Investigating Officer, PW-7, constable Kripal Singh, PW-8, S.I. Faggan Singh are the witnesses of the recovery of weapons of assault, PW-9 S.I. Rajendra Prasad Sharma is the I.O. of the case u/s 25 of the Arms Act against appellant Sundar and PW-10 Dr. Gupta is the doctor who examined the injuries of Smt. Chandra, the injured.

21. DW-1 Ram Singh was produced by the accused to show that the report exhibit ka-1 was written by him at the police station on 22.6.2002 on the dictation of Police Inspector.

22. The learned Sessions Judge after going through the evidence available on the record found the case of the prosecution proved beyond all the reasonable doubts against the appellants and recorded the conviction and sentence in the aforementioned manner.

23. We have heard Shri Raghuraj Kishore and Shri Anoop Trivedi learned Counsel for the appellants and Shri R.K. Singh, learned A.G.A. for the State.

24. The first submission of the counsel for the appellants is that the first information report is ante timed. It is submitted that the prosecution has wrongly shown the time of lodging of the first information report at 2.50 a.m. on 22.6.2002. Intact, the first information report was prepared about 10-11 a.m. at the instance of the investigating officer. The counsel for the appellant has drawn

our attention towards the testimony of D.W. 1 Dr. Ram Singh, scribe of the F.I.R., who had stated that he prepared the first information report on 22.6.2002 around 10 11 a.m. He further deposed that he had prepared the first information report on the dictation of the investigating officer. We have considered this submission of the counsel for the appellants and the evidence on record. It is true that the testimony of a defence witness can not be rejected solely on the ground that he is produced by the defence. The Apex Court in the case of Doodh Nath Pandey v. State of U.P. reported in 1981 CrL. L.J. 618 has held that "Defence witnesses are entitled to equal treatment with those of the prosecution. And Courts ought to overcome their traditional, instinctive disbelief in the defence witnesses. Quite often, they tell lies but so do the prosecution witnesses."

25. In the case of State of Haryana v. Ram Singh reported in 2002 SCC 350, the Apex Court had observed that "the evidence tendered by defence witnesses cannot always be termed to be a tainted one-the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution."

26. We have carefully considered the testimony of D.W.1 Ram Singh in the light of the decisions of the Apex Court. The evidence on the record clearly indicates that report was lodged by Smt. Banas, P.W. 1, who had stated that the report was prepared by Dr. Ram Singh on her dictation and she had lodged the same at the police station. P.W. 5 H.C. Chandra Pal Singh had proved the lodging of the F.I.R. by Smt. Banas. He had prepared the chik F.I.R. Ext. Ka-5. The G.D. Entry is Ext. Ka-6. He had also sent the special report vide G.D. No. 15 at 7.50 a.m. Copy of the G.D. is Ext. Ka-8. The testimony of P.W. 5 is also not challenged about lodging of first information report. After lodging of the F.I.R. P.W. 6 B.P. Singh had reached at the place of occurrence at 3.30 a.m. and started preparing the inquest reports of the deceased. He had also stated that Smt. Banas had came to the police station for lodging the F.I.R. In view of the overwhelming evidence about the alleged time of lodging of the report the evidence of D.W. 1 Dr. Ram Singh does not inspire confidence. He is falsely deposing about the time of lodging of the report and no reliance can be placed on his evidence and the prosecution has successfully proved the time of lodging of the report.

27. The next submission of the counsel for the appellant is that the appellant had no such motive to commit ghastly murders. According to the prosecution case the enmity between the parties was with regard to possession of a well which was situated in the courtyard (Angan) of the informant. The accused wanted to grab the possession of the well. The testimony of the prosecution witnesses clearly shows that there was some dispute regarding the possession of a well. It is stated by the witnesses that there was an electric connection which was in the name of Veer Singh and he was not allowing complainant to take water from the well and on that account there was enmity between the parties. It is a case of

direct evidence. It cannot be said with certainty as to what amount of enmity will led to this ghastly murders. It normally depends upon the reaction of the parties. It cannot be said that there was no motive for committing the crime. The witnesses were also suggested by the appellants that for grabbing the well they were falsely roped in this case. In a case which turns on direct evidence, the motive element does not play such an important role so as to cast any doubt on the credibility of the prosecution witnesses.

28. The next submission of the learned Counsel for the appellants was that there was no source of light in which the assailants could be identified. In the first information report the informant mentioned that a lantern was burning in the shanty. Investigating officer has also shown a lantern in the site plan. Moreover, the assailants are close relatives of the witnesses and they had caused numerous injuries to the deceased and the witnesses had abundant opportunity to identify them. P.W. 2 Chanda is an injured witness also and she must have been in close contact with the accused. All the accused were very well known and they could be identified in faint light also.

29. The counsel for the appellant has also challenged the presence of the eye witnesses on the ground that they did not make any effort to save the deceased and it was further submitted that manner of assault as mentioned by these witnesses is highly improbable. It is also submitted that the dead bodies of the deceased were found on the cot. The witnesses have deposed that assailants firstly killed Gopal on the roof arid thereafter Krishnapal and Hari Krishna were murdered. If Gopal was firstly murdered on the roof then it is highly improbable that the other deceased will remain lying on the cot. We do not find any substance in this submission. The accused are close relatives of the deceased. It was very difficult for them to accept whether they came to kill them and if they remain lying on their cots for some time it cannot be said that the prosecution version is wrong. Every person reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. There is no set rule of natural reaction. The eyewitnesses account is fully corroborated by medical evidence. The presence of the witnesses is quite natural and P.W.2 Chanda is also an injured witness and her presence can not be doubted. The next ground of criticism of the conduct of P.W.1 Smt. Banas that she did not intervene at the time of occurrence in our opinion is wholly unsustainable. Since the appellants were heavily armed with deadly weapons and in such a situation it was absurd to expect any intervention from a lady. P.W.2 Chanda did try to intervene and she was also assaulted.

30. Learned Counsel for the appellant further submitted that the injuries of P.W. 2 Chanda are manufactured and doubtful in nature. According to the prosecution

case Sunder had caused injuries to Chanda by Daon and she had also received fire arm injuries but this part of the prosecution case is not corroborated by the medical examination report. We do not find any substance in this submission because she was also assaulted while she was trying to save her husband and the medical examination report of P.W. 2 Chanda shows that she had received six injuries. If she had not received any incised wound it cannot be said that she was not assaulted in the occurrence. The assault was made while she was trying to save her husband and she must have tried to avoid the blow also and in that process it is not necessary to receive the incised wound from Daon.

31. We have carefully examined the testimonies of the witnesses. The occurrence took place inside the house and the presence of witnesses at the time of occurrence was natural. The occurrence took place at about 2 a.m. on 22.6.2002 and the F.I.R. has been lodged at 2.50 a.m. and the distance of the police station was only 3 km. from the place of occurrence. The F.I.R. contains all necessary details, the name of the accused, weapon in their hands and specific role has been mentioned. Prompt lodging of F.I.R. eliminates the chance of embellishment. The testimony of P.W. 1 Banas inspires full confidence. She was subjected to lengthy cross examination but nothing could be elicited to discredit her testimony. P.W. 2 Chanda is an injured witness. She had also supported the prosecution case. Her presence at the time of occurrence is also corroborated by the medical evidence. P.W. 3 Vimla had also supported the prosecution and she is also a truthful witness and her testimony also inspires full confidence. The Sessions Judge had rightly relied upon their testimonies and recorded the findings of conviction and we also concur with the same.

32. Lastly, the question that arises for consideration is that death sentence awarded to the appellants on the facts and circumstances of the case is justified? The Sessions Judge has awarded death sentence to the appellants of CrI. Appeal No. 5263 of 2006, namely, Devendra, Sundar, Naresh alias Lavesh and Kurri alias Kiran holding that three persons were done to death while they were sleeping and all were the bread earners of their families.

33. Under the old code of criminal Procedure ample discretion was given to the courts to pass death sentence as a general proposition and the alternative sentence of life term could be awarded in exceptional circumstances, that too after advancing special reasons for making this departure from the general rule. The new Code of 1973 has entirely reversed the rule. A sentence for imprisonment for life is now the rule and capital sentence is an exception. It has also been made obligatory on the courts to record special reasons if ultimately death sentence is to be awarded. A Constitutional Bench of the Supreme Court in the case of Bachan Singh v. State of Punjab AIR 1980 page 898 while upholding the constitutional validity of the death sentence voiced that as a legal principle death sentence is still awardable but only in rarest of rare cases when the alternative option of lesser sentence is unquestionably foreclosed.

34. The Apex Court in the case of Ram Pal v. State of U.P. 2003(47) A.C.C. 567

for the reasons mentioned in paragraph 8 and 9 of the judgment reduced the sentence from death to life imprisonment despite the fact that 21 persons were murdered in an incident.

35. Compassion in sentencing is also a key factor. It allows the scars to heal. Longevity of incarceration may make them see reason. Passage of time may make them ponder over the crime they had committed. This might arouse in them a feeling of remorse and repentance.

36. Considering the over all circumstances of the case this case does not fall within the category of rarest of rare case and it cannot be said that imprisonment for lesser sentence of life term stood altogether foreclosed and we are of the view that a sentence of imprisonment for life to the appellants Devendra, Sundar, Naresh alias Laves and Kurri alias Kiran, would meet the ends of justice.

37. We therefore, reduce the sentence of death of the appellants Devendra, Sundar, Naresh alias Laves and Kurri alias Kiran to imprisonment for life.

38. In view of the above, the above appeals are decided as under:

Crl. Appeal No. 5263 of 2006 (Devendra, Sundar, Naresh alias Laves and Kurri alias Kiran v. State of U.P.) is dismissed with the modification that conviction of the appellants Devendra, Sundar, Naresh alias Laves and Kurri alias Kiran under Sections 302/149, is upheld but the sentence of death is converted into imprisonment for life. Their conviction and sentence under Sections 148, 324/149 and 457 I.P.C. awarded by the trial court is affirmed. They are in jail. They shall be detained there to serve out their sentences awarded by the trial court and modified by this Court.

Crl. Appeal No. 5308 of 2006 (Chandra Pal and Veer Singh v. State) is dismissed. The conviction and sentences of the appellants u/s 302/149, 148, 324/149, and 457 I.P.C. awarded by the trial court is affirmed. The appellants are on bail. C.J.M. Bulandshahr is directed to take the appellant into custody forthwith to serve out the sentences awarded by the trial court and affirmed by us.

39. Reference made by learned Sessions Judge for confirmation of death sentence of appellants, Devendra, Sundar, Naresh alias Laves and Kurri alias Kiran, is hereby rejected.

40. Office is directed to communicate this order to the court concerned within two weeks for compliance.