

A

KRISHAN
v.
STATE OF HARYANA

MAY 1, 1997

B

[M.K. MUKHERJEE AND K. VENKATASWAMI, JJ.]

Indian Penal Code, 1866 :

C

Ss.302—Murder—Accused while undergoing life imprisonment imposed upon him in an earlier murder case, committed murder of his brother-in-law, an under-trial—Trial court convicted the accused and sentenced him to death—High Court upheld the conviction and the sentence—Held, felonious propensity of an offender is a factor which requires consideration while dealing with the question of imposition of sentence of death but that cannot be the sole basis for such sentence as all other factors relating to the commission of the crime including motive, manner and magnitude have also to be taken into consideration—The instant case, in the circumstances, is not one of the rarest of the rare cases where sentence of death should be imposed—The sentence of death is commuted and accused is awarded imprisonment for life—Sentence of fine is maintained.

D

E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 91 of 1997.

F

From the Judgment and Order dated 13.9.96 of the Punjab & Haryana High Court in CrI. A. No. 592 - DB/95 and Murder Ref. No. 8 of 1995.

Satyapal Khushal Chand for the Appellant.

Prem Malhotra (NP) for the Respondent.

G

The following order of the Court was delivered :

H

Consequent upon dismissal of his appeal by the High Court Krishan, the appellant herein, stands convicted under Section 302 I.P.C. and sentenced to death for committing the murder of Ranbir, his brother-in-law, on October 23, 1994 inside District Jail, Sonapat, where the former was undergoing a sentence of imprisonment for life and the latter was an

under-trial prisoner.

According to the prosecution case on the fateful day at or about 10.45 A.M. when the deceased was getting himself shaved by Ram Phal (P.W.3), who is a barber by profession and at the material time was serving a sentence, in Barrack No. 3 of the Jail, the appellant came there with *Kassi* (spade) in his hand and inflicted two successive blows on the head of Ranbir, with whom he had a property dispute as a result of which he fell down and started bleeding profusely. Ram Phal raised an alarm which attracted the attention of Head Constable Som Nath, who was on duty nearby. Ram Phal and Som Nath chased the appellant who had fled away in the meantime with the *kassi*, and nabbed him with great difficulty. They snatched the *kassi* from him and put him inside Barrack No. 4. They then went to Shri Ashok Kumar (P.W.4), Assistant Superintendent of the Jail and narrated the incident and also handed over the *kassi* to him. Shri Kumar then arranged a vehicle to shift Ranbir to the General Hospital, Sonapat. There Ranbir was examined by Dr. R.R. Mittal (P.W.1) and he found the following :

"1. Incised wound in front of the left pinna extending upto mid-line of vault of skull which was 12 x 1 cms. x bone deep. Fresh bleeding was present and brain matter was coming out of the injury and

2. Incised wound on the skull from its middle to parieto-temporal region measuring 10 x 1 cms. x bone deep with fresh bleeding. Brain matter was coming out of the injury. X-ray was advised in respect of skull and surgical opinion was sought."

According to the doctor, both the aforesaid injuries could be caused by a sharp-edged weapon like *kassi*. The doctor sent a *riga* (ext. PB) to In-charge, Police Post General Hospital, Sonapat, at 12 noon.

On receipt of a telephone message from the city Police Station, S.I. Ami Singh (P.W.8), who was then posted as in-charge Police Post, Gohama Road, Sonapat, first went to General Hospital, Sonapat, where he came to learn that Ranbir Singh had since been referred to Medical College & Hospital, Rohtak. Thereafter, he came to District Jail, Sonapat, where Chander Singh (P.W.7) made a statement (Ext. PG) regarding the incident. He forwarded the said statement for registration of a case and took up investigation. There-after, S.I. Ami Singh recorded the statements of Ram

A Phal, Som Nath and Ashok Kumar under Section 161 Cr. P.C. He took possession of the *Kassi* (Ext. P1) from Ashok Kumar and seized some blood stained earth from the place of incident. He also prepared a rough site plan (ext. PI).

B In the night intervening 26/27th of October, 1994 the Investigation Officer received a message from Medical College & Hospital, Rohtak that Ranbir Singh had since died. On receipt of this message, S.I. Ami Singh reached there along with H.C. Dhara Singh and Constable Suresh Kumar and conducted inquest proceedings (Ext. PX). He then sent the dead body for post mortem examination. Post-mortem examination was conducted by C Dr. A.P. Sharma (P.W. 10) in Civil Hospital, Rohtak and he noted two stitched wounds on his person corresponding to the medico-legal report. According to the doctor, the injuries were ante-mortem and sufficient to cause death in the ordinary course of nature.

D The appellant who was already lodged in District Jail, Sonapat as a convict in some other murder case was put under arrest by S.I. Ami Singh. On 23.10.1994, S.I. Ami Singh had deposited the *Kassi* Ext. P.1 duly sealed in a packet and another packet containing blood stained earth with the Moharrir Malkhana Randhir Singh and on 16.11.1994 the said Head Constable Randhir Singh handed over the same duly intact to the said Constable Vinod Kumar for being delivered at the Forensic Science Laboratory E (F.S.L.) and the said constable delivered the same there duly intact on the same day. Subsequently, report from the F.S.L., Madhuban vide Ext. PP. was received to the effect that there was human blood on the *kassi* (Ext.P.1) and the blood stained earth lifted from the spot. On completion of investigation the police submitted charge-sheet against the appellant and F in due course the case was committed to the Court of Sessions.

G The appellant pleaded not guilty to the charge levelled against him and stated that he had been falsely implicated. He took the stand that on the date of the incident he was on duty at the Sabzi *Panja* in Jail and came to the Barrack on hearing the alarm of whistles issued by the Lambardar on duty and then came to know that Ranbir was lying injured. He further stated that on seeing him injured, he started dressing him and while he was still dressing him, he himself became unconscious and thereafter regained consciousness in the hospital.

H To sustain the charge levelled against the appellant the prosecution

principally relied upon the ocular version of Ram Phal (P.W.3) and Chander Singh (P.W. 7), the warden of the jail. Both the learned Courts below found that the above two witnesses were natural, probable and independent witnesses and there was no reason to disbelieve them. As their evidence stood amply corroborated by the medical evidence and the First Information Report, which was promptly lodged, the Courts below recorded their respective findings against the appellant.

We have for ourselves perused the entire evidence on record and see no reason to interfere with the concurrent findings recorded by the learned Courts below as they have been arrived at on a detailed and proper appraisal of the evidence and are based on cogent and convincing reasons. The conviction of the appellant under Section 302 I.P.C. must therefore be upheld.

Coming now to the sentence we find that the principal reason which weighed with the Courts below to hold that the extreme penalty of death was called for, was that earlier the appellant had committed a murder for which he was serving the sentence of life imprisonment at the material time and that he committed another murder while he was released on parole. Undoubtedly, felonious propensity of an offender is a factor which requires consideration while dealing with the question of imposition of the sentence of death but that cannot be made the sole basis for such sentence as all other factors relating to the commission of the crime including motive, manner and magnitude have also to be taken into consideration. Taking an overall view of the attending facts and circumstances of the instant case we do not feel that this is one of the rarest of the rare cases where the appellant should be sentenced to death. We, therefore, commute the sentence of death imposed upon the appellant for his conviction under Section 302 I.P.C. to imprisonment for life, but maintain the sentence of fine of Rs. 5,000 and the sentence to be undergone in default of payment thereof. The appeal is thus disposed of.

R.P.

Appeal disposed of