

A

PANCHHI AND ORS. ETC.

v.

STATE OF U.P.

AUGUST 19, 1998

B

[M.M. PUNCHHI CJI, K.T. THOMAS AND
SYED SHAH MOHAMMED QUADRI, JJ.]

Criminal Law :

C

Indian Penal Code, 1860—Section 302/34—Accused including two ladies—Murdering family of four including child of 5 years—Award of Death Sentence by Sessions Court—Confirmed by High Court—Evidence of attacks and counter attacks between the families prior to the incident. possibility of more skirmishes in the past leading to Venglance—Held, award of alternative sentence of imprisonment for life adequate.

D

Conviction of appellants by Sessions Court—Prosecution relying on a child witness and two neighbours—Finding of trial court regarding reliability of testimony—Confirmed by High Court—Held, no scope for error in appreciation of evidence—Appellants cannot escape conviction.

E

Indian Evidence Act, 1872—Evidence of child witness—Aged 5 years—Son of the deceased—Whether could be relied on—Held, the evidence of child to be evaluated with greater circumspection.

F

The appellants who had been living adjacent to the house of the deceased were on inimical terms and underwent petty quarrels. A fortnight prior to the incident the appellants 2 and 3 had a fight with deceased P. Thereafter the appellants armed with weapons like kulhadi and hansia barged into the house of the deceased and killed all the four deceased including their five year old daughter. Both the Trial Court and the High Court concurrently found that the four deceased were murdered by the four accused out of which one died during trial. Both the Courts held that in the brutal nature of the perpetration of the murders, extreme penalties should be imposed and hence death sentence was confirmed. The Trial Court as well as the High Court relied on P.Ws. 1, 3 and 5.

H

Before this Court the appellants contended that it is very risky to

place reliance on the evidence of P.W. 1 being a child witness; that the evidence of a child witness is generally unworthy of credence and that the imposition of extreme penalty for all the accused was not legally justified in this case since among the three persons one is a septuagenarian, and other a youth in his prime age and the third a mother with a suckling child, since this case did not project any special feature as distinguished from under brutal murder cases inspite of the number of victims being four including a child; and that the number of victims is not sufficient to make the case so special as to foreclose the next alternative sentence i.e. imprisonment for life.

Disposing of the appeals, the Court

HELD : 1. P.Ws. 3 and 5 were admittedly neighbours. The fact that they did not see all what happened inside the house of the deceased is no reason to take their evidence lightly because when they saw all the appellants sitting inside the house variously armed and they also saw that all of them returning from the house after the incident with blood soaked weapons it is correct that the High Court has rightly concurred with the findings of the Trial Court regarding reliability of the testimony of the three witnesses. There is no scope to contend that there was any serious error in the appreciation of the evidence. [45-G-H]

2. The law is that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring. Courts have laid down that evidence of a child witness must find adequate corroboration before it is relied on. It is more a rule of practical wisdom than law. [45-C-D]

Prakash & Anr. v. State of Madhya Pradesh, [1992] 4 SCC 225; *Baby, Kandayanathil v. State of Kerala*, [1993] Suppl. 3 SCC 667; *Raja Ram Yadav & Others v. State of Bihar*, AIR (1996) SC 1613 and *Dattu Ramrao Sakhare and Others v. State of Maharashtra*, [1997] 5 SCC 341, referred to.

5. Brutality of the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the 'rarest of rare cases' as indicated in *Bachan Singh's* case. In a way every murder is brutal, and the difference between one from the other may be one account of mitigating or aggravating features surrounding the murder. The

A incidents which happened on earlier occasions between members of the two rival families are indicative of the intensity of the bitterness which prevailed between them. The brutality with which the murders were committed by the assailants which include two ladies is indicative of the fact that more skirmishes would have happened prior to the incident which would have escalated the simmering thirst for vengeance to reach boiling point.

B The present case cannot be treated as one of the "rarest of rare cases" where the lesser sentence is not at all adequate. The sentence of death penalty is altered to one of sentence of imprisonment for life to each of the appellants.

[47-H, 48-A-D]

C *Bachan Singh v. State of Punjab*, [1980] 2 SCC 684; *Machi Singh & Ors. v. State of Punjab*, [1983] 3 SCC 470 and *Allaudin Mian & Ors. v. State of Bihar*, [1989] 3 SCC 5, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
Nos. 333-35 of 1998 Etc.

D From the Judgment and Order dated 17.2.98 of the Allahabad High Court in Capital Case No. 337 of 1997.

E R.K. Jain, Ms. Indira Jaising, R.B. Malhotra, Manoj Goel, Ms. N. Annapoorani, S. Ravindra Bhat, Ms. Anitha Shenoy, Naveen R. Nath, Ms. Hetu Arora, Sanjay Ghose, C.D. Singh and A.S. Pundir for the appearing parties.

The Judgment of the Court was delivered by

F THOMAS, J. Bad blood which existed between two families living next door to each other resulted in the extermination of all the adult members of one family and the consequent judicial verdict to sent all the living members of the other family to gallows. Four members of the family of the accused became killers of four members of the other family irrespective of gender differences on both sides. A glimpse at the injuries on the mangled dead bodies would have convinced the on lookers that none

G among the victims could have been saved even with most advanced sophisticated medical facilities. Death of all of them would have been instantaneous. Such injuries clearly reflected the resolve of the killers that every one of the victims should have been snuffed out of their worldly existence.

H Facts are too brief for elaboration. The house where all the accused were living is situate adjacent to the house where all the deceased were

living. First appellant Panchhi and his wife Kalia were the parents of second appellant Manmohan and their appellant Smt. Ramshree. Among the victims deceased Banke Lal was the husband of deceased Pan Kunwar, his mother Halki was aged 70 and a little female child Sonu aged only 5 then was the daughter of Banke Lal. This quadruple murder took place during the forenoon of 26th October, 1989, inside and outside the house of the victims.

According to the prosecution story, the two families were on a warpath for some time and the members of both families chose to indulge in petty quarrels. Bad blood started fomenting up. A fortnight prior to the incident two female members of accused family (Kalia and Ramshree) gave a rubbing to Pan Kunwar. Though the matter was reported to the police there was no abatement of the hostility between the two families. So Banke Lal and Pan Kunwar retaliated to Ramshree by assaulting her just six days prior to the occurrence.

Further story of the prosecution is, on the date of occurrence all the assailants, armed with weapons like kulhari and hansia, barged into the house of the deceased at about 10.30 am and unleashed a killing spree. First target was Banke Lal, on seeing the plight of her son his mother Halki instinctively leaned to protect him but one of the assailants swished a lethal weapon on her neck and finished her. Pan Kunwar, wife of Banke Lal, made a bid to escape and she jumped out of the house with her little daughter Sonu. But the bid failed as the assailants rushed out and dealt deadly blows with weapons on the vital parts of their body. After accomplishing their target they retreated to their house.

Kalia could not face the trial as she died before its commencement. The remaining three appellants were tried for the murders of the deceased. Trial court and the High Court concurrently found that the four deceased were murdered by the four assailants who are appellants and Kalia. Both the courts held the view that in the brutal nature of the perpetration of the murders extreme penalty should be imposed and hence the trial court sentenced them to death which was affirmed by the High Court.

It seems, there was initially no move to approach this Court for some time after pronouncement of the judgment by the High Court in appeal. But the print media flashed the news that Ramshree (mother of a suckling

A child) was facing execution of the capital sentence. Some organisations came forward taking up her cause. However, in the meanwhile appellants filed the special leave petition and leave was granted by this Court. Execution of the death sentence was stayed.

B We heard Shri RK Jain, learned Senior Advocate who appeared for the appellant and Shri RB Malhotra, learned Senior Advocate for the State of UP. Smt Indira Jaising, Senior Advocate prayed for allowing National Commission for Women to intervene presumably to bolster up the cause that Ramshree must be saved from gallows. We could not permit the move for intervention in this appeal for the obvious reason that under the Code of Criminal Procedure National Commission for Women or any other organisation cannot have *locus standi* in this murder case.

D There cannot be any dispute, nor has it been disputed before us, that the four deceased were brutally murdered inside their house on the forenoon of 26.10.1989. The only area where the dispute was focussed related to the identity of the assailants, as the appellants have totally denied their involvement in the matter.

E Prosecution examined PW 1 (Ramkhelawan s/o Bankelal) who was a child witness. He has stated that while he was taking lunch around 11 am all the four accused entered his house and killed his father and grandmother inside the house and the assailants killed his mother and sister who were out on the Chabutara. Just when the incident started PW 1 Ramkhelawan slipped out of house and hid himself in a house of one of the closest neighbours. Besides that witness, prosecution examined PW3 Lakahnlal and PW5 Shambhu Dayal as witnesses to the occurrence. According to PW3, he saw the four accused entering the house of the deceased armed with weapons and he saw them while he was standing on the verandah of a barber shop situated very near to the place of occurrence. He heard tantrums of victims from inside the house of occurrence. When he neared the Chauraha (junction) which was located very close, he saw Pan Kuwar and Sonu who were standing outside their house, and within a few seconds the four assailants emerged out of the house and killed them with the weapons. PW5 also gave evidence almost in the same

H line as PW3 said.

As pointed out above, the trial court and the High Court placed reliance on the evidence of the aforesaid three witnesses and reached the conclusion that the murders were committed by the three appellants and Kalia.

Shri RK Jain, learned Senior Counsel, contended that it is very risky to place reliance on the evidence of PW1 being a child witness. According to the learned counsel, evidence of a child witness is generally unworthy of credence. But we do not subscribe to the view that the evidence of a child witness would always stand irretrievably stigmatized. It is not the law that if a witness is a child his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring.

Courts have laid down that evidence of a child witness must find adequate corroboration before it is relied on. It is more a rule of practical wisdom than of law [vide *Prakash and Another v. State of Madhya Pradesh*, [1992] 4 SCC 225; *Baby Kandayanathil v. State of Kerala*, [1993] Suppl. 3 SCC 667; *Raja Ram Yadav and Others v. State of Bihar* AIR (1996) SC 1613 and *Dattu Ramrao Sakhare and Others v. State of Maharashtra*, [1997 (5) SCC 341].

PW 1 Ramkhelawan is one of the two survivors in the family (the other was a suckling child). It is greatly probable that PW1 would have escaped from the notice of the assailants otherwise he would not have been spared as is clear from the fact that his younger sister Sonu was also murdered. His narration of the incident was quite natural though he saw only some part of the occurrence. That part is so decisive as to clear all doubts regarding identity of the assailants.

PW3 and PW5 were admittedly neighbours. The fact that they did not see all what happened inside the house of the deceased is no reason to take their evidence lightly because when he saw all the appellants sitting inside the house variously armed and they also saw that all of them returning from the house after the incident with blood soaked weapons. We have no doubt that the High Court has rightly concurred with the findings of the trial court regarding reliability of the testimony of the above three witnesses. There is no scope to contend that there was any serious

A error in the appreciation of the evidence. The resultant position is that none of the appellants can escape conviction under Section 302/34 of the Indian Penal Code.

B The Trial Court and the High Court chose death penalty for the appellants. Shri RK Jain made a fervent plea that imposition of the extreme penalty as for all the accused was not legally justified in this case. According to him, death penalty awarded to the three persons one a septuagenarian, another a youth in his prime age, and the third a mother with a suckling child is unwarranted since this case did not project any special feature as distinguished from other brutal murder cases in spite of the number of victims being four including a child. Learned counsel contended
C that the number of victims is not sufficient to make the case so special as to foreclose the next alternative sentence i.e. imprisonment for life.

D When the Constitution Bench of this Court, by a majority, upheld the constitutional validity of death sentence in *Bachan Singh v. State of Punjab* [1980] 2 SCC 684, this Court took particular care to say that death sentence shall not normally be awarded for the offence of murder and that it must be confined to the rarest of rare cases when the alternative option is foreclosed. In other words, the Constitution Bench did not find death sentence valid in all cases except in the aforesaid freaks wherein the lesser sentence would be, by any account, wholly inadequate. In *Machhi Singh and Others v. State of Punjab*, [1983] 3 SCC 470 a three judge bench of this court while following the ratio in *Bachan Singh's* case laid down certain
E guidelines among which the following is relevant in the present case:

F "A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

G In *Allauddin Mian and Others v. State of Bihar*, [1989] 3 SCC 5 (Ahmadi J. as he then was) speaking for the Bench has stressed the need that the judge should indicate the basis upon which he considers sentence of that extreme magnitude justified. It has been observed in the decision that:

H "Where a sentence of severity is imposed, it is imperative that the judge should indicate the basis upon which he considers a sentence

of that magnitude justified. Unless there are special reasons, special to the facts of the particular case, which can be catalogued as justifying a severe punishment the judge would not award the death sentence." A

As for the present case the trial Court advanced the following reasons in justification of the award of death sentence: B

"The accused were not satisfied by causing two or four injuries and they made 27 attacks by axes and daranti. The man when turns a beast from a human being even then there must be a limit of his revenge but in this case there remained no limit of revenge and four brutal murders were committed in the broad day light. This act of the accused was against the normal conduct of the man. Hence in my opinion it would be proper that the accused be awarded the death penalty." C

While concurring with the above conclusion learned judges of the High court of Allahabad have set down the following reasons: D

"The appellants were the next door neighbours of the deceased persons. They should have lived like good neighbours, but all the four persons took Kulhari and Hansiya, went inside the house of Bankey Lal and butchered all the four persons one by one. We have seen the injury reports and it is apparent that all the four persons had been butchered like goat. The persons who have become so cruel do not deserve any leniency or mercy by the Court. The attack was deliberate, calculated and the appellants fully knew what they were doing." E F

We have extracted the above reasons of the two courts only to point out that it is the savagery or brutal manner in which the killer perpetrated the acts on the victims including one little child, which had persuaded the two courts to choose death sentence to four persons. No doubt brutally looms large in the murders in this case particularly of the old and also the tender aged child. It may be that the manner in which the killings were perpetrated may not by itself show any lighter side, but that is not very peculiar or very special in those killings. Brutality of the manner in which a murder was perpetrated may be a ground but not the sole criterion for judging whether the case is one of the " rarest of rare cases" as indicated H

A in Bachan Singh's case. In a way every murder is brutal, and the difference between the one from the other may be on account of mitigating or aggravating features surrounding the murder.

B The incidents which happened on earlier occasions between members of the two rival families are indicative of the intensity of the bitterness which prevailed between them. It was thirst for retaliation which became the motivating factor. Attacks and counter-attacks between them were frequent events during the preceding days. There is evidence that six days before this occurrence two elderly persons of the deceased family (Banke Lal and Pan Kuwar) attacked the young female member of the accused family (Ramshree). The brutality with which the murders were committed by the assailants which include two ladies makes us to think that more skirmishes would have happened prior to the incident which would have escalated the simmering thirst for vengeance to reach boiling point.

C We are persuaded to consider that this case cannot be treated as one of the "rarest of rare cases" where the lesser sentence is not at all adequate. Hence we alter the sentence of death penalty by awarding the sentence of imprisonment for life to each of the appellants.

D The appeals are disposed of accordingly.

E The Writ Petition is dismissed.

V.M.

Appeals disposed and
petition dismissed.