

STATE OF U.P.
v.
ALOK VERMA
(SLP (Crl.) No. 6718 of 2011)

SEPTEMBER 02, 2011

**[MARKANDEY KATJU AND CHANDRAMAULI KR.
PRASAD, JJ.]**

Sentence/Sentencing – Death sentence – Accused committed murder of wife and four children as also caused injuries to another daughter with knife and axe taking help of a hired person – Conviction by courts below on basis of the circumstantial evidence as also evidence of the surviving daughter-eye witness to the incident – Death sentence awarded by the trial court modified to life sentence by High Court – On appeal, held: On facts, the said act was a ghastly and brutal act – It falls in the category of rarest of rare cases in which death sentence should have been given – Reasoning of the High Court reducing the award of death sentence to life sentence is strange – Thus, notice issued to the accused as to why the life sentence awarded to him by the High Court should not be enhanced to death sentence.

CRIMINAL APPELLATE JURISDICTION : SLP (Crl.) No. 6718 of 2011.

From the Judgment & Order dated 7.8.2009 of the High Court of Judicature at Allahabad in Captial Jail Appeal No. 6352 of 2008 and Reference No. 8 of 2008.

Pramod Swarup, Pareena Swarup, Pradeep Misra for the Petitioner.

The following Order of the Court was delivered

A

O R D E R

Heard Mr. Pramod Swarup, learned senior counsel appearing for the petitioner-State of U.P.

B

The allegations against the respondent accused, which have been found true by the courts below, are that the respondent murdered his wife and four children (three sons and one daughter) and caused injuries to another daughter with knife and axe taking the help of a hired person. This is because his wife protested against his indulgence in gambling, taking liquor and crimes like kidnapping. He had earlier to undergo imprisonment for one year in a case of kidnapping. His wife tried to persuade him not to commit these illegal acts and get reformed, but instead he would often beat her, and ultimately he committed these ghastly and brutal crimes of murdering his wife and four children, who are aged about 10, 8, 5 and 2 years respectively. The surviving daughter Priyanka is an eye witness and that apart there is convincing circumstantial evidence also on the basis of which the respondent has been convicted by the courts below.

C

The injuries on the deceased Shikha, wife of the accused-respondent are as follows :-

E

1. Multiple incised wounds over face and forehead size 1 cm x 0.5 cm to 3 cm x 0.5 cm bone deep.

F

2. Incised wound 4 cm x 1 cm trachea deep on front of neck below hyoid bone. On dissection the underlying large vessels, tracheas and nerves were cut.

G

3. Incised wound 4 cm x 1 cm size muscle deep on back of root of neck.

4. Incised wound 4 cm x .5 cm muscle deep on top of (Rt.) shoulder.

H

5. Incised wound of 3 cm x 0.5 cm muscle deep on back of and middle of (Rt.) upper arm. A

The injuries on the deceased Chhoutey, aged about 5 years, son of the accused respondent are as follows:-

1. Incised wound of 3 cm x 1 cm size skull deep till upper cavity of skull. This wound was 2 cm above the right eyebrow on the right side of the skull. Skull bone was broken. Thereafter, it was found that brain and brain membrane was also cut and blood mix fluid was present in the cavity of skull. B C

2. Incised wound 3 cm x 1 cm size bone deep which was above the right eye brow on the right side of the forehead.

3. Incised wound 2 cm x 1 cm size just above the injury No. 2. D

4. Incised wound 2 cm x 1 cm size muscle deep in the middle of the front of the neck.

5. Contusion 8 cm x 6 cm size upon the skull. E

The injuries on Rahul, aged about 10 years, son of the deceased and the accused respondent, are as follows :-

1. Contusion of 8 cm x 3 cm size on the front of the neck. F

2. Incised wound 5 cm x 1 cm breathing duct deep in the front of the neck. This injury was very close to the injury No.1 On dissection, blood vessels, nerves, muscles and breathing duct etc. were found to be cut. G

3. Incised wound 4 cm x 1 cm skull deep. This injury was 3 cm above the left eye, on the left side of the H

A skull bone of skull, brain and brain membrane were found to be cut. Blood mix fluid was found to present in the cavity of skull.

4. Incised wound 3 cm x 1 cm muscle deep 12 cm above the middle of forehead in the front of skull.

B

5. Incised wound 2.5 cm x 1 cm muscle deep behind the right ear.

C The injuries on Uttam Kumar, aged about 8 years, son of the deceased and the accused respondent are as follows :-

1. Incised wound 3 cm x 1 cm bone deep in the upper part of the body.

D

2. Incised wound 3 cm x 1 cm x deep bone in the middle of the forehead.

3. Incised wound 2 cm x 1 cm x skull deep outside the left eye on the left side of the face. The bone, muscle, blood vessels, brain and brain membrane were found to be cut. The fluid with blood was filled in cavity of brain.

E

4. Incised wound 3 cm x 1 cm bone deep, this wound was close to the outer sides of the right eye.

F

5. Incised wound 2.5 cm x 1 cm x breathing duct deep on the front of the neck.

6. 12 cm x 3 cm size wound till nose contusion on the neck.

G

The injuries on Kumari Anjali, aged about 2 years, daughter of the deceased and accused respondent, are as follows :-

1. 4 cm x 1.5 cm incised wound x deep till cavity of skull, 4 cm above the right eye brow on the right

H

side of the skull. Under the injury, bone, brain and brain membrane under the injury were found to be cut. Blood mixed fluid was found in the cavity of brain. A

2. 2 cm x 1 cm incised wound deep till cavity of skull above the left eyebrow on the left side of forehead. Under the injury, bone, brain and brain membrane were found to be cut. B

3. Incised wound 2 cm x 0.5 cm muscle deep below the chin. C

4. 2 cm x 0.5 muscle deep incised wound on the level of the thyroid cartilage in the front of the neck.

Apart from the deceased, the injuries on the injured eye witness Priyanka, who was aged about six years when the incident took place, are as follows :- D

1. Towards right on the face in the front of the ear contusion with red colour 6 cm x 4.5 cm. E

2. On right eye and lower eyelid contusion 4.5 cm x 4 cm. E

3. Towards left on the face, below the eye contusion with red colour 2 cm x 1.0 cm. F

4. Right ear was bleeding and blood clot was present. F

These injuries show the brutal manner in which the deceased were killed, and injuries caused to Priyanka. Apparently the throats of the deceased were cut with a knife and their heads smashed with an axe. G

It has come in evidence that the accused had taken a house on rent and his wife Shikha (deceased) along with her children were living in that house. On 07.07.2005 when the H

A brother of Shikha (the complainant) came to the said house he found the door closed. He opened the door and found the dead bodies and also his injured niece Priyanka who told him about the incident.

B A blood stained axe was found in the room, while the knife which was also used in committing these horrible crimes had been concealed by the accused. The shirt of the accused was blood stained. The accused took the police to the sand where he had concealed a polythene bag containing the knife which was used which was blood stained, and some other items, including the blood stained shirt. We cannot imagine a more g
C astly act and, we are, prima facie, of the opinion that it is falls in the category of rarest of rare cases in which death sentence should have been given. The trial court, no doubt, awarded death sentence to the respondent, but the High
D Court reduced it to life sentence by observing :-

" . But on the other side, it is to be considered as to what were the circumstances under which the said murders were caused. Accused Alok Verma was postgraduate in
E Sociology, having failed in getting a job. It seems that due to financial crisis, he entered into the criminal world, due to which he had to go to jail. He had been away from his wife and children for a long time, and in these
F circumstances, he became pessimistic and began to suspect his wife's character. Advice of his wife to stay away from criminal activities he could not accept. In absence of alternative, in such circumstances, his wife's threat to disclose all of his wrong acts made the situation worse and
G resulted in occurrence of the incident which does not appear to be committed under any preplan nor for any benefit, but has been caused due to hopelessness and doubts about the character of the wife wherein he was
H doubting that the children were not his. In the above circumstances considering the decision of the Hon'ble Supreme Court in *Prakash Dhawal Khairmath (Patil) Vs.*

State of Maharashtra and State of Maharashtra Vs. Sandeep @ Babloo Prasad Khairnath (Patil) 2002 Supreme Court Cases (Criminal) 281 the conclusion arrived is that the present case is not fit for death penalty." A

Prima facie, we find the reasoning of the High Court to be strange. Merely because a person is in financial crisis does not mean that he is at liberty to commit ghastly and gruesome murders. It appears that the wife of the accused was of a noble character who tried to reform him, but the accused rather than being reformed committed these monstrous crimes. We fail to understand how the High Court could reduce the death sentence in these circumstances. B C

The celebrated Judge of the Allahabad High Court Justice Mehmood quoted the following Urdu couplet in one of his judgments while deciding a murder appeal :- D

"Jo Chup Rahegi Zuban-e-khanjar,

Lahu pukarega asteen ka"

Issue notice to the respondent as to why the life sentence awarded to him by the High Court should not be enhanced to death sentence. E

Issue notice also on the application for condonation of delay. F

N.J.

Matter pending