

KAMLESHWAR PASWAN

v.

STATE OF U.T. CHANDIGARH
(Criminal Appeal Nos.739-749 of 2009)

JANUARY 11, 2011

**[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]**

Penal Code, 1860: ss.302, 307 – Murder – Lathi blows given by accused-father to his three children resulting in death of 2 – Conviction u/s.302 and award of death sentence – Appeal against conviction and sentence – Held: Evidence of eye witnesses was supported by the medical evidence – The nature of the injuries revealed that they were the result of a direct attack in a brutal and violent manner with a lathi – The defence story projected by the wife of the accused not acceptable in view of the opinion of the doctor that the injuries suffered by the three victims could not have been caused in the manner suggested by her – However, the case did not fall under the category of the rarest of the rare case – The offence was committed while the accused was in an inebriated condition and after a quarrel with his wife – The accused was a rickshaw puller aged about 28 years and a migrant in Chandigarh with the attendant psychological and economic pressures – To meet the ends of justice, appeal filed by accused allowed to the extent of substitution of death sentence by imprisonment for life.

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
NOs. 739-740 of 2009.**

From the judgment & Order dated 30.04.2008 of the High Court of Panjab & Haryana at Chandigarh in Murder Reference No. 9 of 2007 and criminal appeal No. 1-DB of 2008

A S. Usha Reddy for the Appellant.

Kamini Jaiswal, Advocate., for the Respondent.

The following order of the Court was delivered

B ORDER

This is indeed a very unfortunate case.

C On 15th January, Gurnam Singh (PW.3), a resident of House No.1 in village Kishangarh in the Union Territory of Chandigarh, had gone to meet a servant of one Milkha Singh for some personal work. As he reached the house of Pritam Singh, he found a woman standing outside shouting "killed them-killed them". PW.3, Gurnam Singh, also heard the voice of a screaming child from inside the house of Pritam Singh.

D PW.3 forced open the door and saw the accused/appellant Kamleshwar Paswan beating his three children with a wooden stick and Yashoda, the daughter of the appellant, lying on one side with serious injuries. He also noticed that the appellant's sons Sunil Paswan and Suraj Paswan (aged one and three

E years respectively) had also suffered injuries and were unconscious. Gurnam Singh PW accompanied by Sunaina (DW.2), the wife of the accused/appellant, took the children to Sharma Clinic in village Kishangarh. The Doctor told them that as the children were in a serious condition they should be taken

F to the PGI, Chandigarh. In the meantime a vehicle from the Police Control Room reached Sharma Clinic and PW.3 and DW.2 along with the three injured children were taken to the General Hospital, Sector 16, Chandigarh which referred them further to the PGI, for treatment. In the PGI PW.3 made a

G statement to PW.14 SI Sunehara Singh narrating the above facts on which a First Information Report was registered under Section 307 of the IPC at Police Station, Manimajra in the Union Territory of Chandigarh. The two boys thereafter died and case under Section 302 of the IPC was added on. PW.14 also

H visited the place of occurrence and made the necessary

302 and 308 of the IPC and the appellant was committed to stand trial. The Trial Court relying on the eye witnesses account of PW.1 Vinod, PW.2-Anil Kumar, the immediate neighbours of the appellant and his family and PW.3 Gurnam Singh held that the case against the appellant stood proved beyond doubt. Sunaina, the wife of the appellant, however, appeared as a defence witness and gave a statement that the three children had received injuries accidentally and that the appellant had no role to play. The Trial Court relying on evidence of the three prosecution witnesses mentioned above as supported by the medical evidence given by PW.4-Dr. Dibar Singh, who had conducted the post-mortem examination on the dead bodies and had also examined the injuries on Yashoda, convicted the appellant under Section 302 and 307 of the IPC and sentenced him to death for the murder of his two sons. No separate sentence was awarded for the offence under Section 307 of the IPC. The matter was thereafter referred to the High Court for the confirmation of the death sentence and the appellant also filed an appeal. The High Court has, by the impugned judgment, confirmed the death sentence and dismissed the appeal. The matter is before us in these circumstances.

We have heard the learned counsel for the parties very carefully. We see that the case of the prosecution is clearly spelt out from the evidence. No fault can be found with the eye-witness account of PWs. 1, 2 and 3 and their statements are clearly supported by the evidence of the Doctor PW.4. The defence story projected by DW.2, the wife of the appellant, is on the face is unacceptable as the Doctor opined that the injuries suffered by the three victims could not have been caused in the manner suggested by her. The very nature of the injuries clearly reveal that they were the result of a direct attack in a brutal and violent fashion with a lathi.

Mrs. S.Usha Reddy, the Legal Aid Counsel for the appellant, has however, pointed out that the present case did not fall under the category of *the rarest of the rare cases* in

A the light of the fact that the appellant was a young man of 28 years on the date of the incident and that the offence had been committed by him (as per the prosecution story) while he was in an inebriated condition and after a quarrel with his wife. We cannot also ignore the fact that he was a rickshaw puller and a migrant in Chandigarh with the attendant psychological and economic pressures that so often overtake and overwhelm such persons. Village Kishangarh is a part of the Union Territory of Chandigarh and a stone throw from its elite Sectors that house the Governors of Punjab and Haryana, the Golf Club, and some of the cities most important and opulent citizens. It goes without saying that most such neighbourhoods are often the most unfriendly and indifferent to each others needs. Little wonder his frustrations apparently came to the fore leading to the horrendous incident. Nevertheless keeping in view the overall picture and in the light of what has been mentioned above, we feel that the ends of justice would be met if the appeal is allowed to the extent that the death sentence is substituted by a term of life imprisonment.

E We accordingly dismiss the appeals but commute the sentence from death to life.

D.G.

Appeals dismissed.