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SONU SARDAR

v.

STATE OF CHHATISGARH

(Criminal Appeal Nos. 1333-1334 of 2010)

B

FEBRUARY 23, 2012

**[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]**

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*Penal Code, 1860 – s. 396 – Conviction and sentence under – Commission of dacoity at the house of the deceased and murder of five persons including two minor children with knife, rod and axe by the appellant and four others – Appellant convicted u/s. 396 and sentenced to death by the courts below – Sustainability of – Held: Prosecution proved beyond reasonable doubt that the appellant participated in the offence of dacoity and murder – Conviction of the appellant based not only on the oral testimony of the daughter of the deceased but also on the evidence of other prosecution witnesses, seized articles and the forensic report – Clear and definite evidence to show that the appellant not only participated in the crime but also played the lead role in the commission of offence – Five members of a family including two minor children and driver were ruthlessly killed by use of a knife, an axe and an iron rod and with help of four others – Crime was obviously committed after pre-meditation with absolutely no consideration for human lives, and for money – Even though appellant was young, his criminal propensities are beyond reform and he is a menace to society – Thus, courts below rightly held that this is one of those rarest of rare cases in which death sentence is appropriate punishment – Order of conviction of the appellant as well as sentence of death sustained.*

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According to the prosecution, appellant, 'A' and others committed dacoity in the house of 'S' and thereafter, committed murder of 'S', his driver, his wife

and his two minor children with rod, knife and axe. The appellant and the other co-accused went to the house of 'S' and demanded money from 'S'. One of them bolted the door from inside, two others caught hold of the driver and one of them caught hold of 'S'. They kept knife on the neck of 'S' and compelled him to give cash. Daughter of 'S' (PW 1), managed to escape and went to the house of 'R' (PW-2) and narrated about the incident to him. FIR was lodged. The appellant and his co-accused 'A' and 'C' were arrested. On the basis of the statement of the appellant, blood stained clothes of the appellant, axe, knife and rod were seized. Test identification parade was carried out in which PW 1 identified the appellant and 'A'. PW 1, PW 2, PW 3 and PW 4 and other witnesses were examined. The trial court convicted the appellant under Section 396 IPC and imposed sentence of death. The High Court upheld the order. Therefore, the appellant filed the instant appeals.

Dismissing the appeals, the Court

HELD: 1.1. During investigation a Test Identification Parade was carried out and out of the ten persons who were presented, the appellant and 'A' were identified by PW 1-'SH' as the two persons, who were amongst the five persons who had come to the house of 'S' and were demanding money from him. From the evidence of PW 2-'R' as well as the evidence of PW 4-'D' it is found that PW-1, soon after she escaped from the house of 'S', mentioned that one of the five persons who had gone to the house of 'S' was a *sardar*. In her cross-examination, PW-1 stated that she knew the appellant as he had come to their house for selling scrap. Moreover, the broken axe with broken handle and iron rod were recovered pursuant to the statement of the appellant. PW 36-doctor, after narrating the injuries on the dead bodies of 'S', 'AG', 'R', 'Y' and 'KR', opined that the death was on account

A of shock as a result of fatal injuries. The injuries described  
 by them were not only incised wounds but multiple  
 fractures of temporal and parietal bones and on the head  
 which could have been caused by the axe and the iron  
 rod. The report of the Forensic Science Laboratory  
 B confirmed the presence of human blood on the clothes  
 of the deceased persons, axe and iron rod as well as the  
 turban and T-shirt of the appellant which had been  
 seized. Thus, the conviction of the appellant was not only  
 based on the oral testimony of PW-1, but also the  
 C evidence of PW-2, PW-3, PW-4, PW-36, the seized articles  
 and also the report of the Forensic Science Laboratory.  
 It is further established from the evidence of PW-1 and  
 the *Panchanama* of the house of 'S' that only cash of  
 Rs.65,760/- was available and the remaining cash out of  
 D Rs.1,70,000/- was missing. The prosecution proved  
 beyond reasonable doubt that the appellant participated  
 in the offence of dacoity and murder and was rightly  
 convicted for the offence under Section 396 IPC. [Para 6]  
 [566-C-H; 567-A-B]

E *Ramesh and others v. State of Rajasthan* (2011) 3 SCC  
 685; 2011 (4) SCR 585; *Sushil Murmu v. State of Jharkhand*  
 (2004) 2 SCC 338; 2003 (6) Suppl. SCR 702; *Atbir v.*  
*Government of NCT of Delhi* (2010) 9 SCC 1; 2010 (9) SCR  
 993; *Sunder Singh v. State of Uttaranchal* (2010) 10 SCC  
 F 611; 2010 (11) SCR 927 – referred to.

1.2. The trial court recorded special reasons under  
 Section 354 (3) of the Code of Criminal Procedure, 1973  
 for awarding the death sentence on the appellant that the  
 G crime was pre-meditated; the crime struck fear and terror  
 in the public mind; helpless and defenceless women and  
 two minor children aged eight and four years besides two  
 adult men were murdered; the driver of 'S', who had only  
 stopped in the house for his food, was also not spared;  
 H taking advantage of earlier business relations with 'S', the

appellant made a friendly entry and committed the murders; the intention was to kill all members of the family though surprisingly a six month old baby and a four year old child remained alive; the five murders were brutal, grotesque, diabolical, revolting and dastardly, which indicated the criminality of the perpetrators of the crime; and no physical or financial harm appears to have been caused by the deceased to the accused. As against the aggravating circumstances, the trial court did not find any mitigating circumstance in favour of the appellant to avoid the death penalty. This is, therefore, not one of those cases in which the trial court has not recorded elaborate reasons for awarding death sentence to the appellant. [Para 9] [568-D-H; 569-A, B, C]

1.3. Regarding the role of the appellant in the commission of the offence of dacoity and murder, it is found that the turban and T-shirt of the appellant, which were seized and sent for examination to the Forensic Science Laboratory, had presence of human blood; the axe and the iron rod, which were recovered pursuant to the statement of the appellant, had also blood-stains; and that the evidence of PW-1 that when her mother was cooking food and came out on hearing the commotion, the appellant was demanding money from her father and her father gave to the appellant all the money which he was having in his pocket. There is, therefore, clear and definite evidence in the instant case to show that the appellant not only participated in the crime, but also played the lead role in the offence under Section 396 IPC. Therefore, this is not a case where it can be held that the role of the appellant was not such as to warrant death sentence under Section 396 IPC. [Para 10] [569-D-F]

1.4. In the instant case, five members of a family including two minor children and the driver were ruthlessly killed by the use of a knife, an axe and an iron

A rod and with the help of four others. The crime was obviously committed after pre-meditation with absolutely no consideration for human lives and for money. Even though the appellant was young, his criminal propensities are beyond reform and he is a menace to the society. The trial court and the High Court were therefore, right in coming to the conclusion that this is one of those rarest of rare cases in which death sentence is the appropriate punishment. The conviction of the appellant as well as the sentence of death under Section 396, IPC is sustained. [Paras 11 and 12] [570-B-D]

*Sunder Singh v. State of Uttaranchal* (2010) 10 SCC 611: (2010) 11 SCR 927 – referred to.

**Case Law Reference:**

D	2011 (4) SCR 585	Referred to.	Para 7
	2003 (6) Suppl. SCR 702	Referred to.	Para 8
	2010 (9) SCR 993	Referred to.	Para 8
E	2010 (11) SCR 927	Referred to.	Para 11

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1333-1334 of 2010.

F From the Judgment & Order dated 08.03.2010 of the High Court of Chattishgarh at Bilaspur in Reference No. 1 of 2008 & Criminal Appeal No. 240 of 2008 in case arising out of Judgment & Order of sentence dated 18.02.2008 in ST No. 6 of 2006 of Ld. Sessions Judge Baikantpur, Dist. Koriya.

G Vanita Mehta for the Appellant.

Dharmendra Kumar Sinha, Atul Jha, Sandeep Jha for the Respondent.

H The Judgment of the Court was delivered by

**A.K. PATNAIK, J.** 1. These are appeals against the judgment of the High Court of Chhattisgarh in Criminal Reference No.1 of 2008 and Criminal Appeal No. 240 of 2008 confirming the conviction of the appellant and the death penalty imposed on him under Section 396 of the Indian Penal Code (for short 'IPC').

2. The prosecution case very briefly is that on 26.11.2004, Shamim Akhtar (for short 'Shamim'), a scrap dealer and a resident of village Cher, Distt. Baikunthpur, Chhattisgarh, had gone to Raipur for selling scrap. He sold the scrap and received cash of Rs.1,70,000/- and returned to his house with the cash. His wife, Ruksana Bibi, kept the cash in different places of her house, which was to be deposited in the bank the next day. At about 6.00 p.m. on 26.11.2004, Sonu Sardar, the appellant herein, and Ajay Singh @ Fotu along with three other persons came with scrap to the shop of Shamim and left after selling scrap for Rs.480/-. The appellant and Ajay Singh and three other persons, however, returned at about 7.00 p.m. on the same day and knocked on the door of the house of Shamim. When the door was opened, the appellant and Ajay Singh and three other persons demanded money from Shamim. One of these five persons then bolted the door from inside and two other persons caught hold of Asgar Ali, driver of Shamim, and one of them caught hold of Shamim. They kept a knife on the neck of Shamim and compelled him to give cash which he was having in his pocket. Shabana Khatun (for short 'Shabana'), the daughter of Shamim, who was present inside, tried to fight but an attempt was made by the appellant and his people to assault her and she somehow escaped through the back door and went to the house of Ramlal, a kilometer away from the house of Shamim. Shabana told Ramlal about the incident at her house and when Ramlal wanted to go to their house, Shabana asked him not to go because she was afraid that Sonu Sardar and others may kill him. That night Shabana stayed at the house of Ramlal and next morning at about 4-5 a.m., Shabana, Ramlal and his wife Dhanpatbai came to the

A house of Shamim and found that Yakut and Asna, 3 years old son and 5 years old daughter of Shamim, were crying near the dead bodies of Shamim, Ruksana Bibi, Yakub and Kumari Rana, 7 years old son and 9 years old daughter of Shamim. Shabana then went to Baikunthpur and narrated the incident to her uncle Nasim Akhtar, who reported the matter the Police. The Police reached the spot and the FIR was lodged. The dead bodies were sent for autopsy to the Community Health Centre, Baikunthpur, and a team led by Dr. Ashok Kumar carried out the *post mortem*. In course of investigation, the Investigating Officer recorded statements of several persons under Section 161, Cr.P.C. The appellant and his co-accused, Ajay and Chhoti Bai, were arrested but the other persons absconded after commission of crime. Blood-stained T-shirt and turban of the appellant and an axe with broken handle, a rod and a knife were seized. Test Identification Parade was carried out on 01.12.2004 in which Shabana identified the appellant as well as Ajay as two of the five persons who had come to the house of Shamim on 26.11.2004 and were demanding money. The seized articles were sent to the Forensic Science Laboratory, Raipur. After completion of investigation, a chargesheet was filed and Sessions Trial No.06/2006 was conducted by the Sessions Judge, Koriya, Baikunthpur (Chhattisgarh).

3. In course of the trial, the prosecution examined 38 witnesses. Shabana was examined as PW-1, Ramlal was examined as PW-2, Nasim Akhtar was examined as PW-3 and Dhanpatbai was examined as PW-4. Dr. Ashok Kumar was examined as PW-36 and the Investigating Officer was examined as PW-37. A large number of documents and the seized articles were also exhibited. The trial court recorded the statements of the appellant under Section 313, Cr. P.C. After hearing the arguments, the trial court held that it was clear from the evidence of PW-1, PW-2, PW-3 and PW-4 that the appellant had committed the dacoity at the house of Shamim between 7.00 p.m. of 26.11.2004 and 4.00 a.m. of 27.11.2004 and thereafter committed murder of Shamim, Asgar, Ruksana

Bibi, Yakub and Kumari Rana with rod, knife and axe and that the prosecution had succeeded in establishing the guilt of the appellant under Section 396, IPC, beyond reasonable doubt. After hearing counsel for the parties on the question of sentence, the trial court also held that the case falls in the category of rarest of rare cases and imposed the sentence of death on the appellant. By the impugned judgment, the High Court has confirmed the conviction of the appellant under Section 396, IPC, and also the sentence of death.

4. Learned counsel for the appellant submitted that the appellant had been convicted on the sole testimony of Shabana (PW-1), a ten years old child who could not have identified the appellant as one of the five persons who committed the dacoity and murder on the night of 26.11.2004. She submitted that it is on the information received from PW-1 that PW-3 had lodged the FIR, but in the FIR the appellant has not been named. She argued that had PW-1 known the appellant, she would have told PW-3 the name of the appellant and PW-3 would have mentioned the name of the appellant in the FIR. She submitted that it will therefore not be safe for this Court to sustain the conviction of the appellant.

5. Learned counsel for the State, on the other hand, submitted that although PW-1 is a minor, her evidence was reliable and she had stood the test of cross-examination. He further submitted that PW-1 narrated the incident not only to PW-3, but also to PW-2 and PW-4 and the evidence of PW-2 and PW-4 would show that PW-1 had clearly mentioned that out of the five persons, who had committed the dacoity and murder on the night of 26.11.2004, there was a *sardar*. He further submitted that PW-1 has also stated in her evidence that the appellant had gone to her father's shop 5 to 6 times before the 26.11.2004 to sell scrap and hence she could identify him as one of the five persons who had committed the dacoity and murder on the night of 26.11.2004. Moreover, at the time of the Test Identification Parade conducted by the Magistrate (PW-11), PW-1 identified the appellant as one of the five persons,

A who had come to the house of Shamim on 26.11.2004 and  
were demanding money. He submitted that the evidence of  
PW-1 that the appellant participated in the dacoity and murder  
on 26.11.2004 is corroborated by the recovery of the iron rod  
and axe on the statement of the appellant and by the fact that  
B the seized T-shirt and turban of the appellant were blood-  
stained.

6. We have considered the submissions of learned  
counsel for the parties and we find that during investigation a  
Test Identification Parade was carried out on 01.12.2004 and  
C out of the ten persons who were presented, the appellant and  
Ajay Singh @ Fotu were identified by PW-1 as the two persons,  
who were amongst the five persons who had come to the house  
of Shamim and were demanding money from him. From the  
evidence of PW-2 as well as the evidence of PW-4, we find  
D that PW-1, soon after she escaped from the house of Shamim,  
has mentioned that one of the five persons who had gone to  
the house of Shamim was a *sardar*. In her cross-examination,  
PW-1 has stated that she knew the appellant as he had come  
to their house for selling scrap. Moreover, the broken axe with  
E broken handle and iron rod (Ext. P.24) were recovered pursuant  
to the statement of the appellant (Ext. P.16). PW-36, Dr. Ashok  
Kumar, after narrating the injuries on the dead bodies of  
Shamim, Asgar Ali, Ruksana Bibi, Yakub and Kumari Rana,  
has opined that the death has been on account of shock as a  
F result of fatal injuries. The injuries described by them are not  
only incised wounds but multiple fractures of temporal and  
parietal bones and on the head which could have been caused  
by the axe and the iron rod. The report of the Forensic Science  
Laboratory (Ext.P.61) confirms presence of human blood on the  
G clothes of the deceased persons, axe and iron rod (Ext. P.24)  
as well as the turban and T-shirt of the appellant (Ext. P.37)  
which had been seized. Thus, the conviction of the appellant is  
not only based on the oral testimony of PW-1, but also the  
evidence of PW-2, PW-3, PW-4, PW-36, the seized articles  
and also the report of the Forensic Science Laboratory. It is  
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further established from the evidence of PW-1 and the *Panchanama* of the house of Shamim made on 28.11.2004 that only cash of Rs.65,760/- was available and the remaining cash out of Rs.1,70,000/- was missing. The prosecution has, in our considered opinion, proved beyond reasonable doubt that the appellant participated in the offence of dacoity and murder and has been rightly convicted for the offence under Section 396, IPC.

7. On the question of sentence, learned counsel for the appellant submitted that this Court has held in *Ramesh and others v. State of Rajasthan* [(2011) 3 SCC 685] that before awarding death sentence, the trial court was expected to give elaborate reasons. She submitted that the reasons given by the trial court for awarding death sentence on the appellant were not elaborate. She submitted that in *Ramesh and others v. State of Rajasthan* (supra) this Court did not find clear evidence as to which of the three persons who participated in the crime was the actual author of the injuries on Ramlal and Shanti Devi and held that as it is difficult to say that Ramesh alone was the author of the injuries on Ramlal as well as Shanti Devi, death sentence awarded to Ramesh should be modified to life imprisonment. She submitted that in the present case also five persons have committed the offence under Section 396, IPC, and as the actual role of the appellant in the offence is not known the death sentence should be modified to life imprisonment.

8. Learned counsel for the State, on the other hand, submitted that the appellant has participated in the offence under Section 396, IPC, and as many as five innocent persons, including two children, have lost their lives and the trial court has given sufficient reasons for awarding death sentence to the appellant. He cited the decision of this Court in *Sushil Murmu v. State of Jharkhand* [(2004) 2 SCC 338] for the proposition that the punishment should be proportionate to the crime committed by the accused. He submitted that in the facts of the

A present case, since the crime was heinous in nature and resulted in the death of five persons, death sentence would be proportionate to the crime committed by the appellant. He also relied on *Atbir v. Government of NCT of Delhi* [(2010) 9 SCC 1] in which this Court held that preventing persons in the house  
 B to escape and committing brutal murder of as many as three persons inside the house are aggravating circumstances warranting imposition of death sentence on the accused. He submitted that in the present case also, as the appellant had closed and bolted the door to prevent an escape of any person  
 C from the house, and had then brutally murdered as many as five persons, death sentence should be imposed on the appellant.

D 9. We have considered the submissions of the learned counsel for the parties and we find that the trial court has recorded the following special reasons under Section 354 (3) of the Criminal Procedure Code, 1898 for awarding the death sentence on the appellant:

- (i) The crime was pre-meditated.
- E (ii) The crime has struck fear and terror in the public mind.
- (iii) Helpless and defenceless women and two minor children aged eight and four years besides two adult men were murdered.
- F (iv) Asgar Ali, the driver of Shamim, who had only stopped in the house for his food, was also not spared.
- G (v) Taking advantage of earlier business relations with Shamim, the appellant made a friendly entry and committed the murders.
- (vi) The intention was to kill all members of the family though surprisingly a six month old baby and a four  
 H year old child remained alive.

(vii) The five murders were brutal, grotesque, diabolical, revolting and dastardly, which indicated the criminality of the perpetrators of the crime. A

(viii) No physical or financial harm appears to have been caused by the deceased to the accused. B

As against these aggravating circumstances, the trial court did not find any mitigating circumstance in favour of the appellant to avoid the death penalty. This is, therefore, not one of those cases in which the trial court has not recorded elaborate reasons for awarding death sentence to the appellant as contended by learned counsel for the appellant. C

10. Regarding the role of the appellant in the commission of the offence of dacoity and murder, we have already found that the turban and T-shirt of the appellant, which were seized and sent for examination to the Forensic Science Laboratory, had presence of human blood. We have also found that the axe and the iron rod, which were recovered pursuant to the statement of the appellant, had also blood-stains. We have also found from the evidence of PW-1 that when her mother was cooking food and came out on hearing the commotion, the appellant was demanding money from her father and her father gave to the appellant all the money which he was having in his pocket. There is, therefore, clear and definite evidence in this case to show that the appellant not only participated in the crime, but also played the lead role in the offence under Section 396, IPC. This is, therefore, not a case where it can be held that the role of the appellant was not such as to warrant death sentence under Section 396, IPC. D  
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11. In a recent judgment in *Sunder Singh v. State of Uttaranchal* [(2010) 10 SCC 611], this Court found that the accused had poured petrol in the room and set it to fire and closed the door of the room when all the members of the family were having their food inside the room and, as a result, five members of the family lost their lives and the sixth member of H

A the family, a helpless lady, survived. This Court held that the accused had committed the crime with pre-meditation and in a cold blooded manner without any immediate provocation from the deceased and all this was done on account of enmity going on in respect of the family lands and this was one of those rarest of rare cases in which death sentence should be imposed. The facts in the present case are no different. Five members of a family including two minor children and the driver were ruthlessly killed by the use of a knife, an axe and an iron rod and with the help of four others. The crime was obviously committed after pre-meditation with absolutely no consideration for human lives and for money. Even though the appellant was young, his criminal propensities are beyond reform and he is a menace to the society. The trial court and the High Court were therefore right in coming to the conclusion that this is one of those rarest of rare cases in which death sentence is the appropriate punishment.

12. In the result, we find no merit in these appeals and we sustain the conviction of the appellant as well as the sentence of death under Section 396, IPC, and dismiss the appeals.

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N.J.

Appeals dismissed.