

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.598 OF 2005

STATE OF PUNJAB

...APPELLANT(

S)

VERSUS

KULBIR SINGH AND ANR.

...RESPONDENT

(S)

WITH CRIMINAL APPEAL NO.75-78 OF 2006

CRIMINAL APPEAL NO.81 OF 2006

J U D G M E N T

B.P.SINGH,J.

In this batch of appeals the State has appealed on the question of sentence and has prayed that such of the accused who have been awarded imprisonment for life should be sentenced to death. An appeal has also been preferred by the complainant also praying that the sentence of death ought to have been passed in this case. The third appeal is by Khushwant Rai @ Goldi, an accused who has been sentenced to life

imprisonment. Criminal Appeal No.598 of 2005 is by the State, Criminal Appeal

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No.75-78 of 2006 is by the complainant and Criminal Appeal No.81 of 2006 is by

Khushwant Rai @ Goldi.

The case of the prosecution is that Kulbir Singh (A-1) in the trial, was

married to the informant Baljit Kaur (PW-12). Earlier, Baljit Kaur was married to

one Dr. Balbir Singh who died sometime in the year 1989. From her first marriage she

had a female child namely Daljit Kaur (deceased) who was about 13 years of age at the

time of the incident. From Kulbir Singh she had two male children aged about 5 and 1-

1/2 years respectively.

On 10th October, 1998 Kulbir Singh (A-1) is alleged to have come and

requested his wife Baljit Kaur to accompany him for a picnic along with the children.

He had brought a vehicle driven by Khushwant Rai @ Goldi. He was also

accompanied by Bharat Inder Singh @ Bunti and one Rakesh Kumar. All of them

together went for a picnic in the vehicle, a jeep of white colour driven by Khushwant

Rai @ Goldi, appellant in Criminal Appeal No.81 of 2006.

The case of the prosecution is that later in the evening at about 8.00 or 9.00

P.M. on 10th October, 1998 while the vehicle was moving and the audio system was

playing at a high volume, the accused who were consuming liquor commenced the

assault on Baljit Kaur and her children. It is the case of the prosecution that Kulbir

Singh attempted to strangulate Daljit Kaur (deceased) and when Baljit Kaur

, the

informant (PW-12) attempted to stop him, she was held by Bharat Inder Singh @

Bunti. Rakesh Kumar took out a revolver and fired at Baljit Kaur (PW-12) causing

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injury on her chest as a result of which she fell down and the accused took her to be dead. However, as a matter of fact the informant was not dead and was pretending to be so. She noticed that thereafter Rakesh Kumar gave a knife blow on Daljit Kaur and the other two gagged and killed minor Happy. Rakesh Kumar and Kulbir Singh killed minor Vicky, the younger child, by throttling. It seems that Daljit Kaur, the injured daughter attempted to get up but she was given a chura blow. Thereafter while the vehicle was moving the victims were thrown out of the vehicle at different places.

Baljit Kaur was also similarly thrown out of the moving vehicle but after

gaining full consciousness, she proceeded towards the abadi and came to a dera where she was given clothes by the inmates thereof. When she proceeded further she noticed a police vehicle which picked up her and took her to the hospital at Rajpura where her statement was recorded at 3.40 A.M. on 11th October, 1998. On the basis of the said information, a formal first information report was drawn up at 6.30 A.M. and the

special report was received by the Magistrate at 3.20 P.M.

Having regard to the facts and circumstances of the case, the prosecution

relied heavily on the evidence of the solitary eye witness Baljit Kaur (PW-12).

The Trial Court accepting the prosecution case, sentenced Kulbir Singh and Bharat Inder Singh @ Bunti to death under Section 302 of the Indian Penal Code. The

appellant Khushwant Rai @ Goldi was sentenced to imprisonment for life.

We may here notice that the fourth accused namely Rakesh Kumar was

absconding and was not available when the remaining accused were tried. We are

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informed that he was apprehended last year and the case against him is pending trial.

On appeal, the High Court upheld the conviction of all the three appellants namely Kulbir Singh, Khushwant Rai @ Goldi and Bharat Inder Singh @ Bunti but on the question of sentence set aside the death sentence awarded to Kulbir Singh and Bharat Inder Singh and instead sentenced them to imprisonment for life. The death reference made by the Trial Court for confirmation of the death sentences was declined by the High Court.

Against the judgment and order of the High Court dated 19th August, 2004

only Khushwant Rai @ Goldi has appealed against his conviction. The other two

accused who have been sentenced to life imprisonment have not appealed. As earlier

noticed, the State as well as the complainant have appealed to this Court for

enhancement of the sentence and have submitted that Kulbir Singh and Bharat Inder

Singh ought to have been sentenced to death.

The only appellant before us appealing against his conviction is Khushwant Rai @ Goldi. His case is that there is no allegation against him that he had assaulted any of the deceased or the informant. His plea before the Courts below was that he was the driver of the vehicle which had been hired by Kulbir Singh and that he had carried Kulbir Singh and other members of the family and dropped them at some place

whereafter he was not aware of what happened to them later. His plea has not been accepted because the evidence of PW-12 establishes the fact that he was the driver of the vehicle and drove the vehicle till such time as the accused disposed of the bodies of

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the victims. His conviction was sought with the aid of Section 34 IPC.

The counsel appearing on behalf of Khushwant Rai @ Goldi submitted that the appellant deserves an acquittal because he did not share the common intention of the other accused. In any event, since he had no active role to play, he may be found guilty of some other offence and not of the offence punishable under Section 302/34 IPC.

The High Court has considered the submissions urged on behalf of the aforesaid appellant and has rejected them, in our view rightly. The prosecution has successfully proved that an occurrence, as alleged, had taken place. In that occurrence apart from the aforesaid appellant there were three other accused who acted in concert and committed the murder of three children. While these acts were being committed, the appellant before us was driving the vehicle. Having regard to the findings of the High Court it cannot be disputed that the murders were committed in a running vehicle, the driver whereof was the appellant. On these facts it is difficult to hold that the appellant did not share the common intention of the other accused. In the first instance, it is unbelievable that Kulbir Singh had hired the vehicle of the appellant without assuring himself of his cooperation. He had planned to commit the

murders of his wife and three children. Obviously therefore, he had associated the

appellant with him to commit the offence, because the appellant was willing to act in concert with him. Moreover, the appellant was a witness to all that was happening in the vehicle which was driven by him. He made no effort to prevent the commission of

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offences in his vehicle. He did not make any effort to stop the vehicle or to drive the vehicle to a police station or to any other place to get help. Even after the commission of the offence he did not report the matter to anyone. All these facts establish beyond

reasonable doubt that the appellant was not innocent, and did share the common

intention of the other accused. His conviction under Section 302 read with Section 34

IPC is therefore amply justified. Having regard to the facts established by the

prosecution, it will be difficult to find the appellant guilty of any other offence. The offences of murder is clearly established and we find no mitigating circumstance which

may bring the offence under any other provision of the Indian Penal Code such as

Section 304 IPC. The mere fact that he did not actually assault any of the deceased or

the informant will not exonerate him of the offence charged because in a planned

action by several persons each has a role to play. It was the role of the appellant to

drive the vehicle when the offence was being committed. We have no doubt, that the

offence was committed in a pre-planned manner and the appellant before us shared

with the other accused the common intention of committing the murders. His

conviction and sentence under Section 302/34 IPC is, therefore, upheld.

The next question is whether the remaining accused before us should be

sentenced to death. The offence was committed on the night intervening 10th and 11th October, 1998. So far as the respondents accused are concerned, they have remained in custody since then. The Trial Court took considerable time and passed its judgment on 4th December, 2002. The High Court thereafter disposed of the appeals on 19th August,

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2004. A period of eight years have elapsed since the commission of the offences.

We have perused the judgment of the High Court and we find that the High Court has fully appreciated the facts of the case and thereafter considered the question of sentence in the light of the principles laid down by this Court. It has considered the aggravating and mitigating circumstances having regard to the guidelines laid down in the case of Bachan Singh Versus State of Punjab (AIR 1980 Vol.67 898) and Machhi Singh Versus State of Punjab (1983 (3) SCC 470). The High Court therefore, while passing the sentence against the accused in the instant case took into account the

relevant circumstances and reached the conclusion that in the facts and circumstances of the case, sentence of death was not called for and therefore, sentenced the

respondents accused to undergo imprisonment for life for the offence punishable under

Section 302 IPC. It may be that it is possible to take a different view, but having

regard to the fact that the High Court has considered the aggravating and mitigating circumstances and reached a conclusion in favour of the accused, at this distance of

time we are not inclined to interfere with the sentence imposed upon the accused.

However, in view of the nature of the offence and the manner in which it was executed we are inclined to modify the sentence in accordance with the guidelines laid down in some of the judgments of this Court.

In Subhash Chander Versus Krishan Lal and others (2001 (4) SCC 458) this Court while affirming the conviction of the accused and the sentence awarded to them directed that the imprisonment for life should mean imprisonment for the rest of his

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life and that he shall not be entitled to any commutation or premature release under Section 401 of the Code of Criminal Procedure, Prisoners Act, Jail Manual or any other statute and the Rules made for the purpose of grant of commutation and remissions.

The same approach was adopted by this Court in Jayawant Dattatraya

Suryarao Versus State of Maharashtra (2001 (10) SCC 109) wherein while upholding

the sentence of imprisonment for life it was directed that the accused shall not be

entitled to any commutation or premature release under Section 433A of the Code of

Criminal Procedure, Prisoners Act, Jail Manual or any other statute and the Rules

made for the purpose of commutation and remissions.

In the case of Prakash Dhawal Khairnar (Patil) Versus State of Maharashtra

(2002 (2) SCC 35) this Court observed that though under the relevant Rules a sentence

of imprisonment for life is equated with a definite period of 20 years, there is no

indefeasible right of such prisoner to be unconditionally released on the expiry of such

particular term, including remissions and that it is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose. The Court, thereafter, directed that the accused shall not be released from prison unless he had served out at least 20 years of imprisonment including the period already undergone by the appellant. In that case also, considering the facts and circumstances, this Court set aside the death sentence and direct that for or murders committed by the appellant, he shall suffer imprisonment for life but he shall not be

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released unless he had served out at least 20 years of imprisonment including the period already undergone by him."

In the case of Ram Anup Singh & Ors. Versus State of Bihar (2002 (6) SCC 686) this Court while holding that in the facts of the case, sentence of death was not warranted, while setting aside the sentence of death awarded by the Trial Court and confirmed by the High Court sentenced the appellants instead to imprisonment for life with a condition that they shall not be released before the actual term of 20 years including the period already undergone by them.

Following the aforesaid precedents and having regard to the facts and circumstances of the case and also the fact that the offence was committed eight years ago, we affirm the sentence of imprisonment for life passed against the respondents but direct that the aforesaid respondents accused will not be entitled to

any commutation or premature release under Section 433A of the Code of Criminal

Procedure, Prisoners Act, Jail Manual or any other statute and the Rules made for the purpose of commutation and remissions. Subject to the aforesaid directions, Criminal Appeal No.598 of 2005 and Criminal Appeal No. 75-78 of 2006 are dismissed. In the result, all the appeals before us are dismissed subject to the aforesaid directions .

We are informed by Counsel appearing on behalf of the State and the complainant that Rakesh Kumar has since been apprehended and is undergoing his trial. We observe that nothing said in this judgment shall prejudice the prosecution or the defence in the trial. It will be open to the Trial Court to pass such judgment or

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order as it deems fit including the order on the question of sentence.

.....J.

(B.P.SINGH)

.....J.

(TARUN CHATTERJEE)

New Delhi,

October 18, 2006

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ITEM NO.1A(For Judgment)

COURT NO.6

SECTION IIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 598 OF 2005

STATE OF PUNJAB

Appellant (s)

VERSUS

KULBIR SINGH AND ANR.

Respondent(s)

(With office report)

With CrI.A.No.75-78 of 2006 (With office report)

CrI.A.No.81 of 2006 (With office report)

Date: 18/10/2006 These Appeals were called on for judgment today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mr. Sanjay Jain, Adv.

Mr. Mukesh Kumar, Adv.

Mr. Arun K. Sinha, Adv.

In CrI.A.75-78/06

Mr. K.K.Mohan, Adv.

In CrI.A.81/2006

Mr. V.B.Joshi, Adv.

For Respondent(s)

Mrs.K. Sarada Devi, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Criminal Appeals are dismissed subject to the directions contained in the

signed judgment.

(Sukhbir Paul Kaur)

(Vijay Dhawan)

Court Master

Court Master

(Signed Judgment is placed on the file)