

Subash Chander vs Krishan Lal & Ors on 29 March, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1903

Bench: K.T. Thomas, R.P. Sethi

CASE NO. :

Appeal (crl.) 812-814 of 1999

PETITIONER:

SUBASH CHANDER

Vs.

RESPONDENT:

KRISHAN LAL & ORS.

DATE OF JUDGMENT: 29/03/2001

BENCH:

K.T. Thomas & R.P. Sethi.

JUDGMENT:

(With Crimina Appeal Nos.815-16,819-20,817-18,821-22,980,1017/99 Crl.A.No.298/2001) J U D G
M E N T SETHI,J.

L...I...T.....T.....T.....T.....T.....T.....T...J Legends reveal and the people believe that in the ancient Indian society Bhagwan Krishna took birth to reprieve the suffering humanity from the terror let loose by the demon named Kansa. The birth of Lord Krishna, Janmasthami, is celebrated every year to commemorate the birth of truth for elimination of repression and atrocities. Ironically, thousands of years thereafter, on the day of Janmasthami in the year 1992, the accused, unfortunately named Krishan, along with others, became a devil and like vultures pounced upon the family of Bhagwan Ram, the deceased. After committing a ghastly crime, the accused persons left the scene of occurrence, satisfied with their design of killing the whole of the family. To their misfortune, two of the injured survived who appeared against the accused as PWs 2 and 3. The deceased included Bhagwan Ram, his son Sunder Ram, and Chando Devi, his mother. Spree of killing was resorted to, for eliminating the prosecution witnesses against some of the accused persons who earlier, on 25th June, 1987, had committed the crime of murder of Om Prakash, another son of Bhagwan Ram.

Apparently with the police connivance, the charge-sheet was filed against accused Krishan Lal and four others, namely, Bikar Singh, Mangu Singh, Major Singh and Om Prakash, the later four being not even named in the FIR or in the statements of PWs 2, and 3, recorded under Section 161 of the Criminal Procedure Code. It was only on the judicial intervention that ultimately charge-sheet was filed against 12 persons including the convicted appellants. The trial court concluded that offences under Sections 302, 307, 148, 450 read with Sections 149, 120B and Section 307 read with Sections 149 and 120B IPC had been proved against the accused persons, namely, Krishan Lal(A1), Mangu Singh(A2), Bikar Singh(A3), Major Singh(A4), Vishu(A6), Banwari(A7), Prithvi(A8), Bri Jal(A9), Dhokal(A10), Bhagirath(A11) and Het Ram(A12). One of the accused persons, namely, Om Prakash(A5) was, however, acquitted. Upon conviction, the trial court awarded death sentence to all the accused persons who were convicted under Section 302 read with Sections 149 and 120B of the Indian Penal Code and fine of Rs.25,000/- each. All the convicted persons were also sentenced to life imprisonment and fine of Rs.2000/- each for the commission of the offence under Section 307 read with Sections 149 and 120B IPC, seven years rigorous imprisonment with a fine of Rs.2000/- each for the offences punishable under Section 450 of the IPC. They were further sentenced to three years rigorous imprisonment and a fine of Rs.2000/- each for the offence punishable under Section 148 and 6 month rigorous imprisonment and a fine of Rs.1000/- each for the offence under Section 27 of the Indian Arms Act. It was further directed that after recovery of fine, the full amount be paid as compensation to injured Subash Chander (PW2). Reference was made to the High Court for confirmation of the capital sentence awarded to the accused persons. Feeling aggrieved all the convicted persons filed appeals in the High Court. The State did not file any appeal against the acquittal of Om Prakash, accused.

All the four appeals filed by the convicted persons and the reference arising out of the judgment of the trial court were disposed of by a common judgment now impugned in these appeals. The High Court upheld the conviction of convicts, namely, Krishan Lal(A1), Vishnu(A6), Bhanwari(A7) and Prithvi(A8) but commuted the death sentence to the imprisonment for life. Their appeals against the sentences in relation to other offences were rejected.

Not satisfied with the judgment of the High Court, Subash Chander, (PW2) has filed two sets of appeals bearing Nos.812-814 of 1999 and 815-816 of 1999 praying for setting aside the order of acquittal and awarding of death sentence to the convicted persons as was done by the trial court. The four convicted accused have filed two sets of appeals bearing Criminal Appeal Nos.817-818 of 1999 and 819-820 of 1999 praying for their acquittal by setting aside the conviction and sentence awarded to them by the trial court and the High Court. Criminal Appeal Nos.821-822 of 1999, 1017 of 1999, 980 of 1999 and 290 of 2001 have been filed by the State of Rajasthan seeking quashing of the order of acquittal and for award of death sentence to the convicted persons. It may be noticed, at this stage, that Subhash Chander in his appeals has not challenged the acquittal of the accused persons, namely, Bikar Singh(A2), Mangu Singh(A3), Major Singh(A4) and Om Prakash(A5). The State of Rajasthan has, however, prayed for setting aside the order of acquittal relating to Bikar Singh, Mangu Singh and Major Singh, as well.

We have heard the learned counsel for the parties appearing in the case at length and propose to dispose of all these appeals by this common judgment.

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In his statement recorded under Section 313 of the Cr.P.C., Het Ram (A12) submitted that he was innocent and@@ JJ that he along with Om Prakash, Sheshkaran and Kashi Ram had@@ JJJJJJJJJJJJJJJJJJJJJJJ gone to Sardarpura at 8.00 a.m. on the day of occurrence and returned home at 12.30 in the night after leaving Kashi Ram in his village. Bhagirath (A11), Dhokal (A10) and Brij Lal (A9) pleaded alibi. Banwari Lal (A7) stated that on the fateful night he was in the Dhani of Lado Ram at Chak 6 LKS as Lado Ram had died. Vishnu (A6) submitted that on the day of Janmasthanmi he had gone to Ganganagar and for the night he stayed there in the house of Krishan son of Bhola Ram. Other accused persons pleaded innocence and took a plea of total denial. In their defence, the accused persons produced 10 defence witnesses and relied upon documents marked Exhibit D-1 to D-7.

the persons who had come on the spot and fired gun shots. She has neither named any other person nor identified the rest of the accused persons in the court. She has not even stated that the aforesaid four accused persons were accompanied by any other person also. By referring to the statements of PWs2 and 3 the Division Bench of the High Court observed: "A critical examination of the testimony of two eye- witnesses PW2 Subhash Chandra and PW3 Raj Kumari shows that as regards the four accused persons, namely, Krishan, Vishnu, Banwari and Prithvi, there is no variance in the testimony of these two eye-witnesses. The testimony of PW3 Raj kumari has not been shaken in the cross-examination and, therefore, on the basis of the testimony of Raj Kumari corroborated by PW2 Subhash Chandra these 4 accused persons can be held to be present at the scene of occurrence and it can be safely held that they have used gun shots as alleged by this witness and as corroborated by PWe Subhash Chandra. In relation to the other four accused persons, namely, Dhokal, Brij Lal, Het Ram and Bhagirath a doubt is created as to whether they were in fact present or not because had they been present Raj Kumari would have definitely named them. May be that they were present and Raj Kumari had missed their presence but if an injured witness misses to name the four accused persons then such absence goes in favour of the accused persons and, therefore, notwithstanding the testimony of PW2 Subhash Chandra the presence of these four accused persons is held to be doubtful. May be that they were not present on the scene of occurrence at the time of the incident. In this background of doubt, it can be said that the presence of the four accused Krishan, Vishnu Banwari and Prithvi is held proved. Presence of four accused Dhokal, Brij Lal, Het Ram and Bhagirath is held doubtful."

We also agree with the conclusions arrived at by the High Court regarding the role played by A9 to A12 and find no reason to interfere with the judgment of acquittal passed in their favour by giving them the benefit of doubt. The appeals filed by Subhash Chander and the State in so far as A9 to A12 are concerned, are dismissed.

Both the trial court as well as the High Court have, upon appreciation of evidence, concurrently found accused Krishan Lal (A1), Vishnu (A6), Bhanwari (A7), Prithvi (A8) guilty of the offences with which they were charged. Involvement of the aforesaid accused persons is fully established by the testimony of Subhash Chander (PW2) and Raj Kumari (PW3). Subhash Chander (PW2) has stated that on the day of occurrence he, along with other members of the family, was sleeping in the courtyard of his house. On hearing the sounds of gun-shot firing, he woke up along with others and saw A1, A6, A7 and A8 along with others firing with their weapons. A1 fired pistol shots which hit the witness. A1 exhorted others that nobody from the family of Bhagwan Ram should escape. When the witness tried to escape by running towards his room, he was again fired at. Raj Kumari (PW3) also sustained bullet injuries. He saw the accused persons in the torch light and also recognised them as they were calling each other by their names. In consequence of the gun shot injuries Bhagwan Ram, Sunder Ram and Chando Devi died. The crime is stated to have been committed on account of the enmity, with the object to eliminate the prosecution witnesses cited against the accused in the murder case pertaining to the death of the brother of the witness, namely, Om Prakash. To the same effect is the statement of Raj Kumari. The High Court has accepted the testimony of both the witnesses so far as A1, A6, A7 and A8 are concerned. Learned Senior Counsel appearing for the aforesaid accused persons could not point out any material infirmity in the depositions of the aforesaid witnesses which could persuade us to take a different view. Upon

analysis of the evidence and the other relevant record produced in the case, we have no doubt in our mind regarding the involvement of the aforesaid accused persons for the offences with which they were charged, convicted and sentenced.

Mr. Ranjit Kumar, Senior Counsel who appeared for Subhash Chander, (PW2) vehemently argued that the trial court was not justified in commuting the death sentence and awarding the life imprisonment to the aforesaid accused persons. He has submitted that the present case was one which could be termed as rarest of the rare case warranting the extreme penalty imposable upon them under law. It is contended that mere fact that some of the accused persons were acquitted could not be made a ground for converting the death sentence into the life imprisonment. The manner in which the crime was committed on the helpless sleeping members of a family and design of the accused to eliminate the whole family justified the grant of death sentence. The reason given by the High Court for not awarding the death sentence being vague and irrelevant, the judgment impugned to that extent is sought to be modified. In support of his contention the learned senior counsel has relied upon the judgments of this Court in *Nirmal Singh & Anr. v. State of Haryana* [1999 (2) Scale 133], *State of U.P. v. Dharmendra Singh & Anr.* [1999 (6) Scale 113], *Ram Deo Chauhan @ Raj Nath Chauhan v. State of Assam* [JT 2000 (8) SC 430] and *Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra* [JT 2000 (10) SC 78].

There is no denial of the fact that the accused convict- appellants, who were earlier involved in the murder of Om Prakash, son of Bhagwan Ram left no stone unturned to eliminate the whole family of said Bhagwan Ram including three eye-witnesses in that case, namely Bhagwan Ram, Sunder Ram and Subhash Chander. It is also established that the aforesaid accused persons attacked the deceased and the injured at the dead hour of the night when they were sleeping being incapable of defending themselves. The means adopted in execution of the evil designs speak of the mental condition of the accused persons whom the trial court found to have been involved in the commission of a crime termed by it as rarest of the rare cases. The High Court, while commuting the death sentences, appears to have completely ignored various pronouncements of this Court dealing with the yardsticks to be adopted while awarding the death sentence. Merely because 8 persons, convicted by the trial court, were acquitted, by itself cannot be termed to be a justified ground for commuting the death sentence. However, as the High Court, presumably on general conspectus and upon consideration of facts of the case, found that accused persons should not be awarded with death sentence, we feel that for interfering with the discretion of the court, further exceptional grounds are required to be made out. When two views are possible about the quantum of sentence, a view which favours the grant of life in comparison of death is generally accepted. But for the exercise of the powers by the High Court in commuting the death sentence we had some reservations about the sentence awarded vide the impugned judgment but in view of the exercise of discretion in commuting the death sentence we are not inclined to interfere with the sentence awarded to the accused persons specially Vishnu (A6), Bhanwari (A7), Prithvi (A8). Mr. Ranjit Kumar, Senior Counsel alternatively contended that if a desperate accused like Krishan Lal (A1) is not awarded death sentence, he is likely to eliminate the remaining family members of Bhagwan Ram, as is evident from his past conduct and behaviour. It is submitted that to protect the lives of innocent surviving family members of Bhagwan Ram, it is necessary to atleast deprive Krishan Lal (A1) of his

life. We feel that the apprehensions expressed by the senior counsel are not without substance. Faced with the situation Mr. U.R. Lalit, Senior Counsel appearing for the respondents submitted that instead of depriving Krishan Lal (A1) of his life, the Court can pass appropriate orders to deprive the aforesaid accused person of his liberty throughout his life. Upon instructions, the learned Senior Counsel submitted that the said Krishan Lal, if sentenced to life imprisonment, would never claim his pre-mature release or commutation of his sentence on any ground. We record such a submission made on behalf of the said accused, upon instructions. Section 57 of the Indian Penal Code provides that in calculating fractions of terms of punishment of imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. It does not say that the transportation for life shall be deemed to be for 20 years. The position at law is that unless the life imprisonment is commuted or remitted by appropriate authority under the relevant provisions of law applicable in the case, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. In *Gopal Vinayak Godse v. The State of Maharashtra & Others* [1961 (3) SCR 440], the convict petitioner contended that as the term of imprisonment actually served by him exceeded 20 years, his further detention in jail was illegal and prayed for being set at liberty. Repelling such a contention and referring to the judgment of the Privy Council in *Pandit Kishori Lal v. King Emperor* [1944 (1) 72 LR I.A.] this Court held: "If so, the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the Indian Penal Code, Code of Criminal Procedure or the Prisons Act. Though the Government of India stated before the Judicial Committee in the case cited supra that, having regard to s.57 of the Indian Penal Code, 20 years' imprisonment was equivalent to a sentence of transportation for life, the Judicial Committee did not express its final opinion on that question. The Judicial Committee observed in that case thus at p.10:

"Assuming that the sentence is to be regarded as one of twenty years, and subject to remission for good conduct, he had not earned remission sufficient to entitle him to discharge at the time of his application, and it was therefore rightly dismissed, but in saying this, their Lordships are not to be taken as meaning that a life sentence must and in all cases be treated as one of not more than twenty years, or that the convict is necessarily entitled to remission."

Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life"

for "transportation for life" enable the drawing of any such all-embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

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All the appeals filed by Subhash Chander, accused persons and the State are dismissed with a rider that Krishan Lal (A1) shall remain in prison for the rest of his life.