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AJAI ALIAS AJU ETC. ETC.

v.

THE STATE OF UTTAR PRADESH

(Criminal Appeal Nos.598-600 of 2013)

B

FEBRUARY 15, 2023

[B. R. GAVAI AND VIKRAM NATH, JJ.]

- Penal Code, 1860 – ss. 302/149, 307 – Arms Act, 1959 – Code of Criminal Procedure, 1973 – ss. 161, 164 – The case of prosecution was that the accused persons, entered into the house of the PW-I and her sister and had caused the death of the four of their family members – In the course of committing the offence, the accused persons also inflicted the injuries upon the PW-I and her sister – Presuming them to be dead, the accused persons left the house – Thereafter, the PW-I and her sister came out of the house shouting and the villagers and the accused persons reached but since they were frightened of the accused persons, they both deliberately concealed the names of the accused persons and upon being asked by the accused persons that whether they have seen someone, they told them that they haven't seen anyone – After that the names of the accused persons were disclosed to the investigating officer by PW-I and thereafter the investigation were carried out and the charge-sheet were filed against the accused persons – The trial court, taking into consideration the evidence adduced convicted the accused persons of the death sentence along with other lesser punishments for other offences – Aggrieved by it, the accused persons approached the High Court – High Court affirmed the sentence imposed by the trial court but commuted the death penalty to life imprisonment – On appeal, held: PW-I is an injured witness and there is no reason why PW-I would make false implication and allow the real assailants to go scot-free – Also, a perusal of her testimony shows that she has fully supported the prosecution story as narrated by her in her statement under section 161 CrPC and even during cross-examination nothing was elicited from her which in any way may weaken or demolish her testimony and therefore, she was a fully reliable witness and has stated the things in natural course – Non-disclosure of the name of the accused persons by the*

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PW-1 was a wise step on her part as they were close relatives of her and such non-disclosure was done for protecting her own life. A

Dismissing the appeals, the Court

HELD: 1. PW-1 is an injured witness. Her injuries have not been challenged. There is no reason why PW-1 would make false implication and allow the real assailants to go scot-free. A perusal of her testimony shows that she has fully supported the prosecution story as narrated by her in her statement under section 161 CrPC. Even during cross-examination nothing has been elicited from her which in any way may weaken or demolish her testimony. She was a fully reliable witness and has stated the things in natural course. [Para 18][939-E-F] B C

2. The two daughters of the deceased 'V' having seen the assailants murdering their family members and also causing injury to one of them i.e. PW-1 being close relative rightly and wisely did not speak out anything in their presence and allowed them to remain in dark that she had actually seen them committing the crime. At the first instance, when the Investigating Officer went to the hospital to record her statement, they immediately came out with the true sequence of events as they had happened. [Para 19][939-G-H; 940-A] D

3. The pressing of the dog squad into service was also fully justified as till that time when the dog squad was pressed into service in the morning the names of the assailants had not been disclosed. The dog squad had been pressed into service as per the FIR since the names of the assailants were not known. It is the case of the prosecution itself that the time when the FIR was lodged and at the time when PW-1 was admitted to the hospital, the names of the assailants had not been disclosed deliberately and for justifiable reasons. The daughters of the deceased 'V' needed to protect their lives otherwise they would also had been done to death. [Para 20][940-B-C] E F G

4. Non-examination of sister of PW-1 and 'H', father of 'V' also has no material bearing. It is the discretion of the prosecution to lead as much evidence as is necessary for proving the charge. It is not the quantity of the witnesses but the quality of witnesses which matters. PW-1 was the injured witness having received H

- A **grievous and life-threatening injuries. Non-examination of the statement under section 164 CrPC also has no relevance or bearing to the findings and conclusions arrived at by the courts below. It was for the Investigating Officer to have got the statement under section 164 CrPC recorded. If he did not think it necessary in his wisdom, it cannot have any bearing on the testimony of PW-1 and the other material evidence led during trial. [Para 21, 22][940-D-E]**
- B **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos.598-600 of 2013.**

- C From the Judgment and Order dated 22.02.2012 of the High Court of Judicature at Allahabad in CRLA Nos.6293, 6294 and 6295 of 2009.

With

Criminal appeal nos.337 of 2014 and 745-748 of 2015.

- D Brijender Chahar, Sr. Adv., Ms. Deep Shikha Bharati (Amicus Curiae), Sanjay Kumar Tyagi, Rameshwar Prasad Goyal, Rishi Malhotra, Sarvesh Singh Baghel, Karan Chahar, Ms. Pooja Chahar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

- E **VIKRAM NATH, J.**

- 1. Criminal Appeals No.598-600 of 2013 have been preferred by accused Ajai alias Ajju, Braj Pal and Ravi respectively. Ajai alias Ajju has since died, as reported by the learned counsel for both the sides. Accordingly, Criminal Appeal No.598 of 2013 stands abated. Criminal Appeal No.337 of 2014 has been preferred by accused Mukesh.

- 2. The above appeals assail the correctness of the judgment and order of the High Court dated 22.02.2012 whereby the conviction recorded by the Trial Court under section 302/149 of the Indian Penal Code¹ and other allied offences, both under the IPC as also the Arms Act, 1959 has been affirmed. However, sentence awarding death penalty by the Trial Court has been commuted to life sentence for all the accused. Rest of the sentences have been maintained.

- 3. Criminal Appeal Nos.745-748 of 2015 have been preferred by the State of Uttar Pradesh against the above referred common judgment

H ¹ IPC

of the High Court to enhance the punishment to all the four respondents A and award them death sentence.

4. Prosecution story in brief is that Braj Pal Singh (one of the accused) made a complaint to the police station at Muradnagar, District Ghaziabad at about 4.30 AM on 25.08.2007 that early in the morning at around 3.00 AM he heard the shouting and shrieking of Ms Rashmi, daughter of his brother Vijay Pal Singh whereupon along with other villagers he reached the house of his brother in the neighbourhood only to find that his brother Vijay Pal Singh, his wife Smt Rajesh were lying on the ground floor on their cots with their necks cut by sharp edged weapons, and further, when he went on the upper floor, he saw Nishant, son of Vijay Pal Singh and also Mangal Singh, son in law of Vijay Pal Singh also lying dead on their cots with their necks also cut. Smt Pinky, daughter of Vijay Pal Singh was also lying on the ground floor in an injured condition. She was taken to the hospital and admitted there whereas the dead-bodies of the four deceased persons were lying on the spot where the crime was committed. After registering the case, the D investigation started.

5. The Investigating Officer recorded the statements of the two daughters of the deceased Vijay Pal Singh, namely Ms Rashmi and Smt Pinky (PW-1). According to Smt Pinky and also Ms Rashmi a very shocking sequence of events were revealed. According to Smt Pinky, there was enmity of her father with his brother Braj Pal and son of other brother Indra Pal; further, there was enmity with their neighbour Mukesh over consuming alcohol. She further stated that she was sleeping with her parents on the ground floor. Her sister Ms Rashmi, brother-in- law Mangal Singh, brother Nishant were sleeping on the upper floors of the house. At about 3.00 AM, she woke up due to some noise only to see that her neighbour Mukesh, son of Tungal Singh, Braj Pal Singh, Ravi, Ajai alias Ajju were assaulting her parents with *talwar* and *gandasa*. Mukesh assaulted her with a sword. She tried to save herself but then she fell down and lay quietly. She also narrated that Mukesh was saying ‘Abrar makes sure that no one is left alive. Kill all of them’ and thereafter he went upstairs. She continued to lie close to her mother in a state of fright and shock. They left thinking that she was also dead. They were also taking name of one Pramod. Both Abrar and Pramod are from village Noorpur, which is the in-law’s place of Mukesh. They used to regularly come to Mukesh and that she had seen them earlier. When H

- A these assailants left after assaulting, her sister Ms Rashmi came down from upstairs only to see that their parents, brother and husband had been murdered. Both the sisters ran outside shrieking and shouting, and after some time, Braj Pal and Mukesh came along with others and they asked what had happened. They came inside and saw the entire place of occurrence and asked Smt Pinky if she had recognised the assailants.
- B Out of fright both Ms Rashmi and Smt Pinky denied having seen anyone. Thereafter Mukesh called for the vehicle of Ajai alias Ajju and they brought them to the hospital. They were also asking her on the way as to whether she had recognised any one, to which she had denied. She also requested the Investigating Officer that both of them have told the correct sequence but please keep to himself as there is imminent threat to her life and also to her sister's life. After narrating the entire story Smt Pinky (PW-1) fell unconscious. Ms Rashmi, the other daughter of the deceased has also given a similar statement to the Investigating Officer, although she was not examined during trial. After recording the said statements, the Investigating Officer completed all the formalities, sent the dead-bodies for post-mortem, informed the superior authorities, prepared the sight plan, made necessary recoveries from the spot.

6. Smt Pinky (PW-1) suffered the following injuries as per the injury report prepared by Dr Rajeev Sharma(PW- 2) of the Sarvodaya Hospital, Ghaziabad who had examined her at 5.25 AM on the same day:

- “INJURIES”**
- (i) Amputated little & ring finger at level of proximal crease (R)
 - F (ii) Cut lacerated wound on palmar aspect of (R) hand 8 cm. x 2 cm. red in colour. 2 cm distal to palmar crease.
 - (iii) Cut lacerated wound on front side of forearm (R) 6 cm. x 2 cm. red in colour profusely, bleeding, 5 cm. above wrist joint.
 - G (iv) Cut lacerated wound over face extending from (Lt.) Angle of mouth 5 cm. x 3 cm.
 - (v) Cut lacerated wound over neck 5 cm. x 1 cm. just above upper crease of neck.
 - H (vi) Cut lacerated wound at base of index and middle finger on back side 2 cm. x 1 cm. & 2 cm. x 0.5 cm. respectively.

- (vii) Cut lacerated wound on (L) ear 3 cm. x 1 cm. red in colour A
and bleeding.”

X-ray of the neck and jaws was also conducted on the same day and a report to that effect was submitted by Dr.Rajeshwar Yadav, Radiologist (PW-3).

7. Post-mortem was conducted in the afternoon on the same day B
by Dr K.N.Tiwari (PW-4) and the following ante- mortem injuries were reported on the four deceased:

Smt. Rajesh

Antemortem Injuries (Exhibit Ka-3)

- (1) Incised wound over neck lower part anteriorly and on Rt.side C
8 cm. x 4 cm., bone deep, 3 cm. above supractenal notch,
soft tissues of neck including blood vessels and trachea are cut in the wound.
- (2) Incised wound on Lt. side neck lower part 8 cm. below ear D
7 cm. x 3 cm. wound in muscle deep, soft tissue and muscle cut.

Post-mortem wound

Three clean cut wounds on right hand dorsum are present. Sixe 8 E
cm. x 5 cm., 7 cm. x 4 cm., 3 cm. x 2 cm., 2.3 cm. apart.

Vijay Pal

Antemortem Injuries (Exhibit Ka-4)

- (1) Incised wound in upper part of neck on anterior and sides size F
10 cm. x 3 cm. bone deep, wound is 8 cm. below ear lobule laryux,
hyoid soft tissues and blood vessels are cut in the wound.

Post mortem wound

Post mortem wounds (1) clean cut 7 cm x 3 cm. on dorsum of Rt. G
Hand, (2) Abrasion 7 cm. x 3 cm. on dorsum of Rt. Hand and 1 cm. x 1 cm. clean cut over Lt. angle of mouth noted.

Mangal

Antemortem Injuries (Exhibit Ka-5)

- (1) Incised wound 25 cm. x 9 cm. on upper part of neck and H
lower jaw on anterior and Rt. Side, wound is reactive upto

A Vertebrae, Mandible, soft tissues of neck muscles, Larix, hyoid and blood vessels are cut in the wound.

- (2) Upper part of wound in at level of ear lobule and oblique, oblique Incised wound on Rt. side face, from upper lip to ear 11 cm. x 1 cm. muscle deep.

B **Nishant**

Antemortem Injuries (Exhibit Ka-6)

- (1) Incised wound 9 cm. x 2 cm, oblique, Rt. Side neck reaching upto mid line 6cm. Below ear muscle deep.

C (2) Incised wound 5 m.m. Below injury no.1 on Rt. Side neck reaching up to midline size 10cm x 8 cm., muscles, Larynx, (thyroid cartilage and hyoid) vessels are cut in the wound."

8. After having recorded the statements of the two daughters of Vijay Pal Singh, namely Smt Pinky and Ms Rashmi, the Investigating

D Officer Sub-Inspector Ram Babu Saxena (PW-9) also noted that mobile number of the deceased Nishant bearing No.9336780542 was also not traceable. Later on, the Investigating Officer arrested Mukesh and Braj Pal Singh. Mukesh after his confessional statement also got recoveries made on his pointing out of blood-stained pant, *Khukri* from his house

E which were taken into custody, sealed and memo prepared. Motor cycle belonging to Abrar, co-accused was also recovered and taken into custody. Braj Pal Singh after giving his confessional statement also got a blood-stained *gandasa* recovered from his house which was taken into custody, sealed and memo prepared. On 28.08.2007, co-accused Ravi was arrested and in his confessional statement, and on his pointing out, a

F blood- stained T-shirt and a mobile phone LG Reliance bearing No.9336780542 was also recovered from the house of his mother's sister. The same was taken into custody, sealed and a memo prepared. Ajai alias Ajju was arrested on 4.11.2007 and upon recording his confessional statement, and on his pointing out, a knife was recovered from his village

G hidden near a canal, the said knife was taken into custody and a recovery memo was prepared. The recovered articles were sent for forensic examination to the *Vidhi Vigyan Prayogshala*, Agra.

9. After completing the investigation, a charge-sheet was filed against the four accused namely, Braj Pal Singh, Mukesh, Ravi and Ajai alias Ajju. Two separate cases were registered against Mukesh and Ajai

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alias Ajju under sections 4/25 of the Arms Act. In these two FIRs also a charge-sheet was submitted. All the matters were clubbed together and tried by the Trial Court.

10. The prosecution examined 13 witnesses. They all supported the prosecution story. All the relevant material and documents were proved and exhibited.

11. The four accused gave their statements under section 313 of the Criminal Procedure Code² in which they denied their involvement and alleged that they had been falsely implicated; they also stated that the recovery was not at their instance; the witnesses were giving evidence out of enmity; the accused in defence examined two witnesses. Dr Islamuddin, a resident doctor in Sarvoday Hospital was examined as DW-1 to prove the medical papers regarding admission of Smt Pinky in the hospital Exh. Kha-1 to Kha-38. Smt Berwati, wife of Mool Chand, mother of the accused Ajai alias Ajju was examined as DW-2. She stated that her son was arrested along with Mukesh and Braj Pal, thereafter released and again after 20 days he was arrested.

12. The Trial Court vide judgment dated 24.09.2009, after thorough scrutiny and appreciation of the material evidence on record, came to the conclusion that the prosecution had successfully brought home the guilt of the four accused in committing the murder of the four deceased and attempt to murder of Smt Pinky (PW-1) who were their close relatives and, accordingly, convicted them under section 302/149 and section 307 of IPC and other allied offences under IPC and Arms Act, 1959 and awarded them death sentence and life imprisonment and other lesser sentences for different offences proved.

13. Appeals were preferred before the High Court by the accused which were heard along with death reference forwarded by the Trial Court. Before the High Court, the appellants Braj Pal, Ajai alias Ajju and Ravi had engaged separates counsels whereas appellant Mukesh was provided an *amicus curiae* from the legal aid. The High Court, after considering the respective arguments and the material on record, affirmed the conviction recorded by the Trial Court of all the offences. However, on the question of sentence, after discussing the law on the point and taking into consideration the various other relevant factors, commuted the death sentence into life imprisonment.

² CrPC

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A 14. Aggrieved by the same, present appellants are before this Court.

15. We have heard learned counsel for the parties at length and also perused not only the record provided by the learned counsel for the parties but also the Original Record of the Trial Court.

B 16. On behalf of the appellants, the arguments advanced are briefly recorded as follows:

(i) This is a case of solitary eye-witness, namely, Smt Pinky (PW-1), her testimony was that of a witness related to the deceased and also a witness having enmity with the appellants and, therefore, would not be a reliable witness and ought not to have been relied upon;

C (ii) There is no other evidence to corroborate the testimony of the solitary eye-witness, PW-1;

D (iii) Smt Pinky (PW-1), at the first instance, does not disclose the names of the assailants to the villagers and other family members who collected on her shouting and shrieking nor did she disclose the names of the assailants at the time she was admitted to the hospital, therefore, it is a case of improvement;

E (iv) There is evidence to show that a dog squad was summoned in the morning, as such it was a case of unknown assailants and that the eye-witness Smt Pinky had actually not seen any one and even if she had seen any one, she did not recognise them. A dog squad would not have been put into action, in case the names of the assailants were known; as such this also suggests improvement;

F (v) No explanation as to why Ms Rashmi and Horam, father of the deceased Vijay Pal Singh, accused Braj Pal and grandfather of Ravi were not examined, even though they were there at the place of occurrence; and

G (vi) The statement of Smt Pinky (PW-1) was not recorded before the Magistrate under section 164 CrPC which creates a doubt.

H (vii) Learned counsel on behalf of the appellant Ravi raised an additional argument that Smt Pinky (PW-1) did not take his

name before the Investigating Officer while giving her statement under section 161 CrPC. According to him, the name of Ravi has been taken for the first-time during trial as an improvement. His client has been falsely implicated.

- (viii) Learned Amicus appearing for appellant Mukesh has referred to various discrepancies in the testimony of the witnesses. B

17. On the other hand, learned counsel appearing for the respondent -State submitted that the findings recorded by the Trial Court and the High Court are based upon a thorough scrutiny and appreciation of the evidence on record and do not require any interference. It is further submitted by the learned counsel for the State that the appellants being close relatives and neighbours of the deceased, in order to gain property, settled their score of enmity by committing a ghastly act of brutally murdering four members of the same family and also attempting to murder the injured witness Smt Pinky who had been attacked and assaulted on her neck and in the act of protecting herself she lost a couple of fingers of her upper hand. No leniency needs to be shown to them. The High Court committed an error in commuting the death sentence to life imprisonment. Accordingly, the sentence of life imprisonment awarded by the High Court be set aside and that of the Trial Court of death sentence be restored. E

18. The submissions advanced are being dealt with in the same sequence. PW-1 is an injured witness. Her injuries have not been challenged. There is no reason why PW-1 would make false implication and allow the real assailants to go scot-free. A perusal of her testimony shows that she has fully supported the prosecution story as narrated by her in her statement under section 161 CrPC. Even during cross-examination nothing has been elicited from her which in any way may weaken or demolish her testimony. She was a fully reliable witness and has stated the things in natural course. F

19. The two daughters of the deceased Vijay Pal Singh having seen the assailants murdering their family members and also causing injury to one of them i.e. Smt Pinky (PW-1) being close relative rightly and wisely did not speak out anything in their presence and allowed them to remain in dark that she had actually seen them committing the crime. At the first instance, when the Investigating Officer went to the hospital to record her statement, they immediately came out with the H

A true sequence of events as they had happened. The appellants cannot gain anything out of the above submission.

20. The pressing of the dog squad into service was also fully justified as till that time when the dog squad was pressed into service in the morning the names of the assailants had not been disclosed. The dog squad had been pressed into service as per the FIR since the names of the assailants were not known. It is the case of the prosecution itself that the time when the FIR was lodged and at the time when Smt Pinky (PW-1) was admitted to the hospital, the names of the assailants had not been disclosed deliberately and for justifiable reasons. The daughters of the deceased Vijay Pal Singh needed to protect their lives otherwise they would also have been done to death.

21. Non-examination of Ms Rashmi and Horam, father of Vijay Pal Singh also has no material bearing. It is the discretion of the prosecution to lead as much evidence as is necessary for proving the charge. It is not the quantity of the witnesses but the quality of witnesses which matters. Smt Pinky (PW-1) was the injured witness having received grievous and life-threatening injuries. We are not impressed by this argument also.

22. Non-examination of the statement under section 164 CrPC also has no relevance or bearing to the findings and conclusions arrived at by the courts below. It was for the Investigating Officer to have got the statement under section 164 CrPC recorded. If he did not think it necessary in his wisdom, it cannot have any bearing on the testimony of PW-1 and the other material evidence led during trial.

23. Insofar as the attempt of the learned counsel for Ravi is concerned, regarding his name not being taken in the statement of Smt Pinky under section 161 CrPC, we are of the view that the same is factually incorrect. This Court has perused the statement of Smt Pinky and finds that at two places she has taken the name of Ravi, both during the assault and otherwise also.

24. Learned Amicus for the appellant Mukesh has tried to point out several discrepancies and inconsistencies in the evidence. We need not go into details as the same are minor and do not have any impact on the findings recorded by the courts below.

25. For all the reasons recorded above, we do not find any infirmity in the order of the High Court affirming the conviction of the appellants.

Accordingly, Criminal Appeal Nos.598-600 of 2013 and Criminal Appeal No. 337 of 2014 are liable to be dismissed and are accordingly dismissed. Insofar as the appeals filed by the State are concerned for enhancement of sentence, we find that the High Court has given sound and cogent reasons for commuting death sentence into life sentence. Accordingly, the Criminal Appeal Nos.745-748 of 2015 also stand dismissed. The appellants are in custody and they will serve out their sentence.

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26. Pending applications, if any, are disposed of.

Ankit Gyan
(Assisted by : Mahendra Yadav, LCRA)

Appeals dismissed.