Om Prakash vs State Of Haryana on 22 February, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1332, 1999 (3) SCC 19, 1999 AIR SCW 1029, (1999) 1 JT 599 (SC), 1999 (1) SCALE 570, 1999 SCC(CRI) 334, 1999 (1) LRI 477, 1999 CRIAPPR(SC) 209, 1999 (2) ADSC 57, 1999 ALLMR(CRI) 1 818, (1999) 2 KER LT 22, 1999 ADSC 2 57, 1999 CRILR(SC MAH GUJ) 143, 1999 (1) UJ (SC) 529, 1999 (1) JT 599, (1999) 3 PAT LJR 157, (1999) 2 EASTCRIC 9, (2000) 1 MADLW(CRI) 180, (1999) 16 OCR 544, (1999) 2 RECCRIR 200, (1999) 1 CURCRIR 115, (1999) 2 SUPREME 227, (1999) 24 ALLCRIR 556, (1999) 1 SCALE 570, (1999) 38 ALLCRIC 525, (1999) 1 CHANDCRIC 85, (1999) 2 ALLCRILR 90, 1999 CRILR(SC&MP) 143, (1999) SC CR R 337

Bench: K.T. Thomas, M.B. Shah

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           CASE NO.:
Appeal (crl.)  224 of 1999

PETITIONER:
OM PRAKASH

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 22/02/1999

BENCH:
K.T. THOMAS & M.B. SHAH

JUDGMENT:
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JUDGMENT 1999 (1) SCR 794 The Judgment of the Court was delivered by SHAH, J. Leave granted.

At the time of admission of this matter, the Court had issued notice limited to the question of sentence only. Hence, the question involved in this appeal is whether death sentence imposed requires to be confirmed on the ground that it is the rarest of the rare cases? Whether sentence of imprisonment for life would be inadequate? This is a case in which per- sistent disputes over a small house in a village between two neighbours and inaction by the authority (despite repeated prayers), led to this case of gruesome murders of seven persons, some totally innocent.

Before dealing with the contentions raised by the learned Counsel for the appellant, we would first refer to a few facts. It is a prosecution version that on 28th January, 1990, Chater Singh (P.W. 4) along with his wife deceased Smt. Daya Kaur was sleeping at his house and his brother Satbir, his

wife Smt. Kamlesh and mother Smt. Khazani (deceased) were sleeping at the house of Satbir while inside the house of Satbir, Satbir and two male progeny of Chater Singh, Aman Kumar and Mohinder and one male progeny Surender of Hawa Singh (P.W. 5) were sleeping. Around 4.00 a.m., Chater Singh saw torch light emanating from the window of his house, upon which he and his wife got up from their cots and saw Parma Nand accused holding a torch in his hand and Ajit Singh accused (since dead) standing by his side holding a gun. Ajit Singh fired a shot from his gun, which hit the breast of Smt. Daya Kaur who fell down and met her doom. He raised an alarm, whereafter Ajit Singh accused entered his house from the rear door and fired at Chater Singh from his gun which hit the fingers of his right hand. Chater Singh caught hold the barrel of the gun but Ajit Singh got it freed and handed over his weapon to Om Prakash accused present in the court yard of the house. It is stated that one other person not known to Chater Singh was also present in the street. Thereafter all the four reached the house of Satbir followed by Chater Singh and Hawa Singh and there accused Om Prakash fired from his gun hitting Smt. Kamlesh wife of Satbir and Smt. Khazani who succumbed to the injuries. Thereafter, the assailants headed towards the house of Satbir where Chater Singh and Hawa Singh had already reached. At that place, Om Prakash fired indiscriminately from the gun and shot dead Satbir, Mohinder, Aman Kumar male progeny of Chater Singh and Surender son of Hawa Singh (P.W. 5). It is stated that after committing the gruesome murder of 7 persons accused Parma Nand made out that they had taken the revenge regarding the plot in dispute and dared anybody to confront them at the risk of elimination. All the accused thereafter fled away with their weapon of offence. After departure of the accused, many persons collected. Leav-ing Hawa Singh at the spot, Chater Singh rushed to the Police Station, Sampla and lodged F.I.R. at Ex. PJ at 7.30 a.m. During investigation, weapon of offence, that is, S.L.R. (self loading rifle) which the accused Om Prakash surrendered with the BSF authorities, where he remained posted, was collected and was sent to the Bureau, Forensic Science Lab. Mad-huban alongwith empties and bullets lifted from the scene of occurrence. After completion of the investigation, accused were chargesheeted for the offence punishable under Sections 302, 307 read with Section 34 of l.P.C. Prior to trial, accused Ajit Singh had expired. In Sessions Case No. 341/90, the learned Sessions Judge, Rohtak by Judgment and Order dated 29th March, 1997 convicted the accused Om Prakash and Parmanand under section 302/307/452/506 read with Section 34 l.P.C. and under section 25 of the Arms Act after appreciating the evidence in detail.

The learned Sessions Judge observed that mitigating circumstances culled out by the learned Defence Counsel cannot save the convict Om Prakash from the gallows, in case, the order of sentence is confirmed by the High Court because on that ill-fated morning of 28.6.90, around 4.00 a.m., the bullets clawed through the aged (Khazani, 77 years) and middle aged (Daya Kaur, 40 years), the young (Satbir 28-29 years, Kamlesh, 22 years) and the adolescent (Surender 16-17 years) and two boys below their teens (Aman Kumar and Mohinder aged 9/11-12 years). The attempt was to wipe out the entire family of Mange Ram, both male and female. Victims were sleeping, defenceless. Firing was restored to without any provocation to wreck vengeance over the dispute of a plot, which had been amicably settled with the intervention of relatives and friends, though accused Om Prakash had not relished the same. The children of Satbir Singh deceased were rendered orphan because he and his wife Kamlesh fell to the bullets (one of the survivor was a girl aged about six months). Lot of deliberations, pre- meditation and planning had gone in the commission of the crime. It was absolutely devilish and dastardly. The weapon which was meant to beat back the

intruders from the Indian Territory, was used to wreck personnal vendetta. So, in respect of Om Prakash accused, the case falls within the category of "rarest of rare cases". With regard to the co-accused Parma Nand, the learned Sessions Judge convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 2,000, in default of payment of fine to undergo R.I. for two years. Conviction and sentence order is as under :

Om Prakash Accused.

Under Section 302 IPC, for committing the murder of Khazani, Kamlesh, Satbir, Mohinder, Aman Kumar & Surender Sentenced to death.

Under Section 302/34 IPC, for the murder of Daya Kaur Committed by Ajit Singh.

To undergo imprisonment for life and to pay a fine of Rs. 2000 and in default of payment of fine, to undergo R.I. for two year Under Sec. 307/34 IPC for the injuries caused by Ajit Singh to Chater Singh with an intention to cause his death.

To undergo imprisonment for life and to pay a fine of Rs. 1000 and in default of payment of fine to undergo R.I. for one year.

Under section 27(3) Of the Arms Act, 1959.

Since the S.L.R. bearing butt No. 362 and body No. W 7522 is a prohibited Arm and the prohibited ammunition was used in causing the murder of Khazani, Kamlesh, Satbir, Mohinder, Aman Kumar and Surender, accused Om Prakash is sentenced to death. Parma Nand Accused.

Under Section 302/34 IPC for the murder of Khazani, Kamlesh, Satbir, Mohinder, Aman Kumar, Surender and Daya Kaur.

To undergo imprisonment for life and to pay a fine of Rs. 2000 and in default of payment of fine to undergo R.I. for two years.

Under Section 307/34 IPC, for causing injuries to Chater Singh by Ajit Singh.

To undergo imprisonment for life and to pay a fine of Rs. 1000 and in case of default of payment of fine, to undergo R.I. for one year.

On appeal, after appreciating the entire evidence, the High Court of Punjab and Haryana in Criminal Appeal No. 343/DB of 1997 confirmed the conviction of the accused.

Learned counsel for the appellant submitted that finding given by the High Court while confirming the death sentence requires to be set aside because the Court has

considered only one side of the picture and has not appreciated the reasons which drove the appellant to this dastardly act. It has been pointed out that High Court has observed that appellant was a member of the Border Security Force and prior to present occurrence had no serious dispute with the complainant party but for the matter pertaining to the plot in question has belied the trust that the armed force had put in him by betraying an utter lack of discipline; the murders were committed with pre-meditation and in a thought out manner as would be reflected in the letter Ex. PX and the fact that he had absconded on 27th June, 1990 from his unit and had returned after having committed the crime. It was a cold-blooded attack on 7 persons of a family, most of them being women and children who had given no provocation to the accused and had caused him no harm; an attack had been at the dead of night while they lay asleep; an attack had been made despite the compromise that had been entered into between Suraj Brian, father of the accused and Chater Singh and others; it appeared that murders were committed with a positive intention of wiping out the families of Chater Singh and Hawa Singh. The Court after considering the decision rendered in the case of Suraj Bhan v. State of Rajasthan, [1996] S.C.C. (Criminal) 1314 held that the court must respond to the cry of society and to settle what would be a deterrent punishment for what was an apparently abominable crime.

It is true that Court must respond to the cry of the society and to settle what would be deterrent punishment for abominable crime. It is equally true that large number of criminals go unpunished thereby increas-ing criminals in the society and law-loosing it deterrent effect. It is also truism as observed in the case of State of M.P. v. Shyamsunder Trivedi and Others, reported in [1995] 4 SCC 262 at p. 273 that the exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situation and the peculiar circumstances of a given case often results in miscarriage of justice and makes the justice delivery system a suspect; in the ultimate analysis the society suffers and a criminal gets encouraged. Sometimes it is stated that only rights of the criminals are kept in mind, the victims are forgotten. Despite this it should be kept in mind that while imposing the rarest of rare punishment, i.e. death penalty, the Court must balance the mitigating and aggravating circumstances of the crime and it would depend upon particular and peculiar facts and circumstances of each case.

Dealing with this aspect in the case of Shankar v. State of Tamil Nadu, [1994]4 SCC 478 (para 50) this Court has observed as under :

"The choice as to which of the two punishments provided for murder is the proper one in a given case will depend upon the particular circumstances of the case and the Court has to exercise its discretion judicially and on a well-recognised principles after balancing all the mitigating and aggravating circumstances of the crime. The Court also should see whether there is something uncommon about the crime which renders sentence of imprison-ment of life inadequate and calls for death sentence.

> The nature of the crime and the circumstances of the offender should be so revealing that the criminal is a menace to the society and the sentence of imprisonment of life would be inadequate. The sen-tence of death should be reserved for the rarest of rare cases alter a due consideration of both mitigating and aggravating circumstan-ces. What circumstances bring a particular case under the category of rarest of rare cases vary from case to case depending upon the nature of the crime, weapons used and the manner in which it is perpetrated etc."

In the aforesaid case, the Court referred to an earlier Full Bench decision of this Court rendered in the case of Bachan Singh v. State of Punjab, [1980] 2 SCC 684 wherein the Court after referring to aggravating circumstances (para 202), the Court held that following mitigating cir- cumstances (para 206) are undoubtedly relevant circumstances and must be given weightage in determination of sentence :

> (1) The age of the accused. If the accused is young or old, he shall not be sentenced to death, (2) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
>
> (3) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(4) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the of-fence.

(5) That the accused acted under the duress or domination of another person.

(6) That the condition of the accused showed that he was men-tally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

The Court further observed "there are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation.

> "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society". Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive con-struction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hang-ing of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency - a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated

> by us, will discharge the onerous function to evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for an exception."

Hence it is settled law that sentence of death should be reserved for rarest of the rare cases where sentence of imprisonment of life would be inadequate. In each case for finding out whether it is rarest of the rare cases, the Court has to balance the aggravating and mitigating circumstan- ces. From the evidence on record, it is apparent that the accused had committed gruesome murders of innocent persons. There is no doubt that it is pre-meditated and in a well thought out manner. He was also a member of Para Military Force. As against this, it is also on record that he has not committed any offence on any previous occasion. At the relevant time in 1990 when the incident took place, he was 23 years old. In this background, if we refer to the evidence on record produced by the prosecution which is in the form of applications (letters) written by the appellant-accused to the authorities and to his brother Parma Nand, it would reveal the background in which accused appellant was under ex-treme mental disturbance which lead him commit serious crime. We may mention that these applications/letters are used by the prosecution for establishing the motive behind the crime but, at the same time, court overlooked the serious agony suffered by the accused which is revealed in applications. First application dated 22nd March, 1990 is written to the Deputy Commissioner, Rohtak for protection of his family members from the respondents and restrictioning them from encroaching on their plot. The application, inter alia, reads as under : "On 2.2.90 the applicant went on leave to his village at the ailment of his father. At that time the respondents raised the matter & warranted me that he could go on his duty after-lifting the encroachment from the plot. The opposite party have three time family members to us. They are strong headed rich persons. Seeing the opposition very strong, the applicant felt that the efforts would go useless. He called a panchayat to sortout the matter. The Panchayat also said that the plot was the property of applicant and the respondents were encroaching it illegally. The respondent's did not accept the decision of Panchayat. After my return at duty, the opposite party attacked on my family. They wanted to kill my whole family. My family like parents, brothers & the wives of my brothers except my younger sister, received grievous injuries. The applicant was told by his brother about the feud on 19.3.90. His brother returned on 20.3.90 after telling the whole talks. My father & brothers were got locked up in the police station Sampla by conniving with the officials. The applicant's party tried his best to lodge the FIR againsl the opposite party but in vain. After the struggle a cross case was entered. Now both side are on bail. The family of applicant is harassed by this way. They are giving open threat that if they would not hand over the possession of the plot they could be killed. The family of applicant hesitate to come out from their houses due to the fear of opposite party. In such circumstances I feel ..... to do my duty & 1 consider that I shall lose my balance of mind. Hence the action be taken against the opposite party & a direction be issued to protect my family & property. If it is not done his family can be ruined."

The next application dated 2.4.90 is written by the appellant to the Superintendent of Police (S.P.), Rohtak. In that application, appellant has requested S.P. Rohtak to take action against Chater Singh, Hawa Singh, Satbir Singh, Rajbir and Suresh. The relevant part of the application is as under :-

> "I am serving in B.S.F. My father Sh Suraj Bhan and my younger brother live in village Samchana P.S. Sampla. Now-a-days, I am on leave. I have one ghar which is a ancestral property and surrounds of walls and we keep luggage in it. Chatter Singh, Hawa Singh, Satbir, Rajbir and Suresh s/o Sh. Mange Ram and their sons want to take possession forcibly of our ghar. So my father had filed civil suit on 12.2.90 and stay order is granted for that Ghar. My father is an old man and we are alone. But the family members of Chattar Singh are strong persons. These persons interfered in our possession inspite of stay order and they want to possess forcibly our ghar. We had already filed an application before you, and you have marked it to the SHO vide No. 601 SPR dated 29.3.90, but no action has been taken against them up till now. The above noted persons and their sons namely Krishan, Dilbag s/o Chhattar Singh, Surinder s/o Hawa Singh harass us. They always keep ready for quarrel and they are bent upon to possess forcibly our ghar".

Thereafter, there is another application Ex. PV/3 dated 20.3.1990 written to the S.P. Rohtak which, inter alia, recites as under :

> "I joined my duty on finishing my leaves. I went to do my duty. I am serving in B.S.F. My younger brother and an old father live in village house. My mother and my wife were attacked seriously and they were trying to possess the above said Ghar. The accused are as under :
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> 1. Chatter Singh 2. Hawa Singh 3. Satbir Singh 4. Rajbir Singh 5. Suresh s/o Sh. Mange Ram 6. Krishan 7. Dilbag s/o Sh. Chatter Singh 8. Gurinder s/o Sh Hawa Singh and remaining persons of their family. After that my father lodged the report to the SHO P.S. Sampla for restraining them to possess the plot. But the SHO did not take any action; conniving with the accused, the SHO confined my brother & father instead of them. They were threaten by dire consequences and they demanded five thousands as ransom we are unable to arrange the money. So no action has been taken against those culprits. I come on leave for two months in a year. They do not let me remain peacefully and they harass us on the one pretext or other. There is no solace in our houses. It is very difficult to come out from the house."

(Emphasis added) The next application Ex. PV/10 dated 15th May, 1990 written to S.P. Rohtak, inter alia, reads as under :

> "On 11.5.90 in the morning time when our sister and the wives of our brothers went to throw dung in the morning in our ghar at that time, suddenly accused came out and attacked upon them and they inflicted grievious injuries to them with their jaili and lathies. The accused inflicted grievous injuries to the wife of my younger brother, who has a foetus of seven months in her stomach. She is in dangerous condition and admitted in Ward No. 2 of MCH Rohtak. We had lodged the report in Police Station Sampla about that matter. The accused stayed for two days in the police Station and then they were released and no action was taken against them. These persons are

giving threats after their release.

So, it is requested that legal action be taken against the accused so that my life and property may be protected from those persons and justice be done."

Lastly, we would refer to the letter dated 21st June, 1990 written to his brother Parma Nand which is reproduced in paragraph 61 of the Judgment rendered by the Learned Sessions Judge. The incident took place on 28th June, 1990 and the said letter was written a week prior to the occurrence. It is true that this letter reveals that appellant was drawing concrete action against the complainant party. But from the letter, it appears that appellant was deeply annoyed, may be because as stated in the letter "We had taken ourselves dead when they had attacked our women-folk and sister." It also reveals that the act of the appellant was pre-planned. This letter no doubt reveals the mind of the appellant accused to the effect that he has decided to take revenge and was planning to take a concrete step in that behalf and that he was keeping it secret. In the said letter, he has further written that at best, it would take 15 days for him for taking action and "If we are to die, let this thing happen. If possible, give a prompt reply and write which wall they were demolishing. Takes heed of what I have written".

Learned Counsel for the appellant submitted that High Court as well as the Sessions Court ought to have referred to all the letters/applications written by the appellant and not only the last letter written by him to find out the motive and the well thought out manner in which murders were committed. It is his contention that aforesaid applications written by the appellant to the authorities reveal that the accused was compelled to resort to the crime because he and his family members were finding helpless. This submission of the learned counsel for the appellant requires to be accepted. From the aforestated applications to S.P. Rohtak or Commis- sioner, it appears that accused was all throughout feeling that he and his family members were humiliated by the other party who were rich and influential and who were intending to grab the plot/Ghar beloging to them. Applications reveal that appellant accused was feeling much more hurt because family members of the appellant including women-folk were not getting any police protection even though they were assaulted. It has been pointed out in the application that his younger brother's wife having seven months pregnancy was assaulted and she was required to be hospitalised. It also reveals that for a period of more than three months appellant was requesting the authorities to take action so that he and his family members can live in peace. It was his allegation that the SHO of the Police Station was conniving with the other side and had demanded five thousand rupees as a ransom which their family members were unable to pay, therefore, no action was taken against the other party. He has pointed out that Panchayat has also arrived at the conclusion that the property belonged to his family and yet other party was encroaching upon it. It was his grievance that despite the stay order granted by the Civil Court, other party wanted to take possession forcibly. The last letter written to his brother indicates that wall of the house was demolished. It is also stated that even though his parents, brothers, and wives of his brothers received grievous injuries in the assault, yet they were locked up in the Police Station, Sampla because of favour by the Officer. They tried to lodge the FIR against the other party but it was in vain and after some struggle, cross cases were registered and both the sides were released on bail. He has also stated that in such situation, he may lose balance of mind. It appears that this situation continued and on 11th May, 1990 further incident took place

when the accused inflicted injuries to the wife of younger brother of accused having seven months pregnancy which resulted in these murders.

Considering the aforesaid background of the matter, the question would be whether the case of the appellant could be one of the "rarest of the rare"

> cases so that death sentence is required to be imposed. In our view, even though this is a gruesome act on the part of the appellant, yet it is a result of human mind going astray because of constant harassment of the family members of the appellant as narrated above. It could be termed as a case of retribution or act for taking revenge. No doubt, it would not be a justifiable act at all, but the accused was feeling morally justifiable on his part. Hence, it would be difficult to term it as the "rarest of the rare" cases. Further this is not a crime committed because of lust for wealth or women, that is to say, murders are neither for money such as extortion, dacoity or robbery; nor even for lust and rape; it is not an act of anti-social element kidnapping and trafficking in minor girls or of an anti-social element dealing in dangerous drugs which affects the entire moral fibre of the society and kills number of persons; nor is it crime committed for power or political ambitions or part of organised criminal activities. It is a crime committed by the accused who had a cause to feel aggrieved for injustice meeted out to his family members at the hands of the family of the other party who according to him were strong enough physically as well as economically and having influence with the authority which was required to protect him and his family. The bitterness increased to a boiling point and because of the agony suffered by him and his family members at the hands of the other party and for not getting protection from the police officers concerned or total inaction despite repeated written prayers goaded or compelled the accused to take law in his own hands which culminated in gruesome murders; may be that his mind got derailed of the track and went astray or beyond control because of extreme mental disturbances for the constant harrassment and disputes. Further considering the facts and circumstances, it cannot be said that he would be a menance to the society; there is no reason to believe that he cannot be reformed or rehabilitate and that he is likely to continue criminal acts of violence as would constitute as continuing threat to the society. He was working in B.S.F. as a disciplined member of the armed forces aged about 23 at the relevant time, having no criminal antecedents.
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> In the result, we are of the view that this case cannot be treated as one of the rarest of rare cases where lesser sentence of imprisonment of life would not at all be adequate. Hence, we alter the sentence of death penalty by awarding the sentence of imprisonment for life to the appellant. The appeal is allowed to the aforesaid extent and stands disposed of accordingly.