

Balraj vs State Of U.P on 12 April, 1994

Equivalent citations: 1995 AIR 1935, 1994 SCC (4) 29

PETITIONER:

BALRAJ

Vs.

RESPONDENT:

STATE OF U.P.

DATE OF JUDGMENT 12/04/1994

BENCH:

REDDY, K. JAYACHANDRA (J)

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REDDY, K. JAYACHANDRA (J)

ANAND, A.S. (J)

CITATION:

1995 AIR 1935

1994 SCC (4) 29

JT 1994 (3) 649

1994 SCALE (2) 518

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- Balraj, the sole appellant has been convicted under Section 302 IPC for the offence of committing the murders of four members of PW 2's family and also under Section 307 IPC for attempting to commit the murder of PW 2. In respect of murder charge he has been sentenced to death and for the offence punishable under Section 307 IPC he has been sentenced to undergo seven years' RI. The Division Bench of the High Court confirmed the convictions and the sentences awarded by the trial court.

2. The prosecution case is as follows: PW 2, Smt Laxmi Devi, is the wife of Tej Pal, one of the deceased persons in the case. The appellant Balraj is the younger brother of Tej Pal. Budh Jyoti, a boy aged about 13 months, Kumari Renu, aged about 4 years, Kumari Chandrawati, aged about 11 years and Kumari Deep Mala, aged about 8 years were the children of PW 2 and Tej Pal. One Bhante Baba was a person known to the family. According to the prosecution there were disputes between the deceased Tej Pal and the accused about the opening of a shop. Tej Pal was demanding an advance of Rs 7000 and even regarding the electricity a dispute arose. Balraj suspected that his

younger brother Tej Pal and his wife PW 2 poisoned him and because of that he suffered vomiting of blood and he also suspected that these persons had decided to commit his murder. On the day of occurrence i.e. 13-2-1988 at about 7.30 p.m. the accused armed with a gandasa came to the house of PW 2 saying that she wanted to kill him and therefore he will finish all of them that day. So saying he started assaulting Budh Jyoti, Renu and other children. He also assaulted PW 2, who became unconscious after receipt of the injuries. According to the prosecution, during the same occurrence the accused also assaulted Tej Pal and Bhante Baba. PW 7, the Inspector of Police, Sitarganj received a phone call that an injured man was lying near the Post Office, Sitarganj and another injured man was lying almost dead near a culvert of a canal but the informant did not disclose his name. PW 7 having made an entry in the diary visited the place in a jeep and he saw a group of people there. He found Tej Pal lying with injuries and near the culvert Bhante Baba lying with injuries. He also came to know that Bhante Baba was living in the house of Tej Pal. PW 7 immediately visited the house of Tej Pal which was nearby and he found that the door was closed. He opened the door and went inside along with the witnesses and he found Kumari Deep Mala and Kumari Chandrawati lying unconscious with injuries. He also saw PW 2 and Budh Jyoti lying injured on the cot and Kumari Renu lying injured on another cot which was close by. PW 7 found that all of them were in a state of unconsciousness. All of them were removed to the hospital. After registration of the crime, coming to know that the accused Balraj was available at the residence of his relatives at Moradabad, he went there and arrested him and at the instance of the accused the gandasa was recovered. Meanwhile Tej Pat and Bhante Baba, Budh Jyoti and Renu died. PW 1 the Doctor, who conducted the postmortem on the dead body of Tej Pat, found six incised injuries and opined that the death was due to these injuries. He also conducted postmortem on the dead body of Renu and found some stitched wounds and found that the skull was fractured which resulted in death. He also conducted postmortem on the dead body of Budh Jyoti. He found four stitched wounds on him and opined that the death was due to these injuries which could have been caused by a gandasa. On 16-2-1988, PW 6 conducted the postmortem on the dead body of Bhante Baba who was aged about 60 years. He found some stitched wounds and incised wounds and he opined that the death occurred due to shock and haemorrhage due to ante-mortem injuries which could have been caused by a gandasa.

3. On 14-2-1988, PW 10, another Doctor examined PW 2 and found some stitched wounds and incised wounds and the Doctor opined that they could have been caused by a sharp-edged weapon. On the same day, PW 10 examined Kumari Chandrawati, PW 3 and he found four incised injuries on her which could have been caused by a gandasa. After completion of the investigation, the charge-sheet was laid. The prosecution examined as many as 19 witnesses. A number of them are doctors as stated above. PWs 2, 3 and 4 examined as eyewitnesses and PWs 5, 11, 14, 18 and 19 were examined who spoke about the motive and the disputes between the two brothers and they turned hostile. The others are all formal witnesses.

4. The accused pleaded not guilty and stated that he has been falsely implicated. Out of PWs 2, 3 and 4, PW 3 stated that she could not identify the assailant and she was also treated hostile. However, in the cross-examination by the prosecution, she stated that she and her mother and other sisters were assaulted by the assailant whom she did not identify. She has, however, stated that there was quarrel between her father and the accused. PW 4 was treated as a minor child and the trial court has not even obtained her signature under her statement. Therefore her evidence was not taken into account

at all. Therefore the prosecution is left only with the evidence of PW 2 as an eyewitness. She has not stated as to who assaulted Tej Pal and Bhante Baba. She deposed that at about 7 or 7.30 p.m. the accused came, with a gandasa and saying that they wanted to kill him and therefore he would finish them all-, assaulted the children and also assaulted her (PW 2) and consequently she became unconscious. In the cross-examination she denied the suggestion that some 10 to 12 assailants who could not be identified assaulted her. Both the courts have accepted her evidence.

5. Learned counsel for the appellant submitted that PW 2 has not come out with the whole truth particularly regarding the motive and that from her evidence it cannot conclusively be held that the appellant alone caused the injuries to Tej Pal and Bhante Baba near the Post Office or near the culvert and no other evidence is there to connect the appellant with those two murders.

6. Having perused the evidence of PW 2, which is also supported by the medical evidence, we are satisfied that there cannot be any dispute as to the time and place of occurrence in respect of attack on PW 2 and Budh Jyoti and Renu. No doubt there is no evidence to prove as to who assaulted Tej Pal and Bhante Baba but the inference is that they also must have received the injuries during the same transaction. The High Court, however, pointed out that there is no evidence to prove as to who assaulted Tej Pal and Bhante Baba but concluded that the accused assaulted Budh Jyoti, Renu and PW 2. Having perused the evidence of PW 2, we are satisfied that the accused was at least responsible for causing the deaths of Budh Jyoti and Renu and also for causing the injuries to PW 2. No doubt the occurrence has taken place at about 7.30 p.m. in the darkness but PW 2 says that there was electric light and even otherwise the accused was known to her well. Therefore there would not have been any difficulty for her to identify the accused.

7. In view of the fact that the accused has caused injuries even to minor children and that he wanted to attack all the members of the family, both the courts below held that the case of the accused comes under the category of rarest of rare cases where death sentence alone should be awarded.

8. In this context, the High Court relied on the judgment of this Court in Asharfi Lal v. State of U.P.¹ where the accused committed the murders because of greed and personal vengeance. This Court also noted that the murders were committed with extreme brutality. The High Court observed that since the accused did not even spare his dearest and nearest and since PW 2 is left without any helper or protector because of this occurrence, a serious view of the nature of occurrence has to be taken particularly from the point of view of law and order.

9. In Bachan Singh v. State of Punjab² this Court agreed that the following are undoubtedly the relevant circumstances which must be given weight in determination of the sentence namely: (SCC p. 750, para 206) "(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society."

¹ (1987) 3 SCC 224: 1987 SCC (Cri) 470 ² (1980) 2 SCC 684: 1980 SCC (Cri) 580

10. It is true, as observed by the courts below, that the accused attacked the members of family of Tej Pal but in awarding death sentence, the court has to take into consideration the mental condition of the accused. From the findings of the courts below, it is clear that the accused was mentally disturbed and in fact he expressed before PW 2 that she wanted to kill him and therefore he would finish them. The records and the evidence of the Inspector as well as of PW 15, the Panch witness reveal that the accused stated that Tej Pal and PW 2 wanted to kill him and accordingly administered some poison which made him vomit the blood. From the beginning the case of the prosecution is that Tej Pal has been harassing the accused in respect of the opening of the shop and has been making undue demands and even raised a dispute regarding supply of electricity to the shop to be opened by Balraj which fell to his share. Actually the prosecution examined the close relations of the accused and the deceased namely PWs 5, 11, 14, 18 and 19 to prove the motive aspect namely that Tej Pal was harassing the accused who is no other than his own brother and has been demanding an amount of Rs 7000 in respect of permitting Balraj to open the shop and also raised a dispute regarding electricity. Coupled with this the accused was further mentally disturbed and had an apprehension that Tej Pal and PW 2 wanted to do away with him so that he may not be an obstacle. This is one of the important circumstances which should be given weight in determination of sentence. On the facts and circumstances of this case it cannot be said that the accused would be a menace to the society if allowed to live. It is not a case where he committed these murders merely for personal gain but on the other hand committed the same under the influence of extreme mental and emotional disturbance and also having a reasonable apprehension that his life was in danger. No doubt, two innocent kids also received injuries in the occurrence but when once there is material to show that the accused acted in a highly disturbed mental condition, the murders cannot be said to be cold-blooded. The accused seemed to have acted in a frenzied manner in such a mental disturbed condition. We cannot also overlook the fact that there is no direct evidence connecting the accused with the murders of Tej Pal and Bhante Baba and with regards the assault on PW 2 and children inside the house, there is only the solitary evidence of PW 2 and the other children PWs 3 and 4 who were examined as eyewitnesses did not support the evidence of PW

2.

11. Under these circumstances, we think it may not be safe to award death sentence. Learned counsel for the State, however, invited out attention that PW 2 is left without any support with a family to be maintained. Therefore it is a fit case where this Court should award compensation to her. We are also of the view that this is very much necessary. Section 357(3) CrPC provides for ordering of payment by way of compensation to the victim by the accused. It is an important provision and it must also be noted that power to award compensation is not ancillary to other sentences but it is in addition thereto. To the same effect are the decisions of this Court in Sarwan Singh v. State of Punjab³ and Hari Singh v. Sukhbir Singh⁴. In the instant case the records show that the appellant Balraj has property and also some means.

12. For the reasons stated above, we confirm the conviction of the appellant under Section 302 IPC but reduce the sentence of death to imprisonment for life. We further direct that the appellant Balraj shall pay Rs 10,000 by way of compensation to PW 2 Smt Laxmi Devi and if the appellant fails to pay this amount within three months from today, the same may be collected as provided under

Section 431 CrPC and be paid to PW 2. The conviction and sentence of seven years' RI under Section 307 IPC are, however, confirmed. The sentences shall run concurrently. The order of the High Court is modified to the extent indicated above and the appeal is partly allowed.