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GURMEET SINGH

v.

STATE OF U.P.

SEPTEMBER 28, 2005 B

[K.G. BALAKRISHNAN AND ARUN KUMAR, JJ.]

Penal Code, 1870:

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Section 302—Murder—Death sentence—Commutation of death sentence to life imprisonment—Accused came with swords and started shouting and indiscriminately attacked and killed thirteen members of his family who were asleep at various places in his farmhouse—It was a moonlit night—Trial court sentenced the accused to death—However, there was a difference of opinion between the two Judges who constituted the Bench hearing the D *appeal—One Judge was for dismissal of the appeal and maintaining conviction and the death sentence while the other was for acquittal of the accused—The matter was referred to a third Judge who ultimately upheld the conviction and sentence—What weighed with the Judge who opined for acquittal of the accused was that eyewitnesses were near relations—Secondly, it was felt that* E *the deceased family members must have raised alarm by shouting and crying and if the murder was committed as stated by the prosecution in the house of the accused, neighbours would have come to help—Further, the Judge felt that it was surprising that no resistance was offered—Held: The residential portion of each farmhouse was located at quite a distance from each other—Therefore, there was no question of neighbours hearing the shouts and* F *coming for help—Most of the family members were asleep and, therefore, could not offer any resistance—It was moonlit night and, therefore, the accused could be easily identified more so since the accused was a member of the family—Therefore, there could be no doubt about the identity of the accused to the eyewitnesses—Hence, accused rightly convicted and sentenced* G *to death—The time for consideration of delay in execution of death sentence started from the date of judgment pronounced by Supreme Court—Therefore, there is no warrant to commute the death sentence life imprisonment.*

Commutation of death sentence to life imprisonment due to delay in

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A *execution.*

According to the prosecution, the appellant-accused was living with several members of his family in a big farmhouse. On the fateful night, the appellant and the co-accused came with swords and started shouting and indiscriminately attacking the members of the family who were asleep at
B various places in the house and killed thirteen members of his family. It was a moonlit night. The appellant-accused had been married about one year prior to the date of incident. The family was suspecting unnatural relationship between his newly married wife and the co-accused. The family, therefore, was objecting to the visit of the co-accused and his presence in the house,
C which was not liked by the appellant and the co-accused.

The trial court convicted the appellant for an offence under Section 302 of the Penal Code, 1860 and sentenced him to death.

In the High Court there was a difference of opinion between the two
D Judges who constituted the Bench hearing the appeal. One Judge was for dismissal of the appeal and maintaining conviction and the death sentence while the other was for acquittal of the accused. The matter was referred to a third Judge who ultimately upheld the conviction and sentence. What weighed with the Judge who opined for acquittal of the accused was that eyewitnesses were near relations. Secondly, it was felt that the deceased family members
E must have raised alarm by shouting and crying and if the murder was committed as stated by the prosecution in the house of the accused, neighbours would have come to help. Further, the Judge felt that it was surprising that no resistance was offered. Hence the appeal.

F On behalf of the appellant, it was contended that in view of the long delay in execution of the death sentence, the accused deserved some sympathy and the death sentence should be commuted to life imprisonment.

Dismissing the appeal, the Court

G HELD: 1.1. The incident took place in the family house of the appellant. All the deceased persons were immediate family members of the accused being his father, brothers, their wives and their children. The surviving eyewitnesses are one brother and two children of the brothers who were killed. Their presence in the house is natural. The entire family was sleeping in the family house at that hour of the night. The family had been taken unawares. The
H accused persons were wielding swords in their hands which they used to kill

the family members in an indiscriminate attack on them. The medical report about nature of injuries supports attack by swords. The residential house was in an area having large farmhouses. There are big farms and residential portion in each farm is located at quite a distance from each other. Therefore, there is no question of neighbours hearing the shouts and coming for help. Most of the family members who have been killed were very young children, below ten years of age. They could offer no resistance. The brothers were asleep at separate places and were separately attacked and killed. There was no time for the family members to group together to ward off the attack. It was not difficult to identify the persons who were attacking as it was a moonlit night. Secondly, the accused were known persons, being members of the family. The accused remained on the scene of crime for a long time killing the victims one after the other. Therefore, there could be no doubt whatsoever about their identity to the eyewitnesses. [656-B, C, D, F]

1.2. The evidence of the eyewitnesses corroborates each other. Therefore, there is no reason to doubt the same. In the face of such clear-cut evidence of the eyewitnesses there is hardly any scope for the argument regarding sanctity of the FIR. [659-A-B]

2. The appellant along with the co-accused killed as many as 13 persons for a flimsy reason. All the victims were closely related to the appellant and they were killed in the most dastardly manner. Most of the victims were sleeping when they were attacked. The appellant did not spare even the small kids with whom he had apparently no enmity. The appellant did not have even a grain of mercy or human kindness in his heart. Considering all these aspects, this is not a fit case where the death penalty is to be commuted to life imprisonment. [659-E-F]

3. Applying the ratio of the judgment in *Triveniben's* case, the time for consideration of delay in execution of death sentence starts to run from the date of this judgment and it cannot be said to be a case of delay in execution of death sentence requiring the death sentence being substituted by the sentence of life imprisonment for the reason of delay in execution of the death sentence. [662-A-B]

Smt. Triveniben v. *State of Gujarat,* [1989] 1 SCC 678, followed.

Sher Singh v. *State of Punjab,* [1983] 2 SCC 344 and *T.V. Vatheeswaran* v. *State of Tamil Nadu,* [1983] 2 SCC 68, referred to.

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1371 of 2004.

From the Judgment and Order dated 28.4.94/29.2.96 and 1.3.96 of the Allahabad High Court in Crl.A. No. 1333/92 and Reference No. 6 of 1992.

B Harbans Lal Bajaj, (AC) for the Appellant.

Ravi P. Mehrotra, Garvesh Kabra and Mrs. Alka Agarwala for the Respondent.

The Judgment of the Court was delivered by

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ARUN KUMAR, J. The appellant has preferred this appeal against the judgment of the Allahabad High Court upholding his conviction and sentence. The sessions court while convicting the appellant under Section 302 I.P.C., had awarded death sentence. The case against the appellant is that he alongwith his companion Lakha Singh (who died during the course of trial D proceedings) committed the murder of thirteen members of his family in the night of 17th August, 1986. The petitioner was living jointly with several other members of his family in a big house called in local language as 'jhalla'. Thirteen persons of the family who were killed on that fateful night were father of the appellant, his two real elder brothers, wives of both the brothers, E four daughters and two sons of one of the brothers who was murdered and two sons of another slain brother. The only members of the family who survived the murderous attack are one brother of the appellant namely Balwinder, his wife, who was away to her parents' house and was, therefore, not present in the house on the date of occurrence and some children. As far as appellant's brother Man Singh is concerned, his almost entire family F was finished as he and his wife and four daughters and two sons were subjected to the murderous attack resulting in their deaths. Family of another brother Karam Singh was also finished as both the husband and wife were killed alongwith two young sons aged 9 years and 4 years at the time of the incident. Only one son of Karam Singh who is named Paramjeet Singh survived. G He is P.W.2. Six children of Man Singh who were killed were between the ages of 3 to 9 years. Even two of the surviving members of the family who appeared as P.W. 1 and P.W. 3, received injuries in the attack.

As per the prosecution case both the accused came with swords and started shouting and indiscriminately attacking the members of the family who H were asleep at various places in the house. It is in evidence that it was a

moonlit night. One Jawahar had accompanied the accused. He was a servant. No particular role was assigned to Jawahar except that he was throwing brickbats on the terrace where some of the members of the family were sleeping and was shouting at them to come down. Jawahar was acquitted by the trial court and the State did not appeal against his acquittal. The other accused Lakha Singh died during trial. The trial Court convicted the appellant for offence under Section 302 IPC and sentenced him to death. Since it was a case of death sentence, reference was made to the High Court for confirmation of sentence. The appellant also filed appeal against his conviction before the High Court.

The case of the prosecution is that the appellant had been married about one year prior to the date of incident. He was part of the family and was staying together with other members in the same house. The entire family was joint. The family was suspecting unnatural relationship between his newly married wife and his friend Lakha Singh, co-accused. Lakha Singh used to visit her very often and even stayed with her. The relationship between the two was felt to be unnatural. The family, therefore, was objecting to Lakha Singh's visits and presence in the house which was not liked by the appellant as also by Lakha Singh. Therefore, they both decided to finish the entire family and in furtherance of this common intention they came with swords in their hands on the fateful night and started the murderous attack on family members. They did not spare even the father of the appellant Nazir Singh who was sleeping at a distance near the tubewell and to finish him the accused had to go there. Other family members were sleeping in the house at different places. The family members started shouting and running here and there to save themselves. But the two accused having swords in their hands attacked whosoever was within their reach. The wife of one of the brothers tried to escape from the back door into the field. However, she was chased and finished in the field itself.

In the High Court there was difference of opinion between the two Judges who constituted the Bench hearing the appeal. One Judge was for dismissal of the appeal and maintaining conviction and the death sentence while the other was for acquittal of the accused. The matter was referred to a third Judge who ultimately upheld the conviction and sentence vide his order dated 29th February, 1996 and the reference was answered accordingly. What weighed with the learned judge who opined for acquittal of the accused was that eye witnesses were near relations. Secondly, it was felt that the deceased family members must have raised alarm by shouting and crying and

A if the murder was committed as stated by the prosecution in the house of the appellant, neighbours would have come to help. Further, the learned Judge felt that it was surprising that no resistance was offered.

The learned *amicus curiae* appearing for the appellant raised same points before us while arguing the appeal. The reasoning of the learned Judge B who stood for acquittal of the accused does not appeal to us and in our view, the same is totally untenable. The incident took place in the family house of the appellant. All the deceased persons were immediate family of the accused being his father, brothers, their wives and their children. The surviving eye-witnesses are one brother and two children of the brothers who were killed. C Their presence in the house is natural. The entire family was sleeping in the family house at that hour of the night. The family had been taken unawares. The accused persons were wielding swords in their hands which they used to kill the family members in an indiscriminate attack on them. The medical report about nature of injuries supports attack by swords. The residential house was in an area having large farm houses. This is the tarai area as it D is called in the State of Uttar Pradesh. It has very fertile land. The uprooted farmers of Punjab, were allotted lands there. They settled there and converted the entire area into a very flourishing agricultural economy. There are big farms and residential portion in each farm is located at quite a distance from each other. Therefore, there is no question of neighbours hearing the shouts E and coming for help. Most of the family members who have been killed were very young children, below ten years of age. What resistance they could offer? The brothers were sleeping at separate places and were separately attacked and killed. There was no time for the family members to group together to ward off the attack. Another argument being raised is that it was dead of night and it was difficult to identify the persons who were attacking. F This argument again is totally misconceived. As already noticed, it was a moonlit night. Secondly, the accused were known persons, being members of the family. The accused remained on the scene of crime for a long time killing the victims one after the other. Therefore, there could be no doubt whatsoever about their identity to the eye-witnesses. One of the eye-witnesses is the G brother of the accused while the other two are the children of deceased brothers who are more than 12 years of age. Justice Giridhar Malaviya, the Judge who gave a judgment of conviction has rightly observed in his judgment as under:

> "Once we examine the sequence of the murders mentioned about, it H becomes quite clear that there is hardly any chance for any of the

adult members to go and bring their swords to protect themselves. Even though a judicial notice of this fact can be taken that ever Sikh keeps a sword or Kripan, but it cannot be believed that they put a sword on a cot when they go to sleep, rather it is generally kept inside the house in a room. Consequently, there was hardly any time for any of the victims to go and gather their weapon. The accused persons who had chalked out the plan to commit the said crime could very well see that they could systematically eliminate all the persons in their family without any real resistance being offered in their design to commit this heinous crime. Consequently I am not prepared to accept the defence contention that only two persons could never have caused the murder of thirteen persons and injuries to two persons."

The said learned Judge of the High Court relied on the evidence of the eye-witnesses i.e. P.W. 1 Kumari Viro, P.W.2 Paramjit Singh and P.W. 3 Balwinder Singh and upheld the prosecution case.

The learned Judges of the High Court have considered the evidence of the eye-witnesses in a detail before reaching their respective decisions. We do not consider it necessary to discuss the entire evidence in detail. We have carefully gone through the evidence and we are in agreement with the conclusion arrived at by the learned Judges of the High Court who have upheld the conviction of the appellant. P.W. 1 Kumari Viro was aged about 13/14 years. She has stated that it was a moonlit night. She was sleeping in a room alongwith her Sisters Pammi and Ravinder Kaur. Her father Man Singh and mother Sita were sleeping alongwith her sisters Kanti, Akki and brothers Richpal and Pamma on the terrace. She saw the accused appellant and Lakha Singh having naked Swords in their hands. They attacked the children who were sleeping on the cot namely Akki, Kanti, Richpal and Pammi. Accused Gurmeet attacked Man Singh and cut him into pieces by his sword. Likewise, Sita, mother of PW 1 was cut into pieces by Lakha singh. She has said that she tried to save her mother when Lakha Singh attacked due to which she received injury on her head and fingers. The story continues like this. About the motive the eye-witnesses stated:

"...two or three days before this incident, while Smt. Bhajan Kaur was going to serve the meal to her husband then on the way accused Lakkha Singh, Gurmit Singh and Jawahar abused her with filthy languages. When Smt. Bhajan Kaur reported this matter to Nazir Singh, the head of the family and to Man Singh and Balvender Singh,

A then Nazir Singh, Man Singh and Balvender Singh complained about this to the three accused persons and they threatened that they will call a 'panchayat'. When the 'panchayat' was to be performed on the next day of the incident, this incident took place in the last night itself. She has deposed that Lakkha Singh used to visit the house of accused Gurmit Singh and used to talk with his wife in his absence. This B certainly involved the prestige and honour of the family and, therefore, Nazir Singh had warned Gurmit Singh that Lakkha Singh shall not visit his house hereafter and will not stay in the house of Gurmit Singh. But then accused Gurmit Singh stated that he will not turn-out Lakkha Singh and Lakkha Singh will remain continued to visit there. P.W.1 has C stated that Lakkha Singh was visiting the house of Gurmit Singh just after the marriage of Gurmit Singh. She has stated that later he was living with accused Gurmit Singh in his house. She has further stated that the room of accused Gurmit Singh was clearly visible from the room of Km. Biro (P.W.1).

D P.W.2 Paramjit Singh is the son of late Karam Singh, who was aged about 13 or 14 years. On his oral version the first information report (Ext.Ka1) was drawn up. He has fully proved the motive for committing this crime in the said manner as stated by P.W.1. He has given the ocular version of this incident which is again fully corroborated by P.W.1."

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P.W. 2 has further stated that he saw accused Gurmeet Singh and Lakha both attacking his grandfather Nazir Singh. After committing murder of Nazir Singh all the three accused went towards southern direction. P.W.2 Paramjit Singh was aged about 13/14 years and was responsible for the first information F report. He is not an injured person, therefore, an argument was advanced that he was not at the spot at all and his evidence has been fabricated by the prosecution. Likewise, the first information report was attacked as having been improved at a later stage by supplying certain omissions. We, however, find no merit or substance in these arguments. In cross-examination it has not been suggested to the witness that he was not present at the scene of G occurrence. In normal course he was bound to be present in the house at the time of the incident. The witness had stated that he had jumped down and reached the sugarcane field from where he could see the accused Gurmeet Singh on the roof of the house killing family members. He had also seen Lakha Singh chasing his mother and killing her at the back of the house. There appears to be no cogent reason why he should be deposing falsely against H

his own uncle unless he had actually seen his uncle killing the family members. The evidence of the eye-witnesses corroborates each other. Therefore, there is no reason to doubt the same. In the face of such clear cut evidence of the eye-witnesses there is hardly any scope for the argument regarding sanctity of the FIR. The credibility of the eye-witness account of the incident is sought to be attacked on the ground that it was late at night and in the darkness it would have been difficult to identify the accused persons. On this we have already observed that all the eye-witnesses are unanimous that it was a moonlit night. The accused persons were familiar faces, one of them being member of the family and staying with the family. Further the accused remained on the scene of the crime for a long time, therefore, there could be no doubt about eye-witnesses being able to identify them correctly. About the crime committed inside the room on the ground floor, it is in evidence that there was a lamp lighted in the room which provided sufficient light to identify the attackers. In view of this convincing evidence on record we are fully in agreement with the findings reached by the two judges of the High Court who have upheld the conviction and sentence of the accused. Accordingly we find no merit in this appeal and the same is dismissed.

Learned counsel for the appellant contended that the death penalty may be commuted to life imprisonment. It was argued that merely because more number of persons had been killed, the death penalty need not be the only option. He pointed out that even in cases where more persons had been killed, this Court commuted the death penalty to life imprisonment. We are not impressed by the argument advanced by the counsel for the appellant. We have carefully considered all the relevant facts of the case. The appellant in this case, along with the co-accused, killed as many as 13 persons for a flimsy reason. All the victims were closely related to the appellant and they were killed in the most dastardly manner. Most of the victims were sleeping when they were attacked. The appellant did not spare even the small kids with whom he had apparently no enmity. The appellant did not have even a grain of mercy or human kindness in his heart. Considering all these aspects, we do not think that this is a fit case where the death penalty is to be commuted to life imprisonment.

On the question of death sentence awarded by the trial Court and confirmed by the two judges of the High Court, the learned *amicus curiae* appearing for the appellant made yet another submission. According him in view of the long delay in execution of the death sentence, the accused deserves some sympathy and the death sentence should be commuted to life

A imprisonment. Before admitting the appeal, this Court tried to ascertain the reasons for the delay. The third Judge gave his opinion for conviction and confirmation of death sentence on 29th February, 1996. On 20th March, 1996 the warrant was issued for execution of the death sentence. The warrant was received in the Naini Central Jail at Allahabad where the accused was detained on 23rd March, 1996. On 24th March, 1996 the appellant addressed a letter B to the Registrar of the Allahabad High Court for grant of certificate to appeal to the Supreme Court under Article 134A of the Constitution of India. This was as per Section 415(2) of the Code of Criminal Procedure. This application of the convict was forwarded to the Registrar of the High Court on 25th March, 1996. Several reminders were sent to the Registrar of the High Court C by Senior Superintendent, Central Jain, Naini, however, there was no response from the High Court. On 25th August, 2003 the accused preferred a special leave petition to this Court. This Court while issuing notice on 5th December, 2003 called upon the jail authorities to state why the sentence was not carried out. This Court stayed the execution. From the report submitted by the High Court it appears that lapse took place in the High Court for which the High D Court has taken action against the erring officers.

For purposes of considering the plea on behalf of the appellant for the death sentence being not carried out at this late stage and it being converted to sentence of life imprisonment solely on ground of delay, our attention has E been invited to various judgments of this Court on the point. In *Sher Singh and Ors.*, v. *State of Punjab* [1983] 2 SCC 344, a decision by a three-judge Bench of this Court, it was observed:

> *"We are of the opinion that no absolute or unqualified rule can be laid down that in every case in which there is a long delay in the* F *execution of a death sentence, the sentence must be substituted by the sentence of life imprisonment. There are several other factors which must be taken into account while considering the question as to whether the death sentence should be vacated...The death sentence should not, as far as possible, be imposed. But, in that rare and exceptional class of cases wherein that death sentence is upheld by* G *this Court, the judgment or order of this Court ought not to be allowed to be defeated by applying any rule of thumb (para 19)."*

These observations were made in the light of an earlier decision of this Court upholding that if the delay in execution was for a period of two years or more it should be considered sufficient to invoke Article 21 of the H Constitution and the sentence of death be substituted by sentence of

imprisonment for life, per *T.V. Vatheeswaran* v. *State of Tamil Nadu,* [1983] 2 SCC 68. Ultimately, the issue was settled by a judgment of five-Judge Constitution Bench of this Court in *Smt. Triveniben* v. *State of Gujarat,* [1989] 1 SCC 678. It was held as under:

> *"So long as the matter is pending in any court before final adjudication even the person who has been condemned or who has been sentenced to death has ray of hope and he does not suffer that mental torture which a person suffers when he know that he is to be hanged but waits for the doomsday. The delay therefore which could be considered while considering the question of commutation of sentence of death into one of life imprisonment could only be from the date the judgment by the apex court is pronounced i.e., when the judicial process has come to an end (para 16).*
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> It is well settled now that a judgment of court can never be challenged under Article 14 or 21 and therefore the judgment of the court awarding the sentence of death is not open to challenge as violating Article 14 or Article 21. *The only jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the subsequent events after the final verdict is pronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to the Supreme Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the death sentence will not be just and proper. The nature of the offence, circumstances in which the offence was committed will have to be taken as found by the competent court when finally passing the verdict. It may also be open to the court to examine or consider any circumstances after the final verdict was pronounced if it is considered relevant* (para 22).
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> *The only delay which would be material for consideration will be subsequent to final decision of the court, the delay in disposal of the mercy petition or the delays occurring at the instance of the executive* (para 17).

A Applying the ratio of judgment of this Court, it is to be seen that the appeal filed by the appellant in this Court is being simultaneously disposed of today. Therefore, the time for consideration of delay in execution of death sentence starts to run now and it cannot be said to be a case of delay in execution of death sentence requiring death sentence being substituted by the sentence of life imprisonment for reason of delay in execution of death B sentence. In the facts of the present case we are unable to accept this request made on behalf of the appellant. The same is accordingly rejected.

V.S.S. Appeal dismissed.