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Amar Pal and Others Vs State of U.P.

Criminal Appeal No. 2600 of 1999

Court: Allahabad High Court

Date of Decision: Aug. 29, 2001

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 147, 148, 149, 201, 302

Citation: (2002) CriLJ 290

Hon'ble Judges: U.S. Tripathi, J; G.P. Mathur, J

Bench: Division Bench

Advocate: A.D. Giri, G.S. Chaturvedi, V.P. Srivastava and Shashank Shekhar, for the Appellant; D.G.A., for the Respondent

Final Decision: Dismissed

Judgement

U.S. Tripathi, J.
Appellants Amar Pal, Hori Lal and Kail Charan preferred Crl. Appeal No.2600 of 1999 against the judgment and order

dated 4-9-1999 passed by Sri Surendra Kumar, Special Judge (E.C. Act) Additional Sessions Judge, Farrukhabad in Sessions Trial No.346 of

1990 convicting all of them u/s 302 read with Section 149 148 and 201 I.P.C. and sentencing them to the extreme penalty of death sentence u/s

302 read with Section 149 I.P.C. R. 1 for a period of two years u/s 148 I.P.C. and R. 1 for a period of three years and fine of Rs. 500/- u/s 201

I.P.C. the learned Additional Sessions Judge has also made reference for confirmation of death sentence to above appellants.

2. Appellants Bhopal, Ram Nath, Deo Singh, Phool Sahai and Genda Lal preferred Criminal Appeal No.2935 of 1999 against the said judgment

and order in above Sessions Trial Convicting them u/s 302 read with 149 I.P.C, 148 and 201 I.P.C. and sentancing them to imprisonment for life

and fine of Rs. 2000/- each u/s 302 read with 149 I.P.C.,R.I. for a period of two years u/s 148 I.P.C. and R.I. for a period of three years and fine

of Rs. 500/- u/s 201 I.P.C.

3. The prosecution story, briefly stated, was as under :--

All the appellants of both the appeals, Ranvir Singh deceased and his brother Ram Niwas (P.W.I) are residents of village Bahwalpur Mistini, P.S.

Kampil, district Farrukhabad. Ranvir deceased was a teacher in a school at Kayamaganj and was also earning by private tuition. Appellants Amar

Pal, Hori Lal are real brothers and sons of appellant Deo singh. The appellants Kali Charan and Ram Nath are sons of Manu and uncle of Amar

Pal and appellants Phool Shahai and Ganda Lal are their Khandani.

4. The house of Ram Niwas (P.W. 1) and Ranvir deceased was situated on south eastern side of village Abadi. The house of complainant was

surrounded by a hedge of Tatiya. The above house faced towards west. Towards South of the house of complainant there was a tank. On

southern side of the said tank there were "Behya" bushes. A rasta passed from north to south in front of main door of the house of the

complainant. On the western side of the rasta, there were house of waheed, Nanhey, Pyarey and Moosey. On easstern side of the rasta besides

the house of complainant there was Gher of Ganga Ram. The above rasta passing north south turned towards east on the southern corner of the

house of Moosey and Gher of Ganga Ram and met in other rasta towards east of talab.

5. Gayadin, father of Ranvir deceased and Ram Niwas (P.W.I), had fixed his pumping set in his field. The appellants Kali Charan, Amar pal, Deo

Singh and Bhopal Singh removed above pumping set on 9-6-1990. On the objection of Gayadin the appellants caused injuries to him. In this

connection report was lodged by Gayadin. Cross report was also lodged from other side.

6. On the evening of 22-7-1990 at about 6.00 P.M. Ranvir Singh deceased along with his younger brother Ram Niwas (P.W.I) was sitting on a

Charpai inside his Ghar Smt. Shakuntla Devi wife of deceased and Smt. Vidyawati his aunt were cleaning utensils. Arvind Kumar (P.W.2) S/o

Ranvir Singh was playing inside Ghar of Ganga Ram, Adjacent to the Ghar of deceased, along with his younger sister. Appellant Amar Pal armed

with gun entered into the Gher of Ranvir deceased by breaking open northern Tatiya and fired, hearing the sound of fire Ranvir deceased ran

towards main door. Appellants Hori Lal armed with gun, Bhopal, Ram Nath and Deo Singh armed with country made pistols, Kali Charan armed

with Tokora (heavy Sharp edged weapon), Phool Sahai armed with Lathi and Ganga Lal armed with knife were standing on the main door. They

caught hold Ranvir Singh deceased when he came out of main door of his house. All the appellants took the deceased by pushing and dragging him

towards southern lane and thereafter took him near tank. Hori Lal fired upon the deceased near the tank. Ranvir Singh deceased ran towards north

east, towards bushes of Behaya. In the mean time Ram Nath, Bhopal, Deo Singh and Genda Lal caught him near Behaya bushes and dragged on

the main Rasta. Amar Pal and Kali Charan tore his body by legs. Hori Lal, Phool Sahai, Genda Lal and Ram Nath pressed the deceased on the

ground. Amar Pal took out Takora from Kali Charan and chopped off the neck of deceased from the trunk and took the severed head. The other

appellants brought out hori (dry plants of mustard) kept nearby, put the dead body on the same and set it fire. The dead body of the deceased was

charred and the appellants threatening the witnesses went away towards east. Thereafter, witnesses came near dead body. The occurrence was

wintessed by Ram Niwas (P.W. 1), Arvind Kumar (P.W.2), Girwar (P.W.3), Ganga Ram, Smt.Vidyawati and Smt. Shakuntla Devi.

7. Ram Niwas (P.W.I) prepared written report (Ext. Ka-1) of the occurrence and came to police station Kampil where he lodged report at 8.15

P.M. The chik F.I.R. (Ext. Ka-2) was prepared by constable Lauva Singh (P.W.4),who made an endorsement of the same at G.D. report (Ext.

Ka-3)and registered a case at crime No. 166 of 1990 against the appellants u/s 147 148 149 302 and 201 I.P.C.

8. The investigation of the case was taken up by Sri Rampati Ram, I.O. (P.W.5), who interrogated Ram Niwas (P.W. l)at the police station and

thereafter came to the soot where he interrogated Arvind Kumar (P.W.2), Girvar (P.W.3) and other witnesses. On the next morning i.e. on 23-7-

1990 the I.O. conducted inquest of the dead body of the deceased and prepared inquest report (Ext. Ka-4) and other relevant papers (Ext. Ka-5

Ka-8). He sealed the dead body and sent it for post mortem. He inspected place of occurrence and prepared site plan (Ext. Ka-9).The I.O. took

into possession blood stained and simple earth from the place where the dead body was burnt, sealed in different containers and prepared

recovery memo (Ext. Ka-10). He also took into possession partly burnt Tori, plain Tori and sample of ashes, sealed it and prepared recovery

memo(Ext. Ka-11). He searched the accused, but they were not traceable.

9. The autopsy on the headless dead body of the deceased was conducted on 23-7-1990 at 4.15 P.M. by Dr. L.S. Tiwari (P.W.6) the Doctor

found two incised wounds, one fire arm injury along with 2nd to 6th degree burn all over the body as ante mortem injury and cause of death due to

shock and haemorrhage as a result of above injuries. The Doctor prepared post mortem report (Ext. Ka-13).

10. The appellants surrendered in the Court and were interrogated by the I.O. on 10-8-1990.Appellants Amar Pal, Hori Lal, Deo Singh, Ram

Nath, Kali Charan, Bhopal and Phool Sahai were given in police custody from 16-8-1990 to 20-8-1990. On 19-8-1990 the above appellants

were interrogated by the police and their pointing out weapons of assault were recovered from the field where they had buried the same. The

above weapons were sealed in different bundles. The other appellants were also interrogated inside jail. On completion of investigation the I.O.

submitted charge sheet (Ext. Ka-12) against all the appellants.

11. Cognizance of the case was taken by the C.J.M. Farrukhabad, who committed the case to the Court of Sessions. The additional Sessions

Judge charged all the appellants for the offences punishable u/s 148 302 read with Section 149 and 201 I.P.C. The appellants pleaded not guilty

and contended that they were falsely implicated on account of enmity.

12. The prosecution examined Ram Niwas (P.W.I), Arvind Kumar (P.W.2) and Girvar (P.W.3) as witnesses of fact besides constable Lauva

Singh (P.W.4) S.I. Ram Pati Ram, I.O. (P.W.5)and Dr. S.L. Tiwari (P.W.6) as formal witnesses. The appellants did not adduce any evidence in

their defence.

13. The learned Additional Sessions Judge on considering the evidence of the prosecution held that offences punishable u/s 148 302 read with

Section 149 and 201 I.P.C. were established beyond all reasonable doubts against all the appellants. Accordingly, he convicted and sentenced the

appellants under said Sections. On hearing the appellants and their counsel on the question of sentence the learned additional Sessions Judge held

that the murder of the deceased was committed in a pre-planned and most inhuman and cruel manner. In view of above he sentenced Amar Pal,

Hori Lal and Kali Charan to the extreme penalty of death u/s 302 read with Section 149, R.I. for period of two years u/s 148 I.P.C. and R.I. for a

period of three years u/s 201 I.P.C. However, the other appellants were sentenced to imprisonment for life u/s 302 read with Section 149 I.P.C.

two years R.I. u/s 148 I.P.C. and years R.I. u/s 201 I.P.C.

14. Aggrieved with their conviction and sentence the appellants have preferred above two appeals.

15. Both the appeals arise out of same judgment and therefore, were taken up together for decision with the consent of the learned Counsel for the

parties.

16. We have heard Sri A.D. Giri, learned Senior Advocate appearing on behalf of appellants Amar Pal, Hori Lal and Kali Charan and Sri G.S.

Chaturvedi, learned senior Advocate appearing on behalf of other appellants as well learned A.G.A. on behalf of the respondents and have

perused the entire evidence on record.

17. The case of the prosecution was that gun shot was fired on Ranvir Singh deceased, thereafter, his head was severed from the trunk and

headless dead body was burnt, this fact is not disputed by the appellants. The I.O. Sri Rampati Ram (P.W.5) stated that he visited the spot in the

night of occurrence but due to paucity of light inquest could not be conducted in the night and it was conducted on the next morning and he

prepared inquest report and other relevant papers. According to inquest report the headless dead body of the deceased was found on the Rasta

near the tank. The dead body was sealed on the spot and was sent for post mortem.

18. Dr. L.S. Tiwari (P.W.6) who conducted the autopsy on the dead body of deceased stated that dead body was headless, abdomen burst,

open intestine coming out, burnt particles, ashes & dust present at places of body.

19. The following ante mortem injuries were found on the dead body :--

1. Incised wound 3.5 cm x 1.5 cm through & through cervical vertebra 4 (c4) on cut surface blood clot present.

2. Incised wound 3.5 cm x 0.5 cm x spine deep over cervical vertebra 5(C5) Margins clean cut blood clot present at cut surface.

3. Firearm injury 2.5 cm x 1.5 cm on right side back of upper border of right scapula. Margin charred inverted with communicating wound of Exit.

355 cm x 2 cm over right side lower part of neck 30 cm above from collar bone margins evented & burnt.

4. 2nd to 6th degree burn all over body from whole part of neck to subcutaneous tissues, red cracking at places muscles exposed at places. Body

black & charred at places. Vesicles present on dorsum side or right foot below, ankle-joint with serum fluid subcutaneous tissue red. left & right

meta-carpal bone partially burnt.

20. The internal examination showed that 3rd ribs posterior medial border of right scapula was fractured pleura lacerated larynx, traches and

bronchi cut, blood clot blackish colour present. Right lung lacerated. All neck vessels cut, blood present in thoracic cavity. Oesophagus cut.

Stomack contained 50 gms. pasty food. Small intestine contained gases & faecal matter Large intestine contained gases & faecal matters.

21. In the opinion of the Doctor the death was caused due to shock and haemorrhage as a result of ante mortem injuries.

22. The above medical evidence given by Doctor L.S. Tiwari (P.W.6) has not been challenged. The above medical evidence fully supported the

prosecution version that firearm injury was caused on the deceased thereafter, his head was separated from the body and body was burnt.

23. The motive alleged by the prosecution was that on 9-6-1990 i.e. about one and half months prior to the occurrence of the case, the appellants

Kali Charan, Amar Pal, Deo Singh and Bhopal Singh had removed pumping set of the father of the deceased from his field and when his father

objected he was beaten. His father had lodged a report of the said occurrence at the police station. The appellants had also initiated a cross case

about the said occurrence and on account of above incident they committed the murder of the deceased.

24. The learned Counsel for the appellants contended that motive alleged by the prosecution was very weak and feeble and the above incident

was not such that the appellants would commit the murder of the deceased. He further contended that if father of the deceased had lodged report

against some of the appellants regarding removal of pumping set, the appellants would have enmity either with the father of the deceased or with his

whole family. That the prosecution story show that when Amar Pal entered into the Gher of the deceased he aimed his gun only on the deceased

Ram Niwas (P.W. 1) was also present in the Gher but no attempt was made on his life and during the entire incident no injury was caused on him.

The prosecution had not explained as to why the deceased alone was chosen to be killed and no other member of his family. That it further

indicates that the motive alleged by the prosecution was not correct. That assuming enmity between the parties there was more probability for false

implication of the appellants on account of above enmity.

25. It is true that the motive alleged by the prosecution is not such which would have culminated in such heinous and ghastly murder of the

deceased. But some times the parties conceal the real motive if it casts stigma on the family and future prospects of the family members. Moreover,

it is also in the evidence that Ranvir deceased was employed as a teacher and was officiating as Principal in a school at Kaymganj and he was also

earning by private tuition and in case he was eliminated the main source of income of the family of the deceased would have stopped. Furthermore

the prosecution is not in a position to lead evidence as to what was going on in the mind of appellants after lodging of report regarding theft

removal of pumping set. One cannot read the mind of the appellants and different persons also act differently in a given situation. Any how the

prosecution had relied on ocular testimony of witnesses and the case has to be decided on the basis of evidence of those eye witnesses. In these

circumstances, the weakness of the motive or no motive would not affect the merits of the case.

26. According to the prosecution the occurrence of the case took place at 6.00 P.M. on 22-7-1990. The learned Counsel for the appellants

vehemently challenged the time of the occurrence and contended that the manner in which the deceased was shot at, his head was severed from

the trunk and dead body was burnt indicated that the occurrence had taken place in odd hours of the night and not at 6.00 P.M. as alleged by the

prosecution because the appellants would have not been in a position to commit the murder of the deceased so patiently and in such a manner, that

too in the presence of the witnesses.

27. The ocular witness Ram Niwas (P.W.1). Arvind Kumar (P.W.2) and Girvar (P.W. 3) have categorically stated that the occurrence took place

at about 6.00 P.M. on 22-7-1990.The report of the occurrence was lodged at 8.15 P.M. at P.S. Kampil which was at a distance of about 12

Km. from the place of occurrence. The Informant Ram Niwas (P.W. 1) stated that he proceeded for the police station Kampil at 7.30 - 7.45

P.M. Constable Lauwa Singh (P.W. 4) stated that Ram Niwas (P.W. 1) reached police station on 22-7-1990 at 8.15 P.M. and handed over him

a written report Ext. Ka-1, on the basis of which the prepared chik report Ext. Ka-2 and made an endorsement the same at G.D. report Ext. Ka-

3. G.D. report are prepared in chronological manner. It has also come in the evidence of Constable Lauwa Singh (P.W. 4) that prior to lodging of

the report of this case on 22-7-1990 a cognisable report was written at the said police station at 5.00 P.M. However, he further stated that after

registration of this case no other, cognizable report was lodged on the said date. There is nothing on record to show that G.D. report was ante

timed. There is also no challenge of the evidence of Ram Niwas (P.W. 1) that he started for police station at 7.30, 7.45 P.M.

28. Medical report shows that the stomach of the deceased contained 50 gm pasty food. Small intestine contained gasses and pasty matter and

large intestine contained gasses and faecal matters. The above contents of stomach and intestines indicated that the deceased had not taken his

night food at the time of occurrence and if the occurrence had taken place in odd hours of the night contents of the stomach and intestines would

have not been such as found by the Doctor conducting post mortem.

29. In view of the above evidence on record, we are of the opinion that the prosecution has successfully proved that the occurrence took place at

6.00 P.M. on22-7-1990.

30. The prosecution alleged that the occurrence took place near Talab situated towards south of the house of the deceased. Learned Counsel far

the appellants challenged the above place of occurrence. He pointed out that according to prosecution story on shot fired by Amar Pal, the

deceased ran towards his main door and on the main door the remaining 7 appellants armed with guns, Takora, country made pistol, lathi and knife

were present and they caught hold and dragged the deceased near Talab where again shot was fired, neck was cut and body was burnt. That if the

appellants had come to the house of the deceased armed with deadly weapon to commit the murder of the deceased they would have murdered

him at his main door itself where he was caught hold and there was no necessity for dragging him towards talab to attract the attention of the

villagers.

31. The ocular witnesses stated that the deceased was dragged near the Talab where Hori Lal fired on him and when the deceased ran towards

Behaya bushes appellants Bhopal Singh, Ram Nath, Genda Lal, Deo Singh and others caught him hold and brought him on rasta where Amar Pal

and Kali Charan tore his body by legs, Amar Pal served his head and all the appellants brought dry mustard plants and put on his body and set it

on fire. As mentioned above adbomen of the deceased was burst open and intestine was coming out. Burnt particle ashes and dust were present at

places of the body. The factum of burnings is thus supported by the medical evidence. The body was also headless and according to ocular

witnesses head of the deceased was taken by the appellants. The head could not be recovered and was also not found in the vicinity of the place

where dead body was lying. The dead body was found by the Investigating Officer on the rasta near Talab. The I.O. had also found blood, partly

burnt mustard plants, ashes etc. on the spot. There is nothing in the evidence on record to show that dead body and other things recovered by the

I.O. were not found at the place of occurrence. The presence of headless body of the deceased, burunt ashes etc. fully corroborated the testimony

of the ocular witnesses and established that the occurrence took place at the place claimed by the prosecution.

32. The occurrence in this case took place at about 6.00 P.M. which is situated at a distance of 12 Km. from the place of occurrence. The

informant Ram Niwas (P.W. 1) stated that at 7.30 or 7.45 P.M. he proceeded for police station Kampil. He met Head Constable (Deewan) at the

police station who asked him to submit written report. Thereafter he prepared report Ext. Ka-1, signed it and handed over to Head Constable.

Manner in which the occurrence had taken place and the brother of the witness was murdered indicate that the witness would have taken

sometime to console himself and then would have proceeded to the police station. The witness covered the distance of 12 Km. within half an hour.

No doubt it not clear as from which conveyance he covered the distance of police station, but arrival of the witness at the police station within half

an hour was probable. There is nothing in the cross examination of informant Ram Niwas (P.W. 1) as well as constable Clerk Lauva Singh (P.W.

4) to indicate that the report was not lodged at 8.15 P.M. on the day of occurrence. The report was thus lodged. The report (Ext. La-1) contained

the name of all the assailants, weapon possessed by them, date, time, place and precise manner of occurrence. Lodging of the report so promptly

further indicates that informant Ram Niwas (P.W. 1) had no occasion to have deliberations for false implication.

33. The prosecution has relied on ocular testimony of Ram Niwas (P.W.I), Arvind Kumar (P.W.2) and Girvar (P.W.3). The learned Counsel for

the appellants has challenged the presence of those witnesses on the spot and contended that they had not seen the occurrence and therefore, their

testimony could not be relied on. He further contended that if Ram Niwas (P.W.I) was present near the place of occurrence he would have tried to

save his brother and in above attempt would have sustained injury. Absence of injury on the person of the witness ruled out his presence on the

spot.

34. Ram Niwas (P.W. 1) is the real brother of the deceased. According to his evidence at the time of occurrence he was present inside his Gher

and was sitting along with his brother Ranvir deceased on a Charpai and was talking with him. Appellant Amar Pal came inside the Gher by

breaking open Tatiya and fired. His brother Ranvir ran towards the door to save his life. At the door he was caught hold by other appellants who

dragged him towards Talab and there they murdered him. That when the appellants were taking the deceased he followed them and was observing

the occurrence. The witness is real brother of the deceased and his presence inside his Gher at 6.00 P.M. is most natural and probable. If he was

present inside his Gher in all probabilities he had followed the appellants who were taking the deceased towards Talab to known as to what the

appellants would do with his brother.

35. It is true that Ram Niwas (P.W. 1) has not sustained any injury and no attempt was made by the appellants on his life. As discussed earlier

Ranvir deceased was earning member of the family and the possibility that appellants chose to finish him alone so that source of income of the

family would stop, cannot be easily ruled out. The witness has explained the absence of his injury on his person by stating that he did not go near

the deceased and also did not raise alarm due to fear of the appellants. As many as 8 appellants armed with guns, country made pistols, takora,

knife and lathi were dragging the deceased. In such a situation it was not expected from Ram Niwas (P.W.I), even being real brother of the

deceased, to object the appellants or to raise alarm because in all probability he was also thinking about his own life. In this way if explanation of

the witness is considered in the light of facts and circumstances of the case narrated above, the absence of injury was explained.

36. Ram Niwas (P.W.I) after the occurrence had prepared the report of the occurrence and reached police station at 8.15 P.M. His presence at

8.15 P.M. at the police station is noted in the G.D. (Ext. Ka-5).A11 these facts ensured his presence at the place of occurrence.

37. No doubt Ram Niwas (P.W. 1) is real brother of the deceased but his above relationship is no ground to discard his testimony. Therefore,

there can be no doubt about, the presence of the witness at the spot. The occurrence had taken place 6.00 P.M. in the month of July when it is

day light and it has also come in the evidence of the witness that on the day of occurrence Sun set after an hour of the occurrence. Therefore, Ram

Niwas (P.W. 1) had every opportunity to observe the occurrence.

38. The next witness of the occurrence is Arvind Kumar (P.W.2) son of the deceased. The witness claimed that at the time of occurrence he was

playing with his younger sister in the Gher of the Ganga Ram. The Gher of the Ganga Ram is adjacent to the Gher of the deceased and Ganga Ram

was uncle of the deceased. He stated that he heard sound of fire and cries of his father. Then he rushed to the main door of his grand father and

observed the appellants except Amar Pal catching hold his father at his main door and dragging towards lane. He also followed the appellants and

observed the entire occurrence.

39. An attempt was made from the side of the appellants that the witness was studying in Shishui Siksha Vihar Junior High School, Kayamganj and

on the date of occurrence he was at Kyamganj. But the witness categorically stated that he had come to his village along with his father on the

evening of Saturday, a day before the occurrence, that the occurrence had taken place on Sunday when it was holiday and therefore, he was

present at his house.

40. The witness was asged about 13 years at the time his evidence which was recorded on 8-5-1992 and occurrence took place in the year 1990.

His age therefore, at the time of occurrence was about 11 years, a boy of 11 years of age attains sufficient maturity to understand and reproduce a

thing. The witness was also studying in 6th or 7th at the time occurrence and as such he was in a position to understand and to reproduce a thing.

There is also a remark of the Trial Court that the witness was mature and having enough understanding to be examined and cross examined as a

witness. His cross examination further shows that he has answered every question properly and there can be no doubt about his maturity and

understanding.

41. According to the witness he was playing inside the Gher of his grand father Ganga Ram. It was but natural for the witness to play with his sister

in the evening. On hearing sound of fire and cries of his father it was also natural for the witness to observe as to what was happening to his father.

When he saw his father being dragged by so many appellants, in all probabilities he would have followed the appellants to know as to what would

happen with his father. The witness has explained that he did not raise alarm due to fear of the appellants. The situation in which the deceased was

being dragged, as discussed above, itself indicated that the witness was not in a position to cry or to go near his father but to observe the

occurrence from some distance. The witness further clarified that he raised cries after the occurrence and when the appellants left the spot. The

witness was interrogated by the I.O. in the night of occurrence. Thus the presence of the witness on the spot has been fully established and the

witness was in a position to observe the occurrence. The occurrence initiated from house of the deceased and therefore, Arivnd Kumar (P.W.2)

was the most natural witness to have seen the occurrence from the very beginning. As mentioned above the witness was sufficiently mature to

observe and repreduce the incident. There is nothing on record to show that he was tutored. Thus he was reliable witness.

42. The next eye witness of the occurrence is Girvar (P.W.3).The witness stated that on the date of occurrence at about 6.00 P.M. he was

washing his mouth on a tap. He heard sound of fire and rushed along with Ganga Ram and came to Chabootara of Poosey and Ram Chandra.

From there he observed that the appellants were dragging Ranvir Singh deceased by pushing him and were taking towards eastern rasta which was

near the tank. He has also stated the weapons possessed by each of the appellant. He further stated that after taking the deceased to some

distance Hori Lal fired on deceased and he ran towards Behya bushes. Amar Pal, Genda Lal and Ram Nath caught hold the deceased near the

Behya bushes and made him fall down. Kali Charan and Amar Pal tore his body by legs. Amar Pal took Takora from Kali Charan and cut the

neck of the deceased. Thereafter 3-4 bundle of dry plant of mustard were put on the dead body of the deceased and it was set at fire Ram Niwas

(P.W.I), Shakuntla Devi, Vidyawati Devi, Ganga Ram and Arvind Kumar (P.W.2) had also seen the occurrence. In his cross examination he

admitted that prior to the occurrence of this case quarrel had taken place between him and Gayadeen, the father of the deceased. Gayadeen had

sustained injuries in said occurrence and both the parties were bailed out. He denied the suggestion of the appellants that appellant Amar Pal was

taking side of Gayaden and was helping him with money. He also denied the suggestion that he had any enmity with appellant Deo Singh. He

showed his ignorance of the fact that appellant Bhopal had fired at Tej Singh and his brother had given evidence against Bhopal Singh. The tap on

which he was washing his mouth was towards west of the house of Ranvir Deceased. The Chabootara of poosey was at a distance of 40 paces

from the tap. He had heard only one sound of fire which came from the Gher of Ranvir. Hearing sound of fire he thought that either Ranvir had

sustained injury or would have been killed. Therefore, he rushed to see as to what happened. That he did not collect courage to save deceased

and was observing the occurrence from a distance of 40-42 paces. The witness further stated that he was son of Makhan. Makhan was real

brother of Parveen, father of Gayadeen and grand father of Ranvir deceased. He also denied the suggestion of the appellant that he himself called

hired assailants and got the deceased murdered.

43. Admittedly the witness is resident of same village and was uncle of the deceased, as the grand father of the deceased named Parveen was real

brother of father of the witness. According to witness he was washing his mouth on the tap which was at a distance of 40-42 paces from the house

of deceased. The witness further stated that hearing sound of fire which came from the Gher of the deceased, he thought that either deceased was

shot at or he was killed. In these circumstances it was but natural for the witness to run towards house of the deceased. When the witness reached

on the Chabootara of Poosey and Ram Chandra which is adjacent towards west of rasta in front of the house of the deceased, he observed the

appellants taking the deceased towards Talab. Therefore, he was in a position to observe the occurrence.

44. The presence of the witness on the spot is also corroborated by the fact that he was interrogated by the I.O. in the night of occurrence, itself.

An attempt was made from the side of appellants to show that the witness was highly inimical with the deceased and it was he who called hired

assailant and got the decesed murdered. It was pointed out by the learned Counsel for the appellants that the witness admitted that prior to the

occurrence of this case "Marpeef had taken place between him and Gayadeen, the father of the deceased and cross cases were registered from

both the side. Cross reports had also been proved by the appellants as Ext. Kha-2 and Kha-3 which related to the incident which took place on

3-9-1988 and cross cases were registered from both sides. It was further pointed out that Amar Pal was siding Gayadeen, the father of the

deceased and was also helping him with money. Therefore, the witness the has killed two birds by one shot by getting the deceased murdered and

becoming witness against the appellants. We have duly considered this contention and are of the opinion that there is no force in the above

contention. No doubt in the year 1988 quarral had taken place between Girvar (P.W.3) and Gayadeen the father of the deceased and cross cases

under Sections 147 148 324 and 323 I.P.C. were registered from both sides. Even then Girvar is giving evidence in this case for prosecution. But

Girvar is none else but first cousin of Gayadeen. It is a matter of common experience that such type of altercation often take place in villages

amongst kith and kins, but after sometimes they forget and live peacefully and their relations again become cordial. Blood is always thicker than

water. Near relative and kith and kins side their near relative than the stranger. This actually happened with the witness and therefore, his becoming

witness in this case despite that he had altercation with Gayadeen, father of the deceased prior to the occurrence and criminal case was initiated

against him. There is nothing on record to show that appellant Amar Pal ever sided Gayadeen and Girvar (P.W.3) had any animosity with the

appellants. No doubt Ram Niwas (P.W.I) has admitted in his cross examination that one Tej Singh had fired upon Bhopal and criminal case was

registered regarding said occurrence about a year before the occurrence. Hotey the brother of Girvar (P.W.3) had given evidence against Bhopal

Singh appellant. Girvar (P.W.3)has showed his ignorance about this fact. But on account of it the testimany of Girvar (P.W.3) cannot be discarded

as the witness had not only stated against Bhopal, but several other appellants, who all participated in the occurrence. There is also nothing on

record to show that Girvar (P.W.3) was instrumental in the murder of the deceased.

45. As mentioned above there was sufficient day light at the time of occurrence and the occurrence took place near the house of the deceased and

gun shot was also fired. Therefore, the inmate of the house of the deceased were in a position to observe the occurrence and Ram Niwas (P.W.

1),being real brother of the deceased and Arvind Kumar (P.W. 2) real son of the deceased were hardly expected to spare out the real assailants

and falsely implicate innocent persons. As such the above contention of the appellants that Girvar (P.W.3) got the deceased murdered by hired

assailants is not worth acceptable.

46. From the above discussions and observations, we are of the opinion that Girvar (P.W.3)was present on the spot and had seen the occurrence

and he had no motive to depose falsely against the appellants.

47. As mentioned above the occurrence had taken place at 6.00 P.M. and the sun had set after an hour of the occurrence and therefore there was

sufficient light on the spot. All the appellants were of the same village and were well known to the prosecution witnesses. The prosecution

witnesses have secified the weapon possessed and the role played by each of the appellants. Therefore, there was no question of mistaken identity

in this case.

48. The evidence of the ocular witnesses also finds full corroboration from the medical evidence, the F.I.R. and other circumstances of the case

referred to above.

49. The learned Counsel for the appellants contended that the prosecution witnesses have admittedly exaggerated number of accused as the

deceased had sustained only one gun shot injury that no doubt his head was severed from body and an attempt was made to burn the dead body,

but all these acts required only two or three persons and not as many as 8 persons who have been implicated in this case. He further contended

that to meet this ambiguity, role of catching hold and falling down of the deceased have also been assigned to some of the appellants. That

according to ocular witnesses the body of the deceased was torn by his legs, but no sign of tearing was found by the doctor. We have considered

above contention in the light of evidence on record. It is true that the Doctor did not find any sign of tearing of the body of the deceased. Ram

Niwas (P.W. 1) stated that the body of deceased was torn up to 3-4 "Anguls". The possibility that the appellants attempted to tear of the body of

deceased and when they could not succeed in it they decided to severe the neck of the deceased to be sure about his death, cannot be easily ruled

out. Assuming that tearing of the body of the deceased was exaggerated by the ocular witnesses, the prosecution story is not affected in any

manner as sharing of common object of unlawful assembly by all if its member is not ruled out as all the appellants were armed with deadly

weapens, they assembled on the main door of the deceased, one of them i.e. Amar Pal went inside the Gher of the deceased, shot at him and

when the deceased ran towards his door the other appellants caught hold of him and dragged him stated above. This act of the appellants clearly

established that all the appellants formed unlawful assembly and their common object was to murder Ranvir deceased.

50. The learned Counsel for the appellants further contended that only interested witness had been examined by the prosecution and no other

independent witness was examined while the occurrence had taken place in day light, near abadi of the village and every person of the village

would have also seen the occurrence. However, ocular witnesses have stated that Ganga Ram, Smt. Vidyawati and Smt. Shankuntla Devi had also

seen the occurrence and no other person of the village. Ram Niwas (P.W. 1) had also clasrified that other persons of the village either were not

present at their houses or did not dare to come out. The high handedness shown by the appellants in committing the murder of the deceased was

sufficient to terrorise the villagers not to come of their houses and only near relatives of the deceased had dared to see the occurrence and that too

by keeping silent and remaining at some distance. Therefore, non appearance of other villagers is also explained.

51. It was further contended that the prosecution story is highly improbable as according to prosecution case the deceased was dragged by the

appellants hear the Talab where he was fired at, his head was severed from the body and dead body was burnt. In case the appellants had

common object to murder the deceased they would have murdered him at his main door where he was overpowered and there was no necessity

for taking him on Talab just to give an occasion to the other villagers to see the occurrence.

52. It is not disputed that besides fire arm injury on the person of deceased his head was severed and body was burnt at places. The stomach had

burst out and intestine was coming out. Therefore, there can be no denial of the fact that gun shot injury was caused on the deceased and

thereafter, his head was severed and attempt was made to burn the dead body. One cannot read the mind and plan of the accused and

prosecution is handicapped in leading evidence regarding intention and planning of accused. But the evidence on record clearly established the

manner of the occurrence as alleged by the prosecution. Why the appellants thought of not murdering the deceased in front of his door and

dragged him near the Talab where they murdered him in such a cruel manner, cannot be explained by the persecution. Therefore, on this ground

the prosecution story cannot be said improbable.

53. It was further argued that number of accused has been exaggerated as appellants Bhopal, Ram Nath, Genda Lal and Deo Singh have been

assigned the role of only catching hold and appellants Hori Lal and Phool Sahai have been assigned the role of pressing the deceased. But the

evidence on record shows that all the appellants armed with deadly weapons (except Phool Sahai) came to the door of deceased, caught hold of

him and dragged towards Talab where all the appellants participated in his murder. The manner of occurrence indicates that role of catching hold

was also an active role. As such all the appellants shared the common object of unlawful assembly of which they were members and all are liable

with the said of Section 149, I.P.C.

54. From the above discussions and observations we are of the opinion that the prosecution has successfully established the guilt of the appellants

Amar Pal, Hari Lal, Kali Charan, Bhopal Singh, Ram Nath, Deo Singh and Genda Lal for the offences punishable under Sections 148 302 read

with Sections 149 and 201, I.P.C. Therefore, we find no ground to interfere with the conviction of the above appellants under said sections.

55. Appellants Phool Sahai has been assigned role of having Lathi, Lathi is not a deadly weapon. Therefore, appellant Phool Sahai was wrongly

charged with and convicted for the offence punishable u/s 148, I.P.C. Instead of it he ought to have been charged with and convicted for the

offence punishable u/s 147, I.P.C. Therefore, the conviction of appellant Phool Sahai u/s 148, I.P.C. is liable to be set aside and instead of it he

should be convicted u/s under Section 147, I.P.C.

56. The learned Sessions Judge has sentenced appellant Amar Pal, Hari Lal and Kali Charan to extreme penalty of death u/s 302 read with

Section 149, I.P.C. The learned Counsel for the above appellants contended that it is not a rarest of rare case and therefore, death penalty was

not warranted in this case.

57. The ground for imposing death penalty given by the learned Additional Sessions Judge was that the above three appellants had motive and the

manner in which they committed the murder of the deceased was most cruel and inhuman. The murder of the deceased was done in a pre-

meditated and cruel manner and therefore, he had no other alternative but to treat the case of above appellants as rarest of rate.

58. Having considered the facts and circumstances of the case, we are of the opinions, that cruel manner and high handedness is not sufficient to

categorise the case as rarest of rare.

59. The Apex Court in the case of Shankar v. State of Tamil Nadu 1994 SCC 1252 : AIR 1994 SCW 2083 held 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 that case and the Court has to exercise its discretion judicially and on 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

imprisonment 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 sentence of death should be reserved for the rarest of rare cases after a due consideration of both mitigating and aggravating circumstances.

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.

60. In the case of Bachan Singh Vs. State of Punjab, the Apex Court laid down certain conditions and circumstances which must be given

weightage in determination of sentence. In the case of Rajendra Prasad Vs. State of Uttar Pradesh, the Apex Court held as below :--

It is not the number of deaths caused nor the sites of the stabs that is telling on that decision to validate the non-application of its ratio. It is a

mechanistic art which counts the cadavers to sharpen the sentence oblivious of other crucial criteria shaping dynamic realistic policy of punishment.

Three death are regrettable, indeed terrible. But. it is no social solution to add one more life lost to the list. In this view, we are satisfied that the

appellants has not received reasonable consideration on the question of the appropriate sentence. The criteria we have laid down are clear enough

to point to the softening of the sentence to one of life imprisonment. A family, feud, an altercation, a sudden passion although attended with

extraordinary cruelty, young and malleable age, reason prospect of reformation and absence of any conclusive circumstances that "" the assailant is

a habitual murderer or given to chronic violence these catena of circumstances bearing on the offender call for the lesser sentence.

61. Appellants Amar Pal, Hari Lal and Kali Charan were aged about 35, 30 and 35 years. No doubt the murder was committed in most cruel

manner but this alone is not the aggravating circumstance to award extreme penalty. Considering other aspects of the case, the motive for which

the deceased was murdered, the number of accused who shared the common object of unlawful assembly, the role played by each of the appellant

and respective age of appellants, we are of the opinion that in view of the mitigating circumstances narrated above the case is not rarest of rare and

therefore, death penalty could not be imposed on appellants Amar Pal, Hari Lal and Kali Charan.

62. Therefore, on visualising entire evidence and circumstances of the case referred above we are of the view that sentence of death imposed on

appellants Amar Pal, Hari Lal and Kali Charan is liable to be reduced to imprisonment for life and sentences on other counts are liable to be

confirmed.

63. The other appellants namely Bhopal Singh, Ram Nath, Deo Singh, Phool Sahai, and Genda Lal have been sentenced to imprisonment for life

u/s 302 read with Section 149, I.P.C. Their sentences u/s 302 read with Section 149, I.P.C. and on other counts appear appropriate and need no

interference.

64. Accordingly we partly allow Criminal Appeal No. 2600 of 1999 preferred by appellants Amar Pal, Hari Lal and Kali Charan. Their conviction

u/s 302 read with Sections. 149 148 and 201, I.P.C. are confirmed. But death penalty imposed by the trial Court u/s 302 read with Section 149,

I.P.C. is set aside and instead of it they are sentenced to undergo imprisonment for life under said Section. Their sentences of 2 years R.I. u/s 148,

I.P.C. and 3 years R. I. and fine of Rs. 500/- u/s 201, I.P.C. are confirmed. Reference No. 12 of 1999 made by Sessions Judge is rejected.

65. Criminal Appeal No. 2935 of 1999 preferred by Bhopal Singh, Ram Nath, Deo Singh, and Genda Lal is dismissed and their conviction u/s

302 read 149 148 and 201, I.P.C. and sentence of imprisonment for life, 2 years R. I. and 3 years R. I. and fine of Rs. 500/- respectively as

awarded by the trial Court are confirmed. However, the conviction of appellant Phool Sahai u/s 148, I.P.C. is set aside and instead of it he is

convicted u/s 147, I.P.C. and is sentenced to R. I. for a period of one year. With this modification the appeal preferred by appellant Phool Sahai is

also dismissed. All the substantive sentences of the above appellants shall run concurrently.

66. Appellants Amar Pal, Hori Lal and Kali Charan are in jail and they will serve out their sentences awarded above. Appellants Bhopal Singh,

Ram Nath, Deo Singh, Phool Sahai and Genda Lal are on bail. They shall surrender before the C.J.M. to serve out their sentences. The C.J.M.

Farrukhabad is directed to secure the arrest of above appellants under the process of law available to him and send them to Jail to serve out

sentences.

67. Office is directed to send a copy of this judgment to C.J.M. Farrukhabad within three days. The C.J.M. shall send compliance report to this

Court within a month.