

(2010) 04 UK CK 0048
Uttarakhand High Court
Case No: None

Ram Manohar, Ramesh and Jai
Chandra

APPELLANT

Vs

State of Uttrakhand
 State
Vs Ramesh and Others

RESPONDENT

Date of Decision: April 12, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 201, 313, 315, 396, 412
- Penal Code, 1860 (IPC) - Section 201, 302, 394, 396, 412

Citation: (2010) 1 UD 400

Hon'ble Judges: Nirmal Yadav, J; B.C. Kandpal, J

Bench: Division Bench

Judgement

B.C. Kandpal, J.

Since all the above four appeals arise out of the same judgment and order and similar question of fact of law is involved, they are being decided by this common judgment.

2. All the appeals arise out against the common judgment and order 13.5.2004 passed by Additional Sessions Judge/F.T.C.VI Dehradun, in Sessions Trial No. 33 of 2003 State v. Ramesh and Ors. whereby the learned Sessions Judge convicted accused/appellants Ramesh, Ram Manohar and Jai Chandra under Sections 396, 412, 201 I.P.C. The Sessions Judge while convicting the said accused/appellants u/s 396 I.P.C. sentenced them to undergo life imprisonment and fine of Rs. 10,000/- each and in default of payment of fine they were directed to further undergo rigorous imprisonment for one year each. The Sessions Judge while convicting the said accused/appellants u/s 412 I.P.C. sentenced them to undergo rigorous imprisonment for ten years and fine of Rs. 10,000/- each and in default of payment of fine they were directed to further undergo rigorous imprisonment for one year each. The Sessions Judge while convicting the said accused/appellants u/s 201 I.P.C.

sentenced them to undergo rigorous imprisonment for three years and fine of Rs. 10,000/- each and in default of payment of fine they were directed to further undergo rigorous imprisonment for one year each. All the sentences were directed to be run concurrently.

3. Accused/appellants Ram Manohar and Jai Chandra have preferred Criminal Jail Appeal No. 248/2004 and Criminal Jail Appeal No. 316/2004 respectively through jail, accused/appellant Ramesh has preferred Criminal Appeal No. 70/2005, while State has preferred Government Appeal No. 117/2005 for enhancement of sentence.

4. Prosecution story in brief is that on 25.11.2002 complainant Saroj Bala lodged a report at P.S. Kotwali to this effect that on 25.11.2002 at 1.00 p.m. when she reached to the house of her brother Mukesh Kumar resident of 26, Arhat Bazar, she came to know that shop of his brother was closed since previous Friday. The complainant asked Surendra about the whereabouts of Mukesh, he told that he had seen her brother along with his family going in a marriage ceremony on Sunday at 8.00 p.m. The complainant also enquired from other persons and accompanied her brothers Raj Kumar and Anil Kumar from her aunt's house. Then she took the key of shop from porter Ashapal and after opening the lock they entered into the shop where bad smell was coming out. On search, dead bodies of her brother Mukesh Kumar, brother's wife Nilam and their two children Siddarth and Yash were found lying in decomposed condition in the backside room and household items were found scattering. On enquiry it came to know that two porters whose names were Phoolchand s/o Dujjan and Viddan s/o unknown residents of Seervai P.S. Hussainganj, District Fatehpur, were also missing for the same day and it is sure that they along with others committed robbery in the house and committed murder of her brother, bhabhi and children. The F.I.R. of the said incident was lodged on 25.11.2002 at 3.20 p.m. u/s 302/394 at police station, which was registered as Case Crime No. 752/2002. The autopsy on the dead body of the deceased persons was conducted on 26.11.2002 at District Hospital, Dehradun. During investigation accused Ramesh, Ram Manohar and Jai Chandra were arrested and looted cash and jewellery were recovered from their possession. From the possession of accused Ramesh, six silver coins, out of them five coins were having impression of Laxmi Ganesh at one side and one coin was having impression of Adverd VII at one side; two golden rings, one of them was having 2.6 gms. weight and costing to Rs. 1200/-, while another ring was having 3.0 gms. weight and costing to Rs. 1500/-, were recovered and recovery memo was prepared vide Ext.Ka.29. Further, from the possession of the accused Ram Manohar, four golden bangles weighing 13 gms each, three golden bangles weighing 11 gms and costing to Rs. 45000/- for all the seven bangles, two silver rings weighing 3.3 gms each and costing to Rs. 200/- each, six silver coins costing to Rs. 600/- each, Rs. 14,000/- in cash having 11 five-hundred currency notes and 85 one-hundred currency note, were recovered and its recovery memo was prepared vide Ext.Ka.30. Further, from the possession of accused Jai Chandra, Rs. 14500/- in cash having 28 five-hundred currency notes, 1 one-hundred

currency note, 7 twenty-rupee currency notes, 26 ten-rupee currency notes, one golden ring, one artificial ring, one Mangalsutra costing to Rs. 17000/-, were recovered and its recovery memo was prepared vide Ext.Ka.31. The police also took in his possession four glass and half bottle containing liquor, the finger impression over these articles were got examined by Finger Print Laboratory, Crime Investigation Department, Lucknow, U.P. Accused Ramesh, Ram Manohar and Jai Chandra were arrested, but rest of two accused Phoolchand and Viddan could not be arrested by the police. After completing all the requisite formalities of the investigation, charge sheets were submitted against accused Ramesh, Ram Manohar and Jai Chandra under Sections 396/412 and 201 I.P.C. and charge sheets were submitted against accused Phoolchand and Viddan on their absconding under the same Sections.

5. After submission of the charge sheet the appellants were committed to the court of Sessions and learned Sessions Judge framed the charge under Sections 396,412 and 201 I.P.C. against accused Jai Chandra, Ramesh and Ram Manohar. The charge was read over and explained to the accused persons, who pleaded not guilty and claimed to be tried.

6. The prosecution in support of its case got examined as many as eighteen witnesses, namely, PW-1 Saroj Bala, PW-2 Dr. N.S. Tomar, PW-3 S.I. Anand Lal, PW-4 Constable Heera Lal, PW-5 Raj Kumar Gupta, PW-6 Mahesh Chandra, PW-7 Raj Kishore Gupta, PW-8 Bishan Singh Bisht, PW-9 Constable Sher Singh, PW-10 Surendra Yadav, PW-11 Constable Gulab Singh, PW-12 Constable Virendra Singh, PW-13 S.I. Vinod Kumar Sharma, PW-14 Ravindra Kumar Bisht, PW-15 Virendra Kumar Sharma, PW-16 Yogesh Chandra, PW-17 I.O. Arun Kumar Pandey and PW-18 Constable Bal Krishna.

7. The accused persons in their statements u/s 313 Cr.P.C. denied the prosecution case and alleged that they have been falsely implicated in the case. Accused Ramesh took plea of alibi and alleged that on the date of incident he was admitted in Kanpur Hospital and he has been falsely implicated. Accused Ram Manohar alleged that he was working in the house of Radhey Shyam and he used to keep his wife with him and after finishing his work he used to return to his house in the evening at 5.00 p.m. and thereafter he did not go anywhere. He further alleged that he has been falsely implicated. In defence, accused Jai Chandra got examined Shivanand Gupta as DW-1 and accused Ramesh got examined himself as DW-2 u/s 315 Cr.P.C.

8. The trial court having considered the entire evidence on record and hearing learned Counsel for the parties found guilty accused Ramesh, Ram Manohar, Jai Chandra of charges of offence punishable under Sections 396, 412, 201 I.P.C. and convicted and sentenced them as mentioned above, vide impugned judgment and order dated 13.5.2004.

9. Feeling aggrieved, Accused/appellants Ram Manohar and Jai Chandra have preferred Criminal Jail Appeal No. 248/2004 and Criminal Jail Appeal No. 316/2004 respectively through jail, accused/appellant Ramesh has preferred Criminal Appeal No. 70/2005, while State has preferred Government Appeal No. 117/2005 for enhancement of sentence, which have been placed before us for disposal.

10. We have heard Sri Ajay Singh Bisht, learned Amicus Curiae for appellants-Ram Manohar and Jai Chandra in CRJA No. 248/2004 and 316/2004, Sri Sandeep Tandon, Advocate for appellant-Ramesh in CRLA No. 70/2005, Sri Nandan Arya, A.G.A. for the State and perused the record.

11. Before further discussion, it is pertinent to mention here that post mortem examination on the dead body of all the deceased namely Master Yash Gupta, Mukesh Gupta, Neelam Gupta and Siddhartha Gupta was conducted on 26.11.2002 by Dr. N.S. Tomar (PW-2). This witness while conducting autopsy on the dead body of deceased found whole body and face bloated, eyes bulging, tongue protruding out side from mouth. He further found that abdomen distended and greenish colour present all over the body and loosening of hairs and nails. This witness also opined that there was fracture on thyroid cartilage and hyoid bone on the dead body of the deceased. This witness (PW-2), at the end of post-mortem examination, opined that cause of death is Asphyxia due to ante mortem strangulation. He further opined that death of the deceased could have been taken place in the intervening night of 21/22.11.2002 at about 11.00 a.m.

12. The statement of PW-2 Dr. N.S. Tomar, read with autopsy reports (Ext.Ka.7 to Ext.ka.10), clearly establishes on record that death of all the four deceased was caused due to strangulation. It also establishes on record that dead body of the deceased remained lying in bag for 4-5 days which started decomposing.

13. It is pertinent to mention here that it is a case of circumstantial evidence as no eyewitness of occurrence is there in the present case. Now, it is to be seen whether the prosecution has established the chain of circumstances leading to only one conclusion that the accused/appellants committed robbery and thereafter committed murder of all the four deceased and concealed their dead body.

14. The first circumstance is the last seen evidence of accused in the company of the deceased on the date of incident. On this point, the prosecution has examined PW-5 Raj Kumar Gupta, who has stated in his evidence that on the date of incident he had gone to the shop of Mukesh. When he left the place by turning in the street, he saw electric light running in outside and inside of the shop of Mukesh. This witness has also stated that porters Phool chandra, Viddan, Ramesh, Ram Manohar and Jai Chandra were sitting in the shop. Accused Phoolchandra, Viddan and Ramesh permanently used to work as porter in the shop of Mukesh, while Ram Manohar and Jai Chandra used to come on some occasion. This witness also identified accused Ramesh, Jai Chandra and Ram Monohar in the court and stated that all the three

accused were present at the place of incident at the same time.

15. The above testimony of PW-5 Raj Kumar Gupta is also corroborated from the evidence of PW-6 Mahesh Chandra. This witness has specifically stated that on 21.11.2002 he got information about the illness of his mother-in-law, who was residing with his sister-in-law Saroj Bala at Rajpur Road, Dehradun, hence he started from Delhi on his own car in the night to the place of her mother-in-law. At 11.00 p.m. when was passing through the shop of Mukesh, then he saw that Phoolchand and Viddan were sitting near the shop. They told him that that Mukesh along with his family had gone to Gurgaon to attend the marriage ceremony of his cousin and they were watching the shop. This witness has further stated that a porter was in drunken state and he was crying. His companion was making to understand him. At that time accused Jai Chandra, Ram Manohar and Ramesh were also present over there. This witness has further stated that as his mother-in-law was seriously ill, he did not go to the house of Mukesh. In this way, the witnesses i.e. PW-5 and PW-6 had seen the accused persons at the spot in the night of the incident. Therefore, the prosecution has been successful in establishing the circumstance of last seen of the accused persons at the spot.

16. The next circumstance which has been relied by the prosecution is the recovery of looted articles from the possession of the accused persons. The prosecution case is that from the possession of accused Ramesh, six silver coins, out of them five coins were having impression of Laxmi Ganesh at one side and one coin was having impression of Adverd VII at one side; two golden rings, one of them was having 2.6 gms. weight and costing to Rs. 1200/-, while another ring was having 3.0 gms. weight and costing to Rs. 1500/-, were recovered and recovery memo was prepared vide Ext.Ka.29. Further, from the possession of the accused Ram Manohar, four golden bangles weighing 13 gms each, three golden bangles weighing 11 gms and costing to Rs. 45000/- for all the seven bangles, two silver rings weighing 3.3 gms each and costing to Rs. 200/- each, six silver coins costing to Rs. 600/- each, Rs. 14,000/- in cash having 11 five-hundred currency notes and 85 one-hundred currency note, were recovered and its recovery memo was prepared vide Ext.Ka.30. Further, from the possession of accused Jai Chandra, Rs. 14500/- in cash having 28 five-hundred currency notes, 1 one-hundred currency note, 7 twenty-rupee currency notes, 26 ten-rupee currency notes, one golden ring, one artificial ring, one Mangalsutra costing to Rs. 17000/-, were recovered and its recovery memo was prepared vide Ext.Ka.31. On this point, the prosecution has examined PW-6 Mahesh Chand. This witness has stated that on 1.12.2002 accused/appellants were arrested by the police from Saharanpur Chowk in Qualis vehicle. He has further stated that accused persons confessed their guilt in his presence and the police got recovered the looted articles at the instance of the accused persons. This witness has identified his signature on the recovery memos (Ext.Ka.29 to Ext.Ka.31). The looted articles were also identified by PW-1 Saroj Bala when the same was put to her by the police. Therefore, from the evidence of PW-6 coupled with the evidence of PW-13 S.S.I.

Vinod Kumar Sharma and recovery memos (Ext.Ka.29 to Ext.Ka.31), it is amply proved that the looted articles have been recovered from the possession of the accused persons on their pointing out. Hence, this circumstance stands proved by the prosecution beyond any reasonable doubt.

17. Another circumstance against the accused persons which connect them to the commission of the crime is the comparison of their finger prints by the Finger Print Expert, who has submitted his report (Ext.Ka.45 and Ext.Ka.46). The Director, Finger Print Laboratory, Lucknow, has reported vide Ext.Ka.46 that finger prints examined by him on the articles sent by the prosecution for comparison were found to be same from the sample finger prints sent to him. The prosecution case is that items containing four glasses, half bottle of wine were sent to the Finger Print Expert. These articles were recovered from the place where the accused/appellants were seen by PW-6 Mahesh Chand sitting in the night of incident. In the report of Finger Print Expert, disputed finger prints are shown as Ext.224 to Ext.227, while sample finger prints are shown as number 2944 to 2973. The Finger Print Expert examined these finger prints with the help of scientific instruments and all the disputed finger prints have been found similar to sample finger prints.

18. Therefore, the above chain of circumstances, brought on record, clearly establishes charges of offence punishable under Sections 396, 412, 201 I.P.C. against accused/appellants Ramesh, Ram Manohar and Jai Chandra that they committed robbery and thereafter committed murder of all the four deceased and concealed their dead body. Therefore, we concur with the finding of the trial court that the prosecution has been successful in proving the charge against the accused/appellants Ramesh, Ram Manohar and Jai Chandra beyond any reasonable doubt.

19. For the reasons as discussed above, CRJA 248/2004, CRLA 70/2005 and 316/2004 filed by accused-appellants Ram Manohar, Ramesh and Jai Chandra respectively, are devoid of any merit and are liable to be dismissed.

20. As far as Government Appeal No. 117 of 2005 is concerned, the same has been filed by the State on the question of sentence. Learned A.G.A. for the State has submitted that it is a case of brutal murder as the entire family of the deceased was murdered by the accused. He has further submitted that accused have created the panic in the society. Under these circumstances, the sentenced of life imprisonment awarded by the trial court is inadequate and death sentence should be imposed upon the accused instead of life imprisonment.

21. While considering the aforesaid submission raised by the learned A.G.A. for the State, we think that it would be just and proper to keep in mind the certain guidelines propounded by the Hon"ble Apex Court by way of various judgments.

22. The Hon"ble Apex Court in the case of [Jagdish Yadav Vs. State of Bihar](#), has observed as under:

6. The only other circumstance that now remains to be considered is that he had killed Dhaneshwar by firing a shot at him. We have gone through the evidence of PWs 2, 3, 4 and 5 who have deposed about the same. They have stated that Jagdish had fired the shot which killed Dhaneshwar. The evidence as to why Jagdish fired that shot and under which circumstances that shot was fired is not consistent. Their versions differ. Though it stands proved that the appellant killed Dhaneshwar, it cannot be said that this case is a rarest of rare case. The facts and circumstances of the case do not justify such an inference. We, therefore, allow this appeal, set aside the sentence of death imposed upon the appellant and reduce the death sentence to imprisonment for life. The appeal is allowed to that extent only.

23. Further, the Hon'ble Apex Court in the case of [Simon and Others Vs. State of Karnataka](#), has observed as under:

21. True, the grant of life imprisonment is the rule and death penalty an exception in the rarest of rare cases by stating "special reasons" for awarding it but, at the same time, it is also true that the punishment awarded must be commensurate with the crime committed by the accused. It is also true that ordinarily the sentence is not enhanced by the appellate court unless it is such a gross case that nothing but maximum sentence stipulated in law deserves to be awarded.

24. Apart from the aforesaid case (supra), the Hon'ble Apex Court in the case of [Machhi Singh and Others Vs. State of Punjab](#), has observed that "one of the categories of rarest of rare case may be when the collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. Further, when the crime is enormous in proportion. For instance, when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community or locality are committed. It was observed that in order to apply the guidelines, inter alia, the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

The Court further said:

40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed

hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

25. The Hon"ble Apex Court in the case of Swamy Shraddananda v. State of Karnataka reported in (2007) 12 SCC 288 has observed as under:

50. Abolition of death penalty is not being and, in fact, cannot be advocated, but what requires serious consideration is as to whether the jurisdiction should not be invoked unless there exists an extraordinary situation to find that it comes within the purview of "the rarest of rare" cases. The approach of the courts should not be to confine its thought process to the identification of a "rare" case. The expression "the rarest of the rare" case has been evolved by a Constitution Bench of this Court and, thus, demands a meaningful application.

26. Further, the Hon"ble Apex Court in the case of Ramasubramanian v. State of Kerala reported in (2007) 12 SCC 801 has observed as under:

12. The appellant was sentenced to death and the counsel for the State submitted that the crime was cruel in nature and the appellant killed the three innocent children along with their mother and he deserves the death penalty, whereas the counsel for the appellant submitted that the prosecution could not adduce the best evidence and even if he is found guilty, his sentence is liable to be commuted to life imprisonment.

13. The counsel for the State relied on the decisions of this Court in Praveen Kumar v. State of Karnataka; Gurdev Singh v. State of Punjab and State of Rajasthan v. Kheraj Ram in this connection. It is true that the crime committed by the appellant is cruel and dastardly in nature and the appellant deserves no mercy. However, it may be noted that it is not known how and under what circumstances the incident had taken place on 9-8-1999. The appellant was annoyed by the fact that his services were terminated without being paid any compensation despite serving his employer for quite a long period. Taking the overall facts into consideration, we do not find that this is one of the rarest of rare cases where death sentence could be the only punishment. Therefore, the sentence of death imposed on the appellant is commuted to life imprisonment. To that extent, the appeal is allowed. However, his conviction and sentence as regards on all other counts are maintained.

27. The Hon"ble Apex Court in the case of [Bachhitar Singh and Another Vs. State of Punjab](#), has observed as under:

22. This takes us to consider the death penalty awarded by the trial court and confirmed by the High Court. It is contended by the learned Counsel for the appellants that the case does not fall within the category of "rarest of rare" cases which would invite capital punishment. On a perusal of the evidence and materials on record, we find that apart from the solitary incident in question, there is no evidence on record either oral or documentary, which would suggest about the

misconduct of the appellants in the past. There is also no evidence on record to suggest that the appellants would be a menace and threat to the harmonious and peaceful coexistence of the society. In a case, that appears to be similar with the present one, Prakash Dhawal Khairnar (Patil) v. State of Maharashtra the accused had done to death his own brother, brother's wife and children out of a land dispute. This Court held that no doubt the crime was heinous and brutal but at the same time it would be difficult to hold that it is rarest of rare case. The Court was also of the view that it would be difficult to hold that the appellant is a menace to the society and there is no reason to believe that he cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continued threat to the society. The same principle has been followed by this Court in Ram Anup Singh v. State of Bihar. In the case in hand also, we are of the view that having regard to the absence of evidence to the contrary that the appellants are a menace to the society threatening the peaceful and harmonious coexistence of the society and they are likely to be a continuous threat to the society if once they come out of incarceration, no doubt the crime was committed in a heinous and brutal manner but viewed from the facts and circumstances, as noticed above, it would be difficult to hold that the case falls within the category of "rarest of rare" cases. At the same time, there is no reason to believe that they cannot be reformed or rehabilitated. Viewed from the aforesaid perspective, we are of the opinion that the appellants must be given a chance to repent that what they have done is neither approved by the law nor by the society and be reformed or rehabilitated and become good and law-abiding citizens.

23. In the facts and circumstances of the case, as stated above, we would think that sentencing them to rigorous imprisonment for life would meet the ends of justice.

28. In the light of the aforesaid observations made by the Hon"ble Apex Court, we have considered the aspect of this case whether this case can be brought within the ambit of "rarest of rare case" or not. While dealing with the instant case we are of the view that this case rests on circumstantial evidence. The important circumstances which lead to an inference pertaining to the guilt of the accused/appellants are the evidence of last seen; recovery of looted articles from the possession of accused/appellants; and finger print evidence. However, there is no evidence available on record that this case has shocked the collective conscience of the community which may suggest the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty.

29. In the instant case we do not find anything uncommon which may suggest that sentence of life imprisonment awarded by the trial court appears to be inadequate and this sentence calls for death sentence. The circumstances of this case also do not suggest that the crime is of such nature that there is no alternative but to impose death sentence. We are, therefore, of the view that the sentence awarded by

the trial court appears to be justified and this case does not fall within the ambit of "rarest of rare case".

30. For the reasons stated above, Government Appeal No. 117/2005 filed by the State for enhancement of sentence, fails and is liable to be dismissed.

31. Accordingly, all the four appeals are dismissed. The impugned judgment and order dated 13.5.2004 is hereby confirmed.

32. Let a copy of this judgment be placed in the files of CRLA No. 70/2005, GA No. 117/2005 and CRJA No. 316/2004.