Supreme Court of India
Surja Ram vs State Of Rajasthan on 25 September, 1996
Author: G Ray
Bench: Ray, G.N. (J)

PETITIONER:
SURJA RAM

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 25/09/1996

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
NANAVATI G.T. (J)

ACT:

HEADNOTE:

JUDGMENT:

WITH (S.L.P.(CRL.)NO.3082/16(D. NO. 1007 OF 1996) J U D G M E N T G.N. RAY.J.

Leave granted.

The appellant Surja Ram was convicted by the learned Additional Sessions Judge. Hanumangarh in Sessions Trial No. 29 of 1991 for the offence under Section 302 IPC for murdering his real brother Raji Ram, Raji Ram's two sons Naresh and Ramesh and Niko Bai their Bua, and for an offence under Section 307 IPC for attempting to murder Sudesh, the daughter of Raji Ram and Phoola Devi the wife of Raji Ram and also for offence under Section 450 IPC for committing house trespass in order to commit offence punishable with imprisonment for life. The learned Additional Sessions Judge awarded death sentence against the said accused Surja Ram for the offence of murder. He was sentenced to suffer imprisonment for life and a fine of Rs.2,000/-, in default of payment of fine, further rigorous imprisonment for three months for the offence under Section 307 IPC and he was also sentenced to suffer rigorous imprisonment for ten years and fine of Rs.1000/-, in default of payment of fine, to suffer further rigorous imprisonment for one month for the offence under Section 450 IPC.

Against such convictions and sentences, the accused Surja Ram preferred D.B.Criminal Appeal No. 265 and 266 of 1995 before the Rajasthan High Court (Jodhpur Bench). The said appeals were heard along with D.B. Criminal Murder Reference No,1 of 1995 by the Rajasthan High Court and by the impugned common judgment dated January 18, 1996. the High Court dismissed both the appeals registered by the accused Surja Ram and confirmed the death sentence passed against him.

Surja Ram filed S.L.F. (Crl.) No. 744 of 1996 through a learned counsel against his convictions and sentences before this Court. He also sent another special leave petition from Jail to the Registry of this Court which has been numbered as D.No. 1007 of 1996. His special leave petition was dismissed by this Court after nearing the learned counsel so far as the order of convictions passed against the said Accused is concerned but notice was issued to the State of Rajasthan limited only on the question of sentences to be passed against the accused for his convictions for the offences aforesaid.

Mr. Rajio Dutt, the learned counsel appearing for the accused appellant Raji Ram has submitted that it is not a fit case calling for awarding extreme penalty of death sentence because sufficient grounds warranting such extreme penalty by holding it as one of the rarest of rare cases are not present. Mr. Dutt has submitted that certain facts, relevant for the consideration of appropriate punishment to be awarded against the accused appellant the accused appellant, should be noted.

The accused appellant and his two brothers Dalip Ram and the deceased Raji Ram had been living in one compound (Anata) in their respective residential unit. The accused appellant used to reside in the middle portion of the said compound and the deceased Raji Ram and Dalip Ram used to reside respectively on the northern and southern side of the said compound. The parents of the accused and his brothers were residing in Punjab. There had been partition of joint property amongst the brothers. On such partition the accused and Dalip Ram each got 13 killa of land and the deceased Raji Ram got 14 killa.

There was some land dispute amongst the brothers about 6 to 7 months prior to the said incident of murder but such dispute is stated to have been sorted but at the intervention of Sarpanch Chandra Pal.

About 5 or 6 days prior to the incident, the accused expressed the desire to erect wire fencing in the compound but the deceased Raji Ram protested against such proposal of the accused.

The prosecution case as proved by the evidences adduced in the trial, is that on August 7, 1990 at about 9.00 P.M., the members of the family of the deceased Raji Ram retired after taking their dinner. The informant Dalip Ram. who is the other brother of the deceased and the wife of Dalip Ram were sleeping in their courtyard. Raji Ram and his two sons Naresh and Ramesh were sleeping in the outer room of his residential unit. Raji Ram's wife Phoola Devi, her daughter Sudesh and Raji Ram's father's sister Niko Pai were sleeping in their courtyard. In the courtyard of Surja Ram the wife of the accused Imarti was also sleeping. After taking meal, the appellant went out of the house. At about 12.30 A.M..Dalip Ram heard the cries of Sudesh. When he came out, he saw in the light that their accused Surja Ram was standing with a kassi in his hand and was assaulting Sudesh. Dalip Ram and the wife of the accused Imarti challenged the accused and the accused had run away. It has

been proved that Sudesh had suffered severe injuries on her neck and she fell down in the courtyard and Niko and Phoola were also found lying seriously injured. Niko was, however, found dead and Phoola was gasping for life. When Dalip Ram went inside the room, he found the Raji Ram and his son Naresh were lying dead and the other son Ramesh though alive, was critically injured. The said Ramesh, however, died shortly thereafter and Sudesh and Phoola were taken in a jeep and admitted in the hospital at Sangaria. On being treated in the hospital both of them survived.

In awarding the sentence of death against the accused- appellant, the learned Additional Sessions Judge noted that:

a) The accused had committed extremely barbaric and henious crime of causing murder of four persons and also attempted to murder the other two who, though seriously injured, providentially survived.

(b) The accused committed murder of his own real brother, two minor sons of his said brother and also his Bua. Although the accused also attempted to kill the daughter and the wife of his brother, they, being seriously injured. luckily survived.

(c) The accused committed the murder of the said persons and also attempted to murder the other two close relations while all the said victims were defenceless as they were asleep then and therefore, had no opportunity to save themselves or resist the attack.

(d) The accused attempted to kill Phoola his brother's wife by cutting her neck and being critically injured, she remained unconscious for about 15 days and hovered between life and death but luckily survived. Attempt was also made to kill the daughter of his brother by cutting her neck with kassi but she also luckily survived.

(e) The intention of the accused was only to murder all the said persons because he inflicted injuries or the neck of all the said persons with a sharp cutting weapon (kassi).

(f) The accused ensured that no male member in the family of hi s brother Raji Ram was alive. As a matter of fact, he attempted to wipe out the whole family of Raji Ram but the widow and the daughter of Raji Ram survived even though they suffered serious injuries on their necks by the kassi blows inflicted by the accused.

(g) There was no instigation or provocation for causing the said murders of four very close relations and attempting to cause murders of the other two persons.

(h) For some land dispute which was settled six months before and the dispute and altercation over a small incident of putting the barbed wire in the compound of the residential complex which had also taken place 2 to 3 days before the incident, the accused in a cool and calculated manner attacked all the said persons when they were sleeping in their house and were utterly helpless in resisting attacks made on them.

(i) The previous and the subsequent conduct of the accused clearly revealed that he was mentally alert for which he selected the opportune moment to commit the said murders when the victims were asleep and after committing the crime escaped from the scene of crime.

(j) There was complete absence of any feeling of remorse of the accused.

The learned Additional Sessions Judge after indicating the aforesaid aggravating factors in the commission of the crime came to the finding that there was absence of any mitigating factor in favour of the accused and the heinous act of murder of four persons including an old aunt and two minor sons of his real brother and attempting also to kill his brother's wife and her daughter in a most cool and calculated manner by ensuring that none of the victim could offer any resistance because they were asleep at the time of being attacked, constituted the offence committed by the accused as one of the rarest of rare cases for which the extreme penalty of death was warranted.

The learned Judge held that the death sentence per se was not unconstitutional as has been held by this Court in Jagmohan Singh Vs. State of U.P. (AIR 1973 SC 947). Shiv Mohan Singh Vs. State AIR 1977 SC 949), Bachan Singh Vs. State (1980 (2) SCC 684), Shashi Navar Vs. Union of India and others (1992 SCC (Crl.) 24).

Mr.Du tta. the learned counsel for the accused- appellant has submitted that though the appellant has committed a very serious crime by killing his own brother, his two minor sons and his Bua when they were asleep and he also attempted to kill his brother's wife and brother's daughter, the appellant did not act with cruelty or in a barbaric manner and also did not torture anyone of them before committing the murder or attempting to cause murder. The learned counsel has submitted that though it is extremely unfortunate that the appellant committed the said ghastly murders of his brother and his two minor sons and the old aunt and also attempted to kill brother's wife and daughter, it should be kept in mind that the appellant felt deeply aggrieved against the conduct of his brother Raji Ram on account of dispute with him in land matter and the recent quarrel which he had with the deceased for not allowing the appellant to put fencing as desired by him, in the compound of their residential complex. The appellant unfortunately fell victim to his deep seeded ill feeling towards his brother and members of the family of the said brother and lost his normal frame of mind for which he could not restrain himself and being mad with rage and being actuated by an urge for vengeance, murdered the said persons and attempted to murder the other two.

The learned counsel for the appellant has further submitted that life once but to end can never be brought back. It is, therefore, essentially necessary to give a very carefully and serious consideration as to whether such extreme penalty of death which will put an end of the life of the accused, should be awarded in a case or not. The learned counsel has also submitted that the number of persons murdered though a relevant consideration in weighing the gravity of a crime is not the only consideration in selecting the extreme penalty for murder and unless the crime perpetrated by an accused can safely be placed in the category of rarest of rare cases, the extreme penalty of death should not be awarded. In support of such contention, the learned counsel for the appellant has referred to a decision of this Court in Anshad and others Vs. State of Karnataka (1994 (4) SCC 381).

The learned counsel for the appellant has further submitted that the facts and circumstances of the case do not reveal that the accused was a mania or otherwise blood- thirsty with a high degree of propensity to commit murder of innocent persons. On the contrary, the accused is a poor agriculturist who was not booked for any crime. Unfortunately, for the said land dispute and the quarrel with the deceased in connection with putting of a barbed fence in the domestic house, the appellant suddenly became very much enraged and lost the normal frame of mind and control over his passions. In such uncontrolled frame of mind, he decided to murder his brother and his family members so as to out an end of any dispute with them for ever. Such act though very heinous and extremely lamentable, cannot be categorised as rarest of rare cases. The learned counsel has submitted that the accused attacked each of the victim with a sharp cutting instrument kassi and inflicted injuries on the neck of each of the victim so that the death could be hastened. There was no tendency on his part to subject any of the victim to any cruel treatment or torture before killing them. In the aforesaid circumstances, the learned Additional Sessions Judge and the High Court should not have awarded the extreme penalty of death against the appellant. The appellant should be given a chance to reform himself in jail and repent for his crime during long soan of imprisonment for life and thereafter to be a useful member in the society. He has, therefore, submitted that the death penalty should be set aside by commuting the sentence to the sentence of imprisonment for life.

The learned counsel for the State, however, opposed the submissions of the learned counsel for the appellant that the crime committed by the accused did not constitute a rarest of rare cases for which the extreme penalty of death is warranted. It has been submitted by the learned counsel for the State that all the brothers had specific share of the land on partition of joint property and they had been enjoying their respective share of land. There is nothing on record to indicate that peaceful enjoyment of the land allotted to the share of the accused was sought to be interfered with by the deceased who was none else but his real brother. On the contrary, it has been proved that there was a dispute between the brothers in respect of only one killa of partitioned land. Such dispute was also sorted out at the intervention of the Sarpanch of the village several months back. hence, there was no just cause for nursing any aggrieved feeling and sense of injustice meted out to him in the hands of the said brother. There was a minor dispute between the deceased and the accused 5 to 6 days before the date of the incident when the accused wanted to out a barbed fencing on a portion of their residential complex and the deceased protested against such intention of the accused. In a domestic life, such petty discord and dissension often happen. For such a petty discord, there cannot be any occasion for any man of normal composure to lose control of his senses and to become so enraged as to commit murder of brother and his two minor sons and an old aunt and to attempt to murder the brother's wife and daughter unless he is a person of cruel nature and absolutely mean minded. Even if it is assumed that because of such dispute, the appellant had felt aggrieved and became enraged, the murders had not been committed immediately after the occurrence when the accused might have lost normal frame of mind. The incident of dispute in connection with putting of fencing had taken place several days before the date of commission of murders. It is quite evident that the accused did not commit said crime under a grave and sudden provocation and in a fit of emotional set back but being determined to wipe out the entire family of his brother, he selected the most opportune moment to commit the said ghastly murders at dead of night when the brother and the members of his family were fast asleep and were completely helpless to put up any defence.

The learned counsel for the State has also submitted that even if the accused had occasion to feel aggrieved against him brother either on account of the land dispute, though in fact no such dispute was then existing, or on account of resistance given by the brother in not allowing the accused to put a fencing in their residential complex, there was no occasion for the accused to kill two innocent minor sons of his brother who were asleep at the time of murder. Similarly, there was no occasion to kill the old aunt and also to attempt to kill the brother's wife and the brother's daughter when they were also asleep and completely defenceless. The brother's wife and daughter were given serious injuries by the sharp cutting instrument on their necks and it was due to extreme good luck that they ultimately survived after prolonged medical treatment in the hospital. The learned counsel for the State has submitted that such act of murders and attempt to murder had not been committed on account of any grave or sudden provocation but the same had been committed in a cool and calculated manner with clear and definite intention to wipe out each member of the family of his real brother. Such act on the part of the accused has been rightly categorised by the learned Additional Sessions Judge and also by the High Court as one of the rarest of rare cases of murder. The learned counsel has submitted that the said act of extreme brutality in committing the murder of helpless innocent persons is bound to shock the conscience of the society and the cry of the society for justice and just punishment to the criminal cannot be met by showing any sympathy to the accused, when there is no real mitigating factor in favour of the accused. He has, therefore, submitted that no interference is called for against the capital sentence awarded against the accused.

After giving our anxious consideration to the facts and circumstances of the case, it appears to us that for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced in a dispassionate manner. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Lounde Mcoautha Vs. State of California ((402) U.S. 183 L. Ed. II 711) that no formula of a full proof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime of murder. In the absence of any full proof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime of murder, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

In Shanker Vs. State of Tamil Nadu (1994 (4) SCC 479), this Court has indicated that the choice as to which one of the two punishments provided for murder is a 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 or aggravating circumstances of the case.

In Jasnupna Bharat Singh and others vs. State of Gujarat (1994(4) SCC 353), it has been held by this Court that in the matter of death sentence, the Courts are required to answer new challenges and mould the sentencing system to meet these challenges. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system as to impose such sentence which reflects the conscience of the Society and the sentencing process has to be stern where it should be.

In Dhananjoy Chatterjee vs. State of west Bengal (1994 (2) SCC 220), this Court has observed that shockingly large number of criminals go unpunished thereby increasing, encouraging the criminals and in the ultimate making. justice suffer by weakening the system's credibility. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The Court must not only keep in view the right of the criminal but also the rights of the victim of the crime and the society at last while considering the imposition of appropriate punishment.-

Similar view has also been expressed in Ravji @ Ram Chandra vs. State of Rajasthan (JT 1995 (B) SC 520). It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the criminal. If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance.

In the instant case, there is absence of any provocation. There is no material on record from which it can be reasonably held that the accused had any occasion to reasonably feel aggrieved for any unjust and improper conduct on the part of the deceased brother. It has transpired from evidence adduced that joining lands had been partitioned long back amongst the brothers and each of the brothers including the deceased and the accused had been possessing his respective allotted lands. There was an occasion for difference and dispute between the accused and the deceased in respect of only one killa of land but such dispute had been sorted out at the intervention of the Sarpanch of the village about eight to ten months before the incident. After that no fresh incident had taken place in recent past for which there was any occasion for the accused to feel aggrieved concerning his landed property. From the evidence it transpires that all the three brothers had been residing in separate portions within their residential compound or Anata. A few days before the incident, there was a quarrel between the accused and the deceased when the accused intended to put a barbed fencing on a portion of their residential complex but the deceased objected to such course of action. Such incident cannot be reasonably held to be a cause for being temperamentally upset and for entertaining so much wrath and spirit of vengeance as may impel man of normal composure and frame of mind to run amuck and perpetrate ghastly murders of such magnitude. There is no evidence to indicate that in view of such quarrel happening a few days prior to the incident there had been any aftermath and further dispute and resentment between the deceased and the accused either immediately before or even proximately before the incident of murders and attempts to commit murders. From the evidence adduced, it is clearly revealed that the accused, in a cool and calculated manner intended to wipe out the entire family of his brother. In that end in view, he selected the most opportune moment, namely, dead of night when his brother and other members of his family would remain asleep so that they would be absolutely helpless and not capable to give any

defence to save themselves. In order to ensure death, the accused chose to cut vital part of the body, namely, the neck by a sharp cutting weapon (kassi) when his victims were asleep. He, therefore, succeeded in murdering his brother Raji Ram and his two minor sons by cutting their necks without any resistance from them. He did not even spare the poor old aunt and brutally murdered her by cutting her neck when she was asleep. In order to wipe out the whole family of his brother, the accused also attempted to murder the brother's wife and the brother's wife and the daughter were critically injured by the accused by cutting their necks. The wife of the brother, as a matter of fact, hovered between life and death and remained unconscious for a number of days but out of sheer luck she could survive. The daughter of the brother also luckily survived after being seriously injured when her neck was also cut by giving a number of injuries in and around the neck. It has been indicated by the learned Additional Sessions Judge that the accused was in full senses and had committed the murders of four close relations one after the other and also attempted to commit murder of his brother's wife and daughter in a cool and calculated manner. He did not even feel remorsed and being quite alive to the enormity of the crime committed by him he escaped from the place of occurrence.

It is true that the appellant was not convicted for any other offence on any previous occasion. Such fact can hardly be considered as a mitigating factor in favour of the appellant that will outweigh all the aggravating factors and circumstances in which the crime of the murders had been committed. The murders had been committed very brutally and mercilessly of absolutely innocent persons, namely, the Bua and two minor sons of his brother with whom there was no occasion to come in conflict and to entertain any grudge or ill feeling. Even if it is assumed that there was still some property dispute between the brothers despite sorting out of such dispute at the intervention of the Sarpanch, for such common place property dispute between brothers particularly when the accused was not dispossessed from the possession and enjoyment of his demarcated landed property by the deceased brother, it cannot be reasonably held that the accused had a genuine cause to feel aggrieved for injustice meted out to him in the hands of his deceased brother which may impel him to cause the murder of his brother. In any event, there could not be any cause to take a decision to wipe out the entire family of the brother in a very cruel manner when being asleep they were absolutely helpless. The members of the family of his brother were absolutely innocent and two of them were even minors. Such murders and attempt to commit murders in a cool and calculate manner without provocation cannot but shock the conscience of the society which must abhor such heinous crime committed on helpless innocent persons. Punishment must also respond to the society's cry for justice against the criminal. While considering the punishment to be given to the accused, the Court should be alive not only to the right of the criminal to be awarded just and fair punishment by administering justice tempered with such mercy as the criminal may justly deserve, but also to the rights of the victims of the crime to have the assailant appropriately punished and the society's reasonable expectation from the court for the appropriate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused. In the facts and circumstances of the case, we are of the view, that the crime committed by the accused falls in the category of rarest of rare cases for which extreme penalty of death is fully justified. We therefore, find no reason to interfere with the sentence of death awarded against the appellant since confirmed by the High Court. This appeal and the jail petition being numbered as D.No.1007/96 stand dismissed.