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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH

Ramesh Sinha; Saroj Yadav, JJ.

07.03.2022

CAPITAL SENTENCE (REFERENCE) No.2 of 2017 connected with CRIMINAL APPEAL No. - 376 of 2022

State of Uttar Pradesh *Versus* Rahul Singh @ Govind Singh

Rahul Singh @ Govind Singh *Versus* State of Uttar Pradesh

Counsel for Appellant: Shri Jyotindra Mishra, Senior Advocate and Shri Kapil Misra, Advocate.

Counsel for Respondent: Shri Vimal Srivastava, Govt. Advocate and Shri Chandra Shekhar Pandey, Additional Govt. Advocate

Saroj Yadav, J:

1. This Capital sentence Reference registered as Capital Sentence No.2 of 2017 was made to this Court under Section 366 of Code of Criminal Procedure, 1973 (in short '**Cr.P.C.**') for confirmation of Capital sentence awarded to the convict Rahul Singh @ Govind Singh in Sessions Trial No.341 of 2011 State Vs. Rahul Singh @ Govind Singh arising out of Crime No.858 of 2010 under Sections 302/34, 394, 411, 120-B of the Indian Penal Code, 1860 (in short '**I.P.C.**'), Police Station Dalmau, District Rae Bareli by judgement and order dated 15.6.2017 passed by Shri K.K.Sharma, learned Sessions Judge, Rae Bareli wherein the convict Rahul Singh @ Govind Singh has been punished with death sentence under Section 302 I.P.C. and with a fine of Rs.25,000/-.

2. The convict Rahul Singh @ Govind Singh preferred a Criminal Appeal (Defective) No.1342 of 2017 against the aforesaid judgement and order passed against him. As there was a delay in filing the criminal appeal, the same was condoned by a Coordinate Bench of this court vide order dated 10.12.2021. Thereafter, the office has allotted the regular number bearing Criminal Appeal No.376 of 2022.

3. Since the above captioned capital sentence reference and criminal appeal no.376 of 2022 arise out of a common factual matrix and the judgement dated 15.6.2017, therefore we are disposing them by a common judgement.

4. Shorn off unnecessary details, the facts necessary for deciding the above Capital Reference as well as criminal appeal are as under :-

5. A First Information Report (in short '**F.I.R.**') was registered on 4.9.2010 at around 5 O'clock in the morning as crime no.858/2010 on the basis of a written report submitted by Ms. Kunti at Police Station Dalmau, District Rae Bareli. It was stated in the written report that on the preceding night, she was sitting with her father Raju and mother Manju Devi, at the door of the house near the pond, Rahul Singh @ Govind Singh Son of Rati Bhan Singh, resident of Purey Bairhana Majrey Valipur came there alongwith his two aides at around 2 O' Clock in the night. Rahul Singh asked for drinking-water from her father and also asked her father to go and call Chotu Neta. Her father went to call Chotu Neta to Village Chandi Ka Purwa. When her father came back, Rahul and his two aides

locked her and her mother inside her house and took her father away towards orchard. They again came back and Rahul tied her hands on the back and also tied cloth on the eyes of her mother. They all left her inside the house and took her mother away towards orchard and there they killed her mother and father by throttling their necks. Thereafter, they hanged them on the tree. She somehow escaped from the house and went in village and told about the incident to the villagers. When villagers came there, Rahul alongwith his aides ran away towards north of the pond. When Rahul alongwith his aides, was hanging her mother on the tree, the electric bulb was lightening on the door at the time. She got very much frightened and somehow saved her life. The villagers had seen the accused persons.

6. After investigation, a chargesheet no.108/2010 was submitted against convict Rahul Singh under Section 302, 394, 411 and 120-B I.P.C. Another chargesheet no.134 of 2010 against co accused Ajay @ Bhanu Yadav, Dharmendra @ D.K. and Ram Deen @ Ram Ji Baba was submitted. The concerned Magistrate took cognizance on the chargesheets and committed the case to Sessions Court. The Sessions court declared Ajay @ Bhanu Yadav a juvenile and separated his file and sent to the Juvenile Justice Board for trial.

7. Two separate sessions trials were registered. The Sessions Trial No.104 of 2011 was registered against accused Dharmendra @ D.K. and Ram Deen @ Ram Ji Baba and another Sessions Trial No.341 of 2011 was registered against convict Rahul Singh. Both the Sessions Trials were tried, heard and decided together by the impugned judgement of the trial court. The charges were framed on 29.9.2011 against accused Rahul Singh @ Govind Singh, Dharmendra @ D.K. and Ram Deen @ Ram Ji Baba in their respective Sessions Trials. All the accused persons denied the charges and claimed to be tried.

8. The prosecution in order to prove its case, examined nine witnesses in *toto* and also proved the relevant documents Exhibit. Ka-1 to Ka-16. Nine witnesses examined are Km. Kunti P.W.-1, Sri Ram P.W.-2, Shri Shiv baran, P.W.3, Arvind Kumar Srivastava P.W.-4, Raj Bahadur Patel P.W.-5, Lok Nath Verma P.W.-6, Anand Kumar Verma P.W.-7, Kailash Prakash Yadav P.W.-8 and Vansh Rai Bharti P.W.-9.

9. Statement of accused persons were recorded under Section 313 Cr.P.C. wherein the accused persons denied the crime and also the recovery. They have also stated that the case was registered against them due to enmity and witnesses have deposed falsely. They refused to give any evidence in defence. The trial court after hearing the arguments of both the sides came to the conclusion that the prosecution has proved the charges levelled against the accused Rahul Singh @ Govind Singh under Section 302 I.P.C. beyond reasonable doubt but the offence under rest of the Sections i.e. 394, 411, 120-B I.P.C. could not be proved.

10. For convicting Rahul Singh, the learned trial court relied upon the statements of P.W.-1 Ms. Kunti the complainant, as she was the only eye-witness examined in the court. The trial court found this witness creditworthy and opined that the reliability of the witness could not be shaken by the defence. The trial court after hearing the convict Rahul Singh

on the point of quantum of sentence came to conclusion that the crime committed by the convict Rahul Singh comes under 'Rarest of the Rare category' and punished him with death sentence under Section 302 I.P.C. coupled with a fine of Rs.25,000/-

11. The trial court sent the impugned judgement and conviction order awarding the capital sentence for confirmation by this Court under Section 366 Cr.P.C.

12. Being aggrieved of the aforesaid judgement and order, the convict Rahul Singh preferred Criminal Appeal No.376 of 2022 (primarily registered as criminal Appeal No.1342 (Defective) of 2017).

13. Heard Shri Jyotindra Mishra learned Senior Advocate assisted by Shri Kapil Mishra, learned counsel for the appellant/ convict and Shri Vimal Srivastava, learned Government Advocate assisted by Shri Chandra Shekhar Pandey, learned A.G.A.

14. Learned counsel for the appellant/convict submitted that the only eye-witness examined in this case is Ms. Kunti and her statement is not worthy of reliance because she has given a contradictory statement in her examination-in-chief and in crossexamination. Her statement made in the court also differs what she has mentioned in the writtenreport. The time of incident in the written-report has been mentioned by her at around 2.00 A.M. in the night while in the court she has stated the time around 11.00 P.M. in the night. In her examination⁸ in-chief, she has stated that she knew Rahul Singh prior to the incident because he used to come to her house quite often but in the cross-examination, she has stated that she never saw accused Rahul prior to this incident. It was also submitted by the counsel for the convict that the distance where the bodies were found hanging was about 100 steps (250 feet) as has been shown in the site-plan so it was not possible to see anything in a dark night from such a distance. Though P.W.-1 has stated that electric bulb was lightening at the door of her house but no such source of light has been shown in the site-plan. P.W.-1 has improved her version in the court and has stated that the accused also looted two pairs of payals(anklets), one gold nose-pin and one mobile-set from the house of the informant but nothing has been mentioned in the written-report about such loot. In fact, the convict Rahul Singh was on run from the jail, so police was annoyed with him and implicated him falsely in the crime. There is no evidence against the convict Rahul Singh hence he should be acquitted.

15. Contrary to it, Shri Vimal Srivastava, learned Government Advocate submitted that the prosecution has proved its case against the convict by examining nine witnesses, before the trial court. P.W.-1 Kunti the daughter of both the deceased persons is the eye-witness of the case and she has supported the prosecution story and the learned trial court after evaluating the evidence available on record held guilty and convicted the appellant by awarding him capital sentence. The appellant/ convict is a habitual offender having criminal history of three more cases prior to the present case. He also submitted that the convict committed murder of the parents of the complainant in a ghastly manner without showing any mercy towards them and also without thinking about the informant, the daughter of the deceased persons. He also submitted that the medical evidence

corroborates the prosecution version as the doctors who conducted post-mortem on the cadavers of the deceased persons, have found that the death was caused by ante-mortem strangulation. He also submitted that there is no reason to disbelieve the evidence of eye-witness Km. Kunti hence learned trial court has rightly held guilty the convict Rahul Singh under Section 302 I.P.C. and punished him with capital sentence. The appeal of the convict should be dismissed and the reference made by the trial court should be confirmed.

16. Considered the rival submissions and perused the original record. The main principles of Criminal Law Jurisprudence in Indian Judicial System are as under:-

- i). Prosecution has to prove its case beyond reasonable doubt.
- ii). The accused shall be presumed innocent until proved guilty.
- iii). The burden of proof i.e. onus of proving the accused guilty beyond reasonable doubt never shifts.

17. The Hon'ble Supreme Court of India in the case of **Rajeev Singh Vs. State of Bihar and another: (2015) 16 SCC 369**, has held as under:

"66. It is well-entrenched principle of criminal jurisprudence that a charge can be said to be proved only when there is certain and explicit evidence to warrant legal conviction and that no person can be held guilty on pure moral conviction. Howsoever grave the alleged offence may be, otherwise stirring the conscience of any court, suspicion alone cannot take the place of legal proof. The well-established canon of criminal justice is "fouler the crime higher the proof". In unmistakable terms, it is the mandate of law that the prosecution in order to succeed in a criminal trial, has to prove the charge(s) beyond all reasonable doubt."

71. In his treatise, The Law of Evidence, Professor Ian Dennis while dwelling on the theme of allocation of burden in criminal cases, elaborated on the significance and purport of presumption of innocence and the general rule of the burden of proof. While reiterating the fundamental notion of criminal jurisprudence, that a person is presumed to be innocent until proven guilty and that the burden of proof in a criminal case is on the prosecution to establish the guilt of accused beyond reasonable doubt, the author underlined that the acknowledged justification of such presumption is that the outcome of a wrong conviction is regarded as a significantly worse harm than wrongful acquittal.

72. Viewed from the moral and political perspectives, it has been observed that in liberal states, the rule about the burden of proof has been elevated to the status of fundamental human right encompassing the assurance of liberty, dignity and privacy of the individual and from this standpoint it is essential that the state should justify fully its invasion of the individual's interest by proving that he had committed an offence, thereby abusing the freedom of action accorded to him or her by the liberal state. The significance of such presumption finds insightful expression in the following extract of State Vs. Coetzee [1997] 2 L.R.C.593, South African Constitutional Court in the words of Sachs,J.:

"There is a paradox at the heart of all criminal procedure in that the more serious the crime and the greater the public interest in securing convictions of the guilty, the more important do constitutional protections of the accused become. The starting point of any balancing enquiry where constitutional rights are concerned must be that the public interest in ensuring that innocent people are not convicted and subjected to ignominy and heavy sentences massively outweighs the public interest in ensuring that a particular criminal is brought to book Hence the presumption of innocence, which serves not only to protect a particular individual on trial, but to maintain public confidence in the enduring integrity and security of the legal system. Reference to the prevalence and severity of a certain crime therefore does not add anything new or special to the balancing exercise. The perniciousness of the offence is one of the givens, against which the presumption of innocence

is pitted from the beginning, not a new element to be put into the scales as part of a justificatory balancing exercise. If this were not so, the ubiquity and ugliness argument could be used in relation to murder, rape, car-jacking, house breaking, drug-smuggling, corruption... the list is unfortunately almost endless, and nothing would be left of the presumption of innocence, save, perhaps, for its relic status as a doughty defender of rights in the most trivial of cases."

The quintessence of the philosophy embedded in the above extract is that the presumption of innocence serves not only to protect a particular individual on trial but to maintain public confidence in the enduring integrity and security of the legal system.

77. Distraught though one would be, by the calamitous incident, judicial adjudication has to be assuredly guided by the recognised legal dicta and cannot be swayed by emotional or sentimental surges. Justice has to be administered essentially in accordance with law and uninfluenced by individual predilections, notions and prejudices....."

18. Now, we have to examine this matter and appreciate the evidence available on record keeping in mind the aforesaid cardinal principles of criminal jurisprudence.

19. Admittedly, there is no eye-witness of the crime except Km. Kunti P.W.1 the daughter of both the deceased and also the complainant of the case. No doubt it is settled law that the evidence of a relative witness cannot be doubted or discarded only for the reason that he or she is a relative of the deceased, if the evidence is worthy of raising confidence of the court. Km. Kunti has mentioned in the F.I.R. that she alongwith her deceased parents were sitting in front of the door of her house at 2.00 A.M. in the night. The accused Rahul alongwith his two aides came there and asked for drinking-water. Thereafter, he asked her father to go and call Chotu Neta from a nearby village Chandi Ka Purwa. When her father came back, Rahul and his two aides locked her and her mother inside her house and took her father away towards orchard. They again came back and Rahul tied her hands on the back and tied a cloth on the eyes of her mother. They left her in the house and took her mother away towards the orchard and killed her mother and father by throttling their necks and hanged them separately on the tree. She somehow escaped and went in the village and told everything to the village people. When village people came there, Rahul alongwith his aides ran away towards the north of the pond. This witness was examined in the court initially on 20.10.2011. In her examination-in-chief, she has stated that she knew accused Rahul Singh. He used to come at her house quite-often. The incident occurred about one year ahead. She alongwith her mother Manju and father were sleeping outside the house. At that time, Rahul alongwith two other persons came there and asked for drinkingwater. She gave him water in a 'lota' (a small vessel in round shape) but her father asked her to bring the water in a bucket. Then she brought water in a bucket and also some sugar. Her father handed over the water and sugar to them. They went away. After some time, Rahul came back to return the bucket and asked her father to go and call Chotu Yadav. Chotu Yadav is a resident of village Chandi Ka Purwa and is a leader. Her father was not ready to go, then Rahul asked him "you go nothing will happen to you". Thereafter her father went to call Chotu to his village. When his father went, Rahul asked his aides to tie her and her mother's hands and locked them inside a room in the house. She and her mother could not raise cry due to fear. When her father came back, Chotu Yadav was not with him. Thereafter,

Rahul took her father away tying her hands, towards the orchard. At that time one lamp (chimni) was lightening there. About half an hour later, Rahul and his aides came back and they picked up two pairs of silver payals(anklets) one gold nose pin of her mother and one mobile, forcibly. Thereafter they tied cloth on the eyes of her mother and took her away towards the orchard and forgot to lock the door. They killed her parents. Police personnel asked her to lodge a report so she went to the police station and got written the report by someone and lodged the F.I.R. She proved her written report as Exhibit - Ka-1. She has further stated that the investigating officer asked her about the incident and she told whatever he asked. She has further stated that at the time of incident, one electric-bulb was lightening at the door of her house. In the light of electric-bulb, she witnessed that Rahul Singh and two other persons were killing and hanging her parents. She has further stated that accused persons first pressed the neck of her parents and tied the hands on the back thereafter they hanged them on the tree. She has further stated that in the room where she was locked, one 'Chimni' (lamp) was lightening. She somehow came from her house and saw that Rahul and other persons were killing and hanging her parents on the tree. She has further stated that the accused persons were seen by the village-people also. The accused persons were armed with small guns. She identified the accused persons present in the Court and told that these are the accused persons who killed her parents.

20. P.W.-2 Shri Ram is brother-in-law of the deceased Raju. He has stated that he did not see anything. Whatever he has stated was told by Ms. Kunti, P.W.-1.

21. P.W.-3 is Shiv Baran Singh, who was the Gram Pradhan at that time. He stated in the Court that the incident occurred at about 2-3 O' Clock in the night. He reached on the spot after hearing the noise and found the dead bodies of the deceased persons hanging on a mango-tree, in the orchard. Km. Kunti and other persons were present there. He asked Km. Kunti about the incident. She told him about the incident. This witness has stated that these facts were narrated to him by Kunti at about 5.00 A.M. in the morning. He did not see the incident himself. When he reached the spot, police was present there.

22. P.W.-4 is Dr. Arvind Kumar Srivastava who conducted post-mortem on the cadavers of both the deceased and found the following ante-mortem injuries on the cadaver of Raju :-

"Ante Mortem Injuries Ligature mark around the neck 15 cm x 2-1/2 cm (front side mostly) present, transversely circular over the prominence adam, Base of ligature mark pale soft, reddish margins. As described - C gap of 2 cm. post and lateral aspect of neck. Total circumference of neck 43 cms."

The cause of death has been mentioned *"due to asphyxia as a result of ante mortem strangulation."*

23. On the cadaver of deceased Manju, the following ante mortem injuries were found :-

"Ante Mortem injuries

i). Circular ligature mark of 12 cm x 2 cm over adam apple. C-Gap on lateral and Posterior aspect of 28 cm. Transversely placed over the front and lateral aspect of neck. Base of ligature mark pale,

soft reddish margins. Ecchymosis on the either side of the ligature mark. Perchamentization of skin under the ligature mark present.

Total Circumference of neck - 40 cm. Hyoid Bone on Palpation fractured."

Cause of death has been mentioned *"due to asphyxia as a result of ante mortem strangulation."*

24. The time of death has been mentioned within one day from the time of post-mortem and has been explained i.e. within twenty four hours.

25. We examined the evidence of P.W.-1 Km. Kunti who is the only eye-witness of the incident, we found that Km. Kunti in her statement has stated that accused persons forcibly picked up two pairs of silver payals (anklets) and one gold nose-pin and one mobile-set from her house at the time of the incident but nothing has been mentioned about this loot or picking up of jewellery in the F.I.R. Km. Kunti who is also the complainant of the case has mentioned in the F.I.R. that she alongwith her deceased parents was sitting in front of the door of her house at 2.00 A.M. in the night and accused Rahul alongwith his two aides came there. But when she was examined in the court as P.W.-1, she has stated that at about 10-11 A.M. in the night, she alongwith her parents was sleeping outside the house and accused Rahul alongwith his two aides reached there. The time mentioned in the F.I.R. and stated as P.W.-1 has a remarkable difference and it is a major contradiction in the statement of the alleged eye-witness.

26. The motive of crime has neither been alleged nor proved. Though it is not always necessary to prove the motive of the crime because no one can peep into the mind of a miscreant but where the direct evidence is of weak type, then it gives strength to the prosecution case. Km. Kunti has stated in her cross-examination that there was no enmity of her with Rahul or his aides. In the examination-in-chief, she has also stated that accused were armed with small guns but nothing is there in the F.I.R. about these guns which is a material fact. She has stated that some village-people saw the incident, at another place she denies the same. The evidence of P.W.-1 does not have a ring of truth. The story of prosecution and the evidence led to prove the same is not worthy of credence, to prove the charge levelled against the convict Rahul beyond reasonable doubt. The evidence is not such as to raise the confidence of the court. In the present matter, the prosecution could not prove the charges levelled against the convict beyond reasonable doubt as evidence of only eye-witness of the incident i.e. P.W.-1 is not worthy of credence. There are contradictions on the point of time and also what have been written in the F.I.R. and what have been stated in the court.

27. The source of light though stated by the P.W.-1 has not been shown in the site-plan Exhibit- Ka-6, the distance from the house of the deceased where P.W.-1 was present, and of the place of occurrence was about 70-72 paces. In the darkness of in a night, it is not possible to witness the incident which is being caused in a orchard without proper and direct light. Hence to sum up, that the prosecution could not prove the charges levelled against the accused beyond reasonable doubt. The learned trial court has erred

in appreciating the evidence of P.W.-1 and holding guilty and convicting the accused on the basis of that evidence. The Court is conscious of the fact that the parents of the complainant were murdered but whether it was the appellant who has killed them that has not been proved by the prosecution by cogent and clinching evidence. Thus, the appellant is entitled for acquittal hence, he is acquitted of the charges. The impugned judgement and order passed by the trial court deserves to be set-aside and death reference is liable to be rejected.

28. Consequently, the criminal appeal preferred by the convict is allowed. The impugned judgement and order dated 15.6.2017 passed by the trial court in Sessions Trial No.341 of 2011 State Vs. Rahul Singh @ Govind Singh arising out of Crime No.858 of 2010 under Section 302/34, 394, 411, 120-B I.P.C., Police Station Dalmau, District Rae Bareli wherein the convict Rahul Singh @ Govind Singh has been punished with death sentence under Section 302 I.P.C., is hereby set aside.

29. Capital sentence Reference registered as Capital Sentence No.2 of 2017, referred under Section 366 of Cr.P.C. for confirmation of Capital sentence awarded to the convict/appellant, in aforesaid Sessions Trial, is hereby rejected.

30. Let the convict Rahul Singh @ Govind Singh convict in Sessions Trial No.341 of 2011 State Vs. Rahul Singh @ Govind Singh arising out of Crime No.858 of 2010 under Section 302/34, 394, 411, 120- B I.P.C., Police Station Dalmau, District Rae Bareli be released from the concerned jail, if not required in any other case.

31. Appellant Rahul Singh @ Govind Singh is directed to file personal bond and two sureties each in the like amount to the satisfaction of the court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973.

32. Let a copy of this order alongwith original record be transmitted to the trial court concerned forthwith for necessary information and further action.