

APPELLATE CRIMINAL.

Before Gopal Singh and A. D. Koshal, JJ.

SANT SINGH,—Appellant.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 759 of 1967.

September 14, 1970.

Indian Penal Code (XLV of 1860)—Section 302—Sentence—Murder though brutal but motive therefor not known—Lesser sentence on the convict—Whether to be imposed—Trial Court exercising discretion in the matter of sentence—Appellate Court—When to interfere.

Held, that where the crime of murder is executed in a brutal manner, this normally constitutes a compelling reason for the offender being visited with the penalty of death. But when the apparent motive for the crime is not known and the immediate cause for the convict behaving cruelly is shrouded in mystery, then this circumstance renders the convict liable to undergo the lesser rather than the capital punishment provided for the offence of murder. (Paras 14 and 19)

Held, that an appellate Court will not interfere to the detriment of an accused person when the trial Court has properly exercised its discretion in the matter of sentence on accepted legal principles. Very strong reasons must be made out for an enhancement of the sentence.

(Para 19)

Appeal from the order of Shri Kartar Singh, Sessions Judge, Kapurthala, dated the 22nd day of July, 1967, convicting the appellant.

HARPARSHAD AND I. S. KAREWAL, ADVOCATES, for the appellant.

P. S. MANN, ADVOCATE FOR ADVOCATE-GENERAL, PUNJAB, for the respondent.

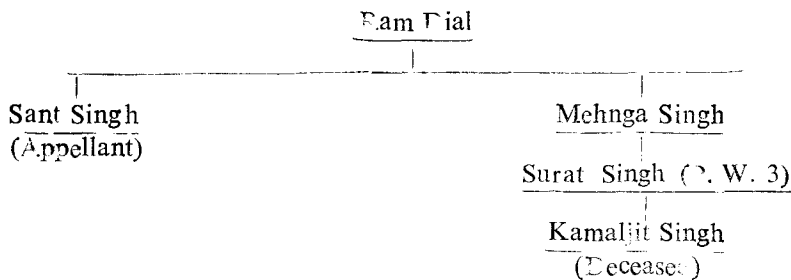
JUDGMENT

Koshal, J.—For the murder of his brother's grand-son named Kamaljit Singh, aged 4½ or 5 years, Sant Singh appellant, a 55 year old resident of village Pandori Rajputan in police station Bholath, has been convicted by Shri Kartar Singh, Sessions Judge, Kapurthala, of an offence under section 302 of the Indian Penal Code and sentenced to imprisonment for life.

(2) The Judgment of the learned Sessions Judge is dated July 22, 1967, which is challenged by the convict in Criminal Appeal

No. 759 of 1967 being hereby disposed of by us along with Criminal Revision No. 1083 of 1967 filed by the State of Punjab with the prayer that the sentence awarded to the appellant be enhanced to one of death.

(3) The following pedigree table brings out the exact relationship between the appellant on the one hand and the deceased and Surjit Singh (P.W. 3) on the other :—



(4) The appellant alongwith other members of his family resides in the upper-storey of a house of which the ground-floor is occupied by Surjit Singh (P.W. 3) and other members of his family including his father Mehnga Singh.

The prosecution case may be stated thus. Before the occurrence, the relations between the appellant on the one hand and his wife and son on the other were strained and the appellant suspected that this was due to his nephew Surjit Singh (P.W. 3) instigating the appellant's wife and son.

(5) During the operations for consolidation of holdings in village Pandori Rajputan, Surjit Singh (P.W. 3) and his father Mehnga Singh surrendered some of their land and were allotted a vacant site in lieu thereof for purposes of construction. They claimed that this site had an area of one Kanal while, according to the appellant, the same was only 15 Marlas. An attempt was made on the 13th April, 1967, for a settlement of this dispute in the presence of Binda Singh, a member of the village Panchayat, but remained unsuccessful.

(6) On the next day, that is, April 14, 1967, Surjit Singh (P.W. 3) was at his well, which also irrigates the land of the appellant, up to 12.30 P.M. when he went to his house leaving his cattle behind.

At about 2.30 P.M. he left his house in order to return to the well on the way to which Prem Singh (P.W. 4), another resident of the same village, who was to bring back fodder for his cattle, joined him. The two were proceeding together and were yet about 100 yards from the well when the shrieks of Kamaljit Singh deceased coming from the side of the well startled them. They ran towards the well and were at a distance of about 40 or 50 Karams from it when they saw that the appellant had gripped the deceased from his legs and was flinging him over and over again so as to make him strike against chaff-cutter Exhibit P. 2. The appellant was going to throw the child into the well when the latter's father and Prem Singh (P.W. 4) succeeded in snatching it away from him. The child was bleeding profusely at the time. Prem Singh (P.W. 4) gripped the appellant around the waist from behind and raised a hue and cry in which Surjit Singh (P.W. 3) joined him. Kartar Singh (P.W. 5) and Sardar Singh (P.W. 6) were attracted to the scene of occurrence and overpowered the appellant whose clothes, namely, shirt Exhibit P.3. *Pyjama* Exhibit P.4 and *Pagri* Exhibit P.5. had stains of blood on them. In response to an enquiry made by Kartar Singh (P.W. 5) as to why he had injured the child, the appellant replied that Surjit Singh (P.W. 3) had caused him trouble for which he had wreaked his vengeance.

(7) Leaving the appellant in the custody of Kartar Singh (P.W. 5) and Sardar Singh (P.W. 6), Surjit Singh (P.W. 3) took the deceased, who was then alive, to the hospital at Bholath where, however no doctor was available so that Kamaljit Singh succumbed to his injuries before he could be given medical aid. Surjit Singh (P.W. 3) then went to police station Bholath where he lodged the first information report Exhibit P.A. at 4.30 P.M. with Head Constable Bagga Singh. (P.W. 10) who accompanied him to the hospital and prepared the inquest report before sending the dead body away to Kapurthala for the autopsy. In the meantime, Sub-Inspector Balwant Singh (P.W. 11) reached the hospital, took over the investigation and by about 7 P.M. arrived at the scene of occurrence where he found the appellant in the custody of Kartar Singh (P.W. 5) and Sardar Singh (P.W. 6). The Sub-Inspector secured blood-stained earth from the place where the chaff-cutter was lying installed and also took into possession one of the blades of the machine as the same was found to be blood-stained. He arrested the appellant and took charge of his three garments above-mentioned.

(8) The autopsy was performed by Dr. R. S. Bedi (P.W. 2) on the 15th April, 1967, from 12.15 P.M. onwards, when the doctor found on the dead body ten injuries consisting of 4 incised wounds, 2 abrasions, 2 contused wounds, a lacerated wound and a contusion. Two of the incised wounds were located on the scalp near the left ear and in conjunction with one of the contused wounds had caused a depressed fracture and injury to the brain. Most of the other injuries were also located in the head region. The death had occurred, in the opinion of the doctor, from the above-mentioned damage to the skull.

(9) On the same day the doctor examined the appellant and found on the middle of the outer border of his left thumb a skin deep lacerated wound with the dimensions $\frac{1}{2}$ " X $\frac{1}{2}$ ". This injury was about 24 hours old.

(10) The stains on garments, Exhibits P. 3 to P. 5, on the earth secured from the spot and on the blade removed from the chaff-cutter were found on analysis by the Chemical Examiner to be those of human blood.

In support of its case, the prosecution produced 11 witnesses at the trial and examined another on affidavit. These witnesses included Surjit Singh (P.W. 3) and Prem Singh (P.W. 4) who gave the same account of the occurrence as has been set out above. Surjit Singh (P.W. 3) further stated that the appellant had, prior to the occurrence, expressed his displeasure at the alleged behaviour of the witness in instigating the appellant's wife and son against him (the appellant). The witness added that he and the appellant tried to settle their land dispute on the Baisakhi day in the presence of Bindra Singh above-mentioned but that they remained unsuccessful.

(11) Kartar Singh (P.W. 5) fully supported the ocular testimony by stating that when he and his brother Sardar Singh (P.W. 6), who was merely tendered for cross-examination without any question having been put to him by either side, reached the spot of occurrence on being attracted thereto by the hue and cry of Surjit Singh (P.W. 3), they found a bleeding Kamaljit Singh being held by his father and the appellant by Prem Singh (P.W. 4). The witness went on to state that on his enquiry the appellant disclosed that he (the

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appellant) had wreaked his vengeance on Surjit Singh (P.W. 3) by causing injuries to the latter's son Kamaljit Singh. According to this witness also, the garments, being worn at the time by the appellant had stains of blood on them. He also testified to those garments being taken off the person of the appellant by the Sub-Inspector on his arrival at the spot round about 7 P.M. The witness also claimed that the blood-stained earth, the chaff-cutter and its blade, all above-mentioned, were taken into possession by the Sub-Inspector in his presence.

(12) When examined in pursuance of the provisions of section 342 of the Code of Criminal Procedure, the appellant denied the allegations made against him by the prosecution and asserted that he always had cordial relations with his wife and his son and that he never had any such land dispute with Surjit Singh (P.W. 3) as had been set up by the latter. He gave a counter-version of the occurrence as also of the circumstances which led to it and the same may be quoted in his own words—

“It is a false case. I have very cordial relations with my son and wife. I never suspected Surjit Singh for having instigated my wife and my son against me. I had no land dispute with Mehnga Singh or Surjit Singh. As the well of Surjit Singh and myself is joint there remains some little dispute between us regarding the turn of water. Puran Singh is the husband of Surjit Singh's sister. Puran Singh's wife is dead. Puran Singh had illicit relations for many years past with the wife of Surjit Singh. Surjit Singh used to tell his wife that Kamaljit Singh deceased was not born out of lawful wedlock and was a stigma on the name of their family. On the alleged day of occurrence I went to my well after 12 noon and found Kamaljit Singh lying on the ground with injuries on his person. Surjit Singh P.W. was standing by his side. I asked Surjit Singh as to what the matter was. He just asked me to lift Kamaljit Singh and carry to the hospital with him. I and Surjit Singh brought Kamaljit Singh to the hospital at Bholath. There was no doctor in the hospital and after about an hour Kamaljit Singh expired and Surjit Singh left the hospital saying that he was going to his village to break the news of the death of Kamaljit Singh. After some

time Surjit Singh came back to the hospital with the police and the police took me into custody. Prem Singh, Kartar Singh are false witnesses. Prem Singh did not witness the occurrence. Kartar Singh and Sardar Singh did not secure me at the spot. Surjit Singh has made me a victim of duplicity and treachery and taken advantage of my presence in the hospital. Surjit Singh made a clever ruse with me to falsely involve me in the case. I had absolutely no grudge against the minor child or for that matter against any member of their family."

No evidence was produced by the appellant in defence.

(13) The assertion about the land dispute made by Surjit Singh (P.W. 3) having remained uncorroborated by other evidence, the learned Sessions Judge did not consider it advisable to regard it as proved. He was, however, of the opinion that the allegation made by Surjit Singh (P.W. 3) about the appellant having suspected him (Surjit Singh) of instigating the appellant's wife and son against him (the appellant) found corroboration in the first information report and was, therefore, worthy of credence. He further noted that, according to the appellant himself, there was some dispute between the latter and Surjit Singh (P.W. 3) regarding turns of irrigation water and concluded that the relations between the appellant and Surjit Singh (P.W. 3) were doubtlessly not cordial. All the same, he felt that the motive thus emerging did not appear sufficient for the appellant to commit such a heinous crime and that it was possible that something unknown occurred between the appellant and the deceased before the tragedy was enacted. The place of occurrence was found by the learned Sessions Judge not only to be undisputed but also to have been established as the place where the chaff-cutter was installed, from the fact that stains of human blood were found on the blade of the machine and the earth secured from underneath it. He was further of the opinion that the first information report was lodged most promptly and that the occurrence took place at 2.30 p.m. as was claimed by the prosecution and not before 12.00 noon as was the case set up by the appellant. He found the ocular account of the occurrence to be reliable supported as it was not only by the testimony of Kartar Singh (P.W. 5) but also by the medical evidence and the presence of stains of human blood on garments Exhibits P. 3 to P. 5, and rejected the defence version as false and untrustworthy.

(14) It was in these premises that the learned Sessions Judge convicted the appellant of the child's murder. On the question of sentence, however, he took the view that the immediate motive for the crime, which possibly consisted of something that transpired between the appellant and the deceased immediately before the latter was subjected to violence, was shrouded in mystery and that this circumstance rendered the appellant liable to undergo the lesser rather than the capital punishment provided for the offence of murder.

(15) We have been taken by the learned counsel for the appellant through the entire evidence on the record and after hearing him, we have no hesitation at all in maintaining the conviction. The appellant's own case is that the unlucky child was still alive when he was carried to the hospital at Bholath and that he expired about an hour after reaching there. He has further asserted that after the child's death Surjit Singh (P.W. 3) left the hospital to which he returned shortly afterwards in the company of the police. The fact that Surjit Singh (P.W. 3) accompanied his seriously injured son to the hospital and lodged a report with the police soon after the son's death is thus not disputed and at once leads to the conclusion that the first information report Exhibit P.A. came into existence at the earliest possible. That document, therefore, assumes considerable importance and lends valuable corroboration to the deposition of Surjit Singh (P.W. 3), who is further supported in the matter of the ocular account of the occurrence by a wholly independent witness in the person of Prem Singh (P.W. 4). Again, both these witnesses are fully supported by Kartar Singh (P.W. 5), another witness who has no axe of his own to grind by making a false deposition against the appellant. It is to be noted that the names of Surjit Singh (P.W. 3) and Prem Singh (P.W. 4) figure as eye-witnesses in the first information report which further states that Kartar Singh Lambardar (P.W. 5) and Sardar Singh (P.W. 6) were attracted to the spot by the hue and cry raised by the two eye-witnesses and that they caught hold of the appellant. These averments appear fully trustworthy in view of the fact that Surjit Singh (P.W. 3) had not had any opportunity of concocting a story by the time the first information report was lodged. We also cannot ignore the fact that the appellant is none else than the father's brother of Surjit Singh (P.W. 3), who would not falsely implicate him in as serious crime as the one with which we are here concerned in spite of the fact that the relations between the two of them were not all the most cordial ones.

(16) The circumstantial evidence furnished by the presence of stains of human blood on the three garments which the appellant was found wearing immediately after the occurrence, as also on the earth and the blade of the machine secured from the spot, further lends assurance to the ocular account of the occurrence. This evidence has remained wholly unchallenged and, as remarked by the learned Sessions Judge, there would be no possibility of turban Exhibit P. 5 getting blood-stained if the appellant had merely carried the child from the place of the occurrence to the hospital for the purposes of his medical treatment. The stains of human blood on the *pagri* Exhibit P. 5 are strongly indicative of his having been the real culprit.

(17) The only ground on which R. B. Har Parshad, learned counsel for the appellant, challenged the testimony of the two eye-witnesses and that of Lambardar Kartar Singh (P.W. 5) was that they had therein made improvements over the story disclosed by them at the investigation stage. His criticism is to some extent justified inasmuch as some of the details of that part of the prosecution case which relate to the motive for the crime were not stated by the eye-witnesses and Kartar Singh aforesaid to the police. However, it does not follow at all that the improvements in question in any way detract from the reliability of the three witnesses under discussion. It may well be that various incidents from which animosity on the part of the appellant against Surjit Singh (P.W. 3) could be deduced were not present to the mind of the latter or of the other two witnesses when the police interrogated them and that those incidents were recalled to their minds later. If that be so, the so-called improvements would be only innocuous. And that is exactly what appears to have happened for, if it were otherwise and the witnesses were out to concoct stories leading to an inference of adequate motive on the part of the appellant, such stories would not indicate merely a slight difference of opinion between the appellant and his nephew. As it is, whatever incidents have been put forward in support of the motive part of the prosecution case do not, as held above, constitute sufficient motive for the dastardly manner in which the appellant is said to have done the child to death. In any case, the improvements relate to a non-essential part of the prosecution case and do not appear to us to at all affect the veracity of the witnesses in relation to the actual commission of the crime by the appellant which, as held by us earlier, has been fully brought home to him.

(18) In so far as the defence story is concerned, it must be held to be false in view of what we have already said. It may further be noted that if Surjit Singh (P.W. 3) was the real culprit, there is no reason why he should have had support from independent witnesses like Prem Singh (P.W. 4) and Lambardar Kartar Singh (P.W. 5). It is further hard to imagine that in that case the appellant himself would not have been the first to contact the police and apprise them of the real situation. It is quite true that the motive set up by Surjit Singh (P.W. 3) appears to be a very insufficient one in relation to the ghastly nature of the tragedy but then that only means that Surjit Singh (P.W. 3) has not tried to buttress his case with a false story. The failure of the prosecution to establish the real motive is, of course, no reason to throw out its case if it is otherwise proved as we have held it to be.

(19) The only question that remains to be determined is that of the sentence. The victim of the crime was an innocent child of only about 5 years of age who could possibly give no deliberate cause for offence to the appellant. The crime was also executed in a most brutal manner. These factors would normally constitute compelling reasons for the offender being visited with the penalty of death, which the appellant, according to the learned counsel for the State, fully deserves. However, there are good reasons why the sentence awarded by the learned Sessions Judge should not be enhanced. It is well settled that an appellate Court will not interfere to the detriment of an accused person when the trial Court has properly exercised its discretion in the matter of sentence or accepted legal principles and that very strong reasons must be made out for an enhancement of the sentence (*Bed Raj v. State of Uttar Pradesh* (1), and *Shivajirao and another v. The State of Maharashtra* (2)). Let us examine, therefore, the reasons given by the learned Sessions Judge for awarding to the appellant the lesser penalty provided by the law for the offence of murder and determine whether those reasons are justifiable. He noted that the crime was brutal and its victim was an innocent child. Nevertheless he attached some significance to the fact that there was no apparent motive and that the immediate cause for the appellant behaving as cruelly as he did was not known. He thought that some incident which suddenly gave rise to anger in the appellant against the child might have been

(1) A.I.R. 1955 S.C. 778.

(2) 1969 C.A.R. 11-S.C.

responsible for the tragedy and was of the opinion that such a situation would be a justification for not inflicting capital punishment on the appellant. In forming this opinion he sought guidance from *In re Sankappa Shetty* (3), *Promode Chandra Dev v. State* (4) and *In re Desingh Nadar* (5) (20) *In re Sankappa Shetty* (3) (*supra*) a loving husband and affectionate father who had never been known to have beaten or ill-treated his wife on any previous occasion suddenly killed her in a closed room which was bolted from inside, by battering her head and body brutally and violently with a plank and inflicted as many as 20 injuries on her person. There was complete lack of motive on the part of the accused who pleaded insanity and was shown to have behaved strangely and in an eccentric manner during a period of about three days preceding the occurrence. After the occurrence the room was broken open by five persons and the accused made no attempt to escape but appeared dazed. In reducing the sentence of death awarded by the trial Court to the appellant and substituting one of transportation for life, Gentle, J., observed—

“The absence of an apparent motive is material when the question of sentence is considered. The offence which the appellant committed was not premeditated in any way and must have been the result of impulse and temper. In these circumstances, I consider that although the assault was a violent one, the proper sentence is one of transportation for life.”

King, J., to whom the case was referred on a difference of opinion between Gentle, J., and Patanjali Sastri, J., took the same view in the following words :—

“I think however that this is a case which does not call for the extreme penalty of the law. There cannot have been any premeditation—and I feel sure that the accused must have received what he felt to be considerable provocation before he attacked his wife in the way he did. I accordingly in confirming the conviction commute the sentence into one of transportation for life.”

(21) In *Promode Chandra Dev v. State* (4) (*supra*), the question did not directly arise but it was remarked that although it is

(3) A.I.R. 1941 Mad. 326.

(4) A.I.R. 1952 Tripura 7.

(5) A.I.R. 1960 Mad. 533.

obligatory on the prosecution to prove adequate motive for the crime, at the same time the absence of an apparent motive on the part of the accused in committing a murder is material when the question of sentence is concerned.

(22) In *In re Desingh Nadar* (5) (*supra*), the facts found were as follows. The accused went to the house of the deceased with whom he had cordial relations. The deceased had three children the eldest of whom was a daughter aged about 15 years. The accused expressed a desire to sleep for the night in the room in which the children were sleeping but the deceased told him that that was not proper and made him sleep in his own room. At about midnight the accused went into the room where the children were asleep and made overtures to the eldest child of the deceased who, however, kicked him whereupon he went back to his own bed. After sometime the accused attacked the deceased with an aruval (a heavy sharp weapon) and caused him 23 incised wounds therewith. One of these wounds was located on the left side of the neck, was 4" deep and had cut the muscles down to the vertebra as well as the intra-spinal ligaments. This is how Anantanarayanan, J., with whom Ramaswami, J., concurred, dealt with the question of sentence :

"It is true that no extenuating circumstances have been established in the evidence. But it is equally clear that this was not a premeditated or planned crime. We think it very likely that this young man, following the repulse of his overture to the girl P.W. 1, lost his balance entirely, and behaved like a person who was temporarily insane. The accused is only about 23 years of age, and taking all the circumstances together into account, we do not think that it is expedient or essential in the interests of justice to award him the extreme penalty of the law for this crime. We, therefore, sentence the accused to undergo the lesser punishment of transportation for life."

(23) The facts in *In re Sankappa Shetty* (3) and *In re Desingh Nadar* (5) (*supra*) are very similar to those obtaining in the present case in which also the crime, though committed mercilessly cannot be said to be premeditated or pre-planned but must on the other hand be held to have followed a sudden impulse. It may be that while playing, the child happened to strike the appellant with a stone. Again, perhaps the child took up a goading stick and struck its nail

part on the appellant's thumb which was found injured after his arrest, or may be the appellant bade the child to do something which the latter refused to carry out and, on the contrary, made a retort in abusive language such as is not foreign to children in rural areas. These would be extreme instances of how the child could have injured or insulted the appellant. What is certain is that something like this triggered off the violence with which the appellant is credited. Had the murder been pre-planned, he would probably have achieved his object at a time and place and in a manner which would have reduced the chances of the detection of his guilt to the barest minimum. It is to be remembered that he is a brother of the grandfather of the deceased who was living in the same house as the appellant himself so that the latter had unlimited opportunities to kill the child with the least possible risk of his own apprehension.

(24) In the above view of the matter, it cannot be said that the exercise of discretion by the learned Sessions Judge in awarding the sentence of imprisonment for life to the appellant lacks propriety or goes against accepted principles.

(25) Another factor is relevant in this connection. The appellant was arrested on April 14, 1967, since when he has been in custody. Notice of the Criminal Revision filed by the State praying for enhancement of the sentence was issued to him on December 8, 1967, i.e., more than 2½ years back since when he has been in suspense about his fate. In similar circumstances a Division Bench of this Court consisting of Sodhi and Gujral, JJ. refused to enhance the sentence to one of death in the *Haryana State v. Gyan Singh and others* (6), decided on May 29, 1970, although the murder therein was brutal and unprovoked.

(26) For the reasons stated, the appellant must be held to have been fully proved to be guilty of the child's murder but no justification exists for the enhancement of the sentence awarded to him by the trial Court. There is thus no merit either in Criminal Appeal No. 759 of 1967 or in Criminal Revision No. 1083 of 1967, both of which are dismissed.

Gopal Singh, J.—I agree.

(6) Cr. Re. No. 766 of 1967 decided on 29th May, 1970.

N.K.S.