



AFR

Court No. 44

Criminal Capital Appeal No. 1748 of 2008

Rishipal Vs. State of UP

HON'BLE YATINDRA SINGH, J.**HON'BLE SURENDRA SINGH, J.****(Delivered by Hon'ble Yatindra Singh)**

1. Witness protection programme is an important aspect of criminal justice system: without it, no reforms are possible. If witnesses are afraid to come forward then irrespective of any measures justice cannot be administered. This case is a pointer.

THE FACTS

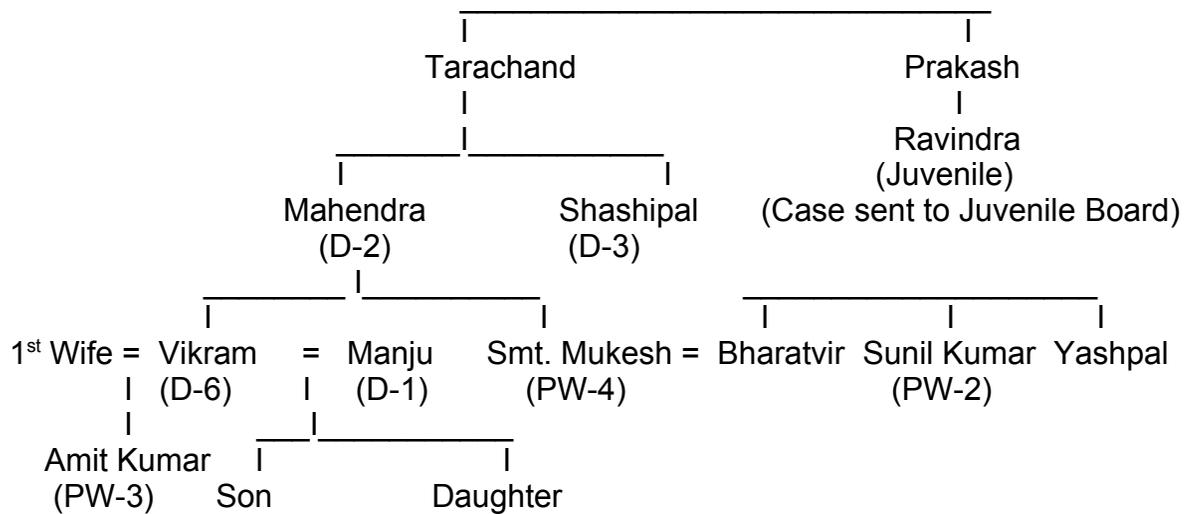
2. An incident happened between 12:00 to 13:00 hours on 26.10.2005. In this incident, six persons namely Manju (Deceased-1 or D-1), Mahendra (D-2), Shashipal (D-3), Ravi (D-4), Smt. Mukesh (D-5) and Vikram (D-6) were killed by knife and sword in the same order. All six of them are collectively referred as the Deceased.

3. The wife of Satyendra Singh (the Informant) was the *Pradhan* of the village. He is not related to any of the parties. He telephonically informed the police about the incident at about 14:15 hours. It was registered as case crime no.537 of 2005, under section 452, 392 IPC, Police Station Chhaprauli, Baghpat .

4. On the basis of telephonic information, the police came on the spot. The Informant gave a written report to them. In the telephonic information as well as in the written report, Rishipal (the Appellant) and Ravindra Singh (the Juvenile) (both are referred as the Accused) were named. The written report is more detailed than the telephonic information.

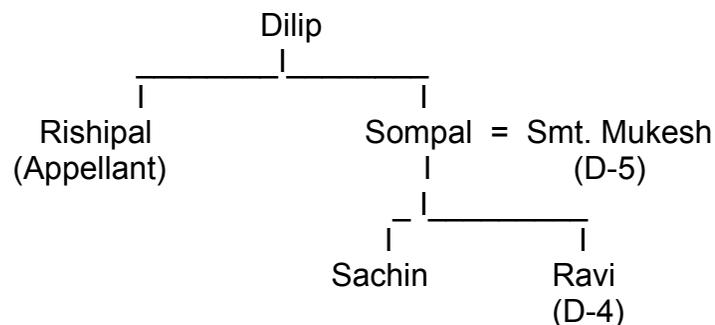
5. Two families are involved in the incident. Their pedigrees are relevant. They indicate the relationship of the Accused with the Deceased. However, inter relationship of the two families is not clear.

6. One pedigree is as follows:



7. Ravindra (the Juvenile) son of Prakash is one of the accused. Four of his relatives from the branch of his uncle Tarachand were killed

8. The other pedigree is as follows:



9. Rishipal (the Appellant) is the other accused. Two from his family namely his sister-in-law and nephew were killed.

10. The allegations in the written report are as follows:

At about 12:00-13:00 hours, the Accused killed six persons by sharp edged weapon. They killed Smt. Manju (D-1) first in her house. Then they went and killed Mahendra (D-2) and Shishpal (D-3) in their house;

Thereafter, the Accused killed Ravi (D-4) in the house of Jaipal Gosai. Smt. Mukesh (D-5) wife of Sompal, (mother of D-4), ran away to save herself. The Accused killed her on the passage at the western side of Madarsa near the pond;

Thereafter, the Accused went to fields of Baljor that was taken on '*Batai*' by Vikram (D-6) and killed him;

Many villagers saw the incident. When they tried to catch them, the Accuse threatened to kill them;

The Accused are moving in sugarcane fields and are threatening to kill anyone, who dares to give evidence or help the police. The entire village is terrorised;

No one was willing to lodge the FIR. Considering it to be the Informant's duty, he had given telephonic information and now is giving in writing,.

The crime was committed because of illicit relationship between D- 5 and D- 6.

11. The police investigated the case and submitted the charge sheet.

12. The case was committed to the sessions' court and was registered as ST No. 14 of 2006.

13. The Accused were arrested on 28.10.2005 at 11:45 hours with two country made pistols and 315 bore empty cartridges (Arrest and recovery memo Ex Ka-22). A knife and sword was recovered at their instance (recovery memo-Ex Ka-23). On the basis of recoveries, case crime no. 541 of 2005 and 542 of 2005 State Vs Ravindra and Rishipal under section 25 read with section 4 of the Arms Act, police station Chhaprauli, district Baghpat was registered.

14. The police also submitted charge sheet in the case under Arms Act. It was connected with the case under IPC and was committed to the sessions' court. It was numbered as ST No. 542 of 2005. Both trials were connected.

15. The Sessions Judge, Baghpat framed charge on 1.2.2006. The Accused were charged under section,

302 read with section 34 and 449 IPC in ST No. 14 of 2006;

Section 25 read with section 4 of the Arms Act in ST No. 16 of 2006.

16. The Juvenile filed an application before the trial court that he was a juvenile on the date of the incident and his case should be referred to the juvenile board. The trial court after considering the medical evidence rejected his application on 4.10.2006.

17. The Juvenile filed a criminal revision no. 6464 of 2006 before this Court. This

revision was decided on 1.12.2006 as being not maintainable. However, the trial court Judge was directed to get his age determined by the juvenile board and then proceed in the trial against the Appellant.

18. In pursuance of the order passed by this court, the case of the Juvenile was sent to the Juvenile Board, Meerut by the order dated 6.12.2006.

19. The Juvenile Board, Meerut declared him to be juvenile and thereafter his file was sent to the Juvenile Board, Meerut by the order dated 6.4.2007. Thereafter, the trial was held only against the Appellant.

20. A large number of case materials are in the case. They are contained in the seven bundles, and are sixty-seven in number.

21. Among others, the prosecution filed the following documents:

Copy of the FIR registered on the basis of the telephonic message dated 26.10.2005 (Ex Ka-18);

Detailed written report dated 26.10.2005 received by the police on the spot. (Ex Ka-1);

Recovery memo of blood stained and plain earth dated 26.10.2005 (at place of dead body of D-2) (Ex Ka-2);

Recovery memo of blood stained soil and plain earth dated 26.10.2005 (at place of dead body of D-3) (Ex Ka-3);

Recovery memo of blood stained soil and plain earth dated 26.10.2005 (at place of dead body of D-1) (Ex Ka-4);

Recovery memo of blood stained soil and plain earth dated 26.10.2005 (at place of dead body of D-5) (Ex Ka-5);

Recovery memo of blood stained soil and plain earth dated 26.10.2005 (at place of dead body of D-6) (Ex Ka-6);

Recovery memo of blood stained soil and plain earth dated 26.10.2005 (at place of dead body of D-4) (Ex Ka-7);

Report of Vidhi Vigyan Prayogshaha dated 24.4.2006;

Report of Vidhi Vigyan Prayogshaha dated 25.3.2006;

Report of Vidhi Vigyan Prayogshaha dated 25.3.2006;

Report of Vidhi Vigyan Prayogshaha dated 27.3.2006;

Report of Vidhi Vigyan Prayogshaha dated 25.3.2006;

Report of Vidhi Vigyan Prayogshaha dated 27.3.2006;

Postmortem examination report of D-2 dated 27.10.2005 (Ex Ka-12);
 Postmortem examination report of D-3 dated 27.10.2005 (Ex Ka-13);
 Postmortem examination report of D-4 dated 27.10.2005 (Ex Ka-14);
 Postmortem examination report of D-5 dated 27.10.2005 (Ex Ka-15);
 Postmortem examination report of D-1 dated 27.10.2005 (Ex Ka-16);
 Postmortem examination report of D-6 dated 27.10.2005 (Ex Ka-17);
 Spot Map with the Index of the dead bodies of Manju (D-1), Mahendra (D-2),
 Sheeshpal (D-3), Ravi (D-4) and Smt. Mukesh (D-5) (Ex Ka-20);
 Spot map with the Index of the dead body of Vikram (D-6) (Ex Ka-21);
 Memo of Arrest and recovery two country made pistol and 315 bore empty
 cartridges (Ex Ka-22);
 Recovery Memo of knife and sword (Ex ka-23);
 Spot Map with the index of knife and sword (Ex Ka-24).

22. The prosecution examined the following witnesses:

Satyendra Singh (PW-1): Informant;
 Sunil Kumar (PW-2): Eyewitness, brother-in-law of PW-3;
 `Amit Kumar (PW-3): Eyewitness, son of D-6,
 Smt. Mukesh (PW-4): Eyewitness, sister of D-6 and daughter of D-2;
 Dr. Pramod Kishor Sharma (PW-5): Doctor, conducted the postmortems of
 the Deceased;.
 Karan Singh (PW-6): Head constable, lodged the FIR;
 Mahipal Singh (PW-7): Investigation Officer (IO);
 Ram Bilas Verma (PW-8): Sub Inspector, prepared the Inquest of D-1 and
 D- 4 to D-6;
 Gaje Singh (PW-9): Sub Inspector, prepared the inquest of D2 and D-3.

23. The court examined Jaipal Singh as court witness-1 (CW-1). He was examined regarding the age of the Juvenile. His evidence is not relevant for decision of the Appeal.

24. The Appellant was examined under section 313 CrPC on 10.1.2008. He denied his involvement in the incident and stated that he was implicated due to the enmity.

25. The Additional Sessions Judge, FTC Court No.1, Baghpat (the ASJ) by his judgement dated 4.3.2008 convicted the Appellant in ST No. 14 of 2006, but acquitted him in ST No. 16 of 2006 under section 25 read with section 4 of the

Arms Act. The following sentence was awarded:

Death penalty and fine of Rs. 5000/- with default stipulation of six months' additional rigorous imprisonment under section 302 read with section 34 IPC.

Ten years' rigorous imprisonment with the fine of Rs. 2000 with default stipulation of two months' additional rigorous imprisonment under section 449 IPC.

The Appellant has filed the appeal against his conviction. The ASJ has also sent reference No. 4 of 2008.

POINTS FOR DETERMINATION

26. We have heard Sri NI Zafri, counsel for the Appellant and Sri DR Chaudhary, GA and Sri Arunendra Kumar Singh and Sri Anand Tiwari, AGAs for the State¹.

The following points arise for determination in the case;

- (i) What was the motive for the crime?
- (ii) Whether the eye witnesses were present;
- (iii) Whether the Appellant is guilty;
- (iv) In case the Appellant is guilty, then what punishment should be awarded;

1st POINT: MOTIVE NOT CLEAR

27. In the written complaint, the motive for the incident is said to be illicit relationship between D-5 and D-6. This was also deposed by the Informant (PW-1) in his statement. However, the real reason for the incident may be something else.

28. In this case, two families are involved. The pedigrees of the families are mentioned under the heading 'THE FACTS'. Amit Kumar (PW-3) has deposed that the two families are related. However, he was not able to depose, how they were related. Smt. Mukesh (PW-4) is real sister of D-6 and *Bua* of (PW-3). She is elder of the two. She deposed that the families are not related.

29. In this case, two persons are said to have committed crime. One is the Appellant, brother-in-law of D-5, the lady, who was said to have illicit relationship with D-6. The other is the Juvenile and he is the first cousin of D-2 father of D-6. This is to say that he is the uncle of D-6.

¹ We are thankful to the counsel appearing in the case for correcting a part of the judgement under the heading 'THE FACTS' 'POINTS FOR DETERMINATION' and the Appendixes. Yet, mistakes if any, are ours.

30. There seems to be no reason as to why these two people would join together to commit the crime if the reason for the incident was only illicit relationship between D-5 and D-6. The person who might be aggrieved with this relationship were D-1 wife of D-6 and Sompal husband of D-5. Sompal neither committed any crime nor was a party to it. In fact, his son D-4 has also been killed.

31. It also does not stand to reason why the Accused would kill,

D-1, real wife of D-6;

D-2 and D-3, father and real uncle of D-6; and

D-4 son of D-5.

32. The witnesses in this case have deposed that Sachin is another son of D-5 and Sompal. He had gone alongwith D-6 to the fields at the time of the incident. The next day, Sompal husband of D-5 and Sachin were also present at the time of cremation. In case the motive was illicit relationship between D-5 and D-6 then perhaps, Sachin would not have gone to fields alongwith D-6.

33. In any case, if any person could have grudge due to the illicit relationship then it was the D-1 and Sompal, husband of D-5 and not his brother (the Appellant). The motive appears to be something more than the one mentioned in the FIR or deposed by the Informant in the FIR.

34. The counsel for the State suggested that the motive could be to eliminate the entire family so that they could occupy and use the agricultural fields. This might be true but in absence of any evidence, the motive for the crime cannot be ascertained.

35. Nevertheless, the motive may not be relevant if the prosecution is able to prove its case beyond reasonable doubts. In that event, irrespective of motive, the conviction has to be maintained.

2nd POINT: EYEWITNESSES WERE PRESENT

36. The prosecution examined nine witnesses. Out of these nine, three {Sunil Kumar (PW-2), Amit Kumar (PW-3) and Smt. Mukesh wife of Bharatvir (PW-4)} are eyewitnesses. Out of these three, PW-2 and PW-4 are said to be eyewitness of all the six murders. Whereas, PW-3 is said to be eyewitness of the first one namely of D-1.

37. The trial court has also examined one witness as CW-1. As already indicated, his evidence not relevant for deciding the appeal before us.

38. The Informant (PW-1) is not an eyewitness but his testimony may be relevant;
So far as the presence of other witnesses are concerned; or
The conduct of the Appellant is concerned.

Regarding Presence of PW-2 and PW-4

39. Sunil Kumar (PW-2) is younger brother of the husband of Smt. Mukesh (PW-4). According to prosecution case, PW-4 had come over to her '*mayaka*' (parent's house) to meet her family members. PW-2 had brought PW-4 on a motorcycle.

40. The counsel for the Appellant submitted that presence of Sunil Kumar (PW-2) and Smt. Mukesh (PW-4) is doubtful for the following reasons:

- (i) Only reason for (PW-2) to be present was that he brought PW-4. In case PW-4 was not present then PW-2 would not be present;
- (ii) The husband of PW-4 was ill and was admitted in the hospital in Delhi. There was no question of her coming to meet her parents;
- (iii) The incident indicates that the purpose was to eliminate the entire family. Had PW-4 also present, then she would have been killed. The fact that she was neither killed nor injured indicates that she was not present on the spot;
- (iv) The oral testimony is inconsistent with the injuries;
- (v) Six persons have been killed and they were killed at five different places. It is unnatural that they (PW-2 and PW-4) would go to all places to see the murders being committed instead of attending to the injured immediately.

ist & iind Submission

41. Smt. Mukesh (PW-4) is the daughter of D-2 and sister of D-6. She was married to Bharatvir. Sunil Kumar (PW-2) is younger brother of Bharatvir. PW-2 and Bharatvir were agriculturist. They have an elder brother Yashpal, who was in Army.

42. Sunil Kumar (PW-2) explained that he had brought his sister-in-law Smt. Mukesh (PW-4) to the village on a motorcycle. His presence on the spot is because of PW-4. His presence floats or sinks with that her.

43. Smt. Mukesh (PW-4) deposed that:

She was married 19 years ago, and had three children;

She used to come to her parent's house two and three times in a year;
She sometimes used to go to her parent's house with her children and sometime her husband accompanied her.

Her husband was admitted in the hospital in Delhi for the last six months and had changed hospital three times;

She was not the only one who was looking after her husband. He was being looked after by the entire family. She used to go in hospital every fourth day; Her relations from the parent's side also used to go to the hospital. They had come 15 days before the date of the incident.

44. It is correct that the husband of Smt. Mukesh (PW-4) was ill and was admitted in the hospital in Delhi. In such a situation, people divide days and time to be in the hospital. A person cannot be in the hospital every day, every minute, every second: everyone needs a break.

45. Smt. Mukesh (PW-4) deposed that she used to go to see her husband every fourth day. Going to parent's house always brings happiness and change: it brings optimism and moral support. This could be the reason for going to the parent's house. This is not unnatural.

46. Smt. Mukesh (PW-4) deposed that they had car and a motorcycle; sometimes she used to come alone by bus, but on that date she had come on the motorcycle with her brother-in-law.

47. The husband of Smt. Mukesh (PW-4) was admitted in hospital. She would not want to waste time by coming and going by bus. This may be the reason for coming on the motorcycle. Her presence cannot be doubted on the ground that her husband was admitted in the hospital. Had he been admitted a day or two before then the matter would have been different. He was admitted for last six months.

iiird Submission

48. Smt. Mukesh (PW-4) and Sunil Kumar (PW-2) deposed that they were in the house of D-1 at the time D-1 was killed. It is also clear from their deposition that they were seen by the Accused. Yet they were not injured. This has been explained by them as follows:

PW-4 deposed that the Accused told her that she was a woman and should

keep quiet. She was not their enemy (i.e. enemy of the Accused).

PW-2 deposed that the Accused told him (PW-2) that he was a guest and he should keep quiet.

49. The motive of the crime is not clear; though there is suspicious that the Accused wants to grab the agricultural property. If that be the case then it is just possible then there was no necessity of injuring Smt. Mukesh (PW-4) or Sunil Kumar (PW-2). These witnesses have also explained the reason as to why they were neither killed nor injured. However, it is difficult to understand or guess the mind of the Accused or their thinking at that time.

ivth Submission

50. The prosecution case is and the eyewitnesses also deposed that the Appellant injured the Deceased with knife and the Juvenile injured them with the sword.

51. The counsel for the Appellant brought to our notice the deposition of Dr. Pramod Kumar Sharma (PW-5) and submitted that:

These injuries could be caused only by heavy sharp edged weapons and not by a knife;

The Appellant was weilding knife;

It cannot be said that he participated in the crime.

52. The ante mortem Injures of the Deceased are mentioned in **Appendix 1 to 6**. They are incised wounds and can be caused by sharp edged weapons.

53. Dr. PK Sharma (PW-5) conducted the postmortems. He deposed that:

The injuries could be caused by the sword;

These injuries could also be caused by a knife, if it was used with force;

54. In such ghastly incident, it is not possible to notice with what force knife was used. The method of killing indicates that at the time of the incident, murder was only in the mind of the Accused: they would surely be using the weapons with force.

55. Apart from above, if there was a knife injury and thereafter injury was caused by sword then it would not be possible to determine the injuries caused by the knife. This would not mean that there were no knife injuries or injuries are

inconsistent with the oral testimony.

56. In our opinion, It cannot be said that the oral testimony is inconsistent with the injuries.

vth Submission

57. Sunil Kumar (PW-2) and Smt. Mukesh (PW-4) have deposed that:

They had reached the village at about 11:00am and initially PW-4 had gone to meet her father (D-2) and met D-3 as well. Thereafter they had gone to meet D-1;

PW-3 went upstairs alongwith Amit Kumar (PW-3) and PW-4 sat alongwith D-1 on the cot. The Appellant (wielding knife) and the Juvenile (wielding sword) came to the house. They had fire arms as well. They killed D-1;

Then the Accused went to the Gher where D-2 and D-3 were sitting and killed them;

Then D-4 was killed at the house of Jaipal. D-5 was chased and killed near the pond;

The Accused said about killing D-6 as well. Then they went towards field of Baljor that was taken by D-6 on *Batai*. D-6 tried to run but the Accused got hold of him and killed him.

58. The murders did not take place at one place but at five different places. The first four places were close by and within abadi, however the fifth place where D-6 was killed was at a distance of about one kilometre from the house of D-1.

59. The Informant mentioned in the written report the entire incident was seen by the villagers. He deposed as well. He deposed that he did not see the Accused killing the Deceased but this does not mean that he did not see the villagers witnessing it.

60. Sunil Kumar (PW-2) and Smt. Mukesh (PW-4) deposed that the entire incident was seen by the villagers. No one was able to stop them as they were threatening the villagers with firearms that they would be killed.

61. If there were many villagers on the spot following the Accused and Smt. Mukesh (PW-4) and Sunil Kumar (PW-4) also joined them then it can not be said that their conduct was unnatural. Often one follows the crowd blindly : thinking

stops in such a situation.

Regarding Presence of PW-3

62. The counsel for the Appellant submitted that the presence of Amit Kumar (PW-3) is doubtful for the following reasons:

- (i) At the time of incident, PW-3 was student of High School. The incident happened on Wednesday and he would be in the school rather than in the house;
- (ii) The purpose of the incident seems to be to eliminate the entire family. Had PW-3 being there present on the spot then he would have also been killed;
- (iii) The statement of PW-2 under section 161 CrPC was taken thereafter on 12.11.2005, seventeen days after the incident;
- (iv) PW-2 deposed that he saw police after the incident, yet he did not tell them that he saw the incident;
- (iv) The IO (PW-7) has stated that he tried to find out Amit Kumar but he was not found;
- (v) PW-2 did not remember the length and thickness of the knife or sword. He also did not remember colour of clothes worn by the Appellant;
- (vii) PW-2 deposed that the Appellant gave knife blow to D-1 at the neck however no injuries were found in the neck.

ist Submission

63. Amit Kumar (PW-3) is the son of first wife of D-6, D-6 had two children from his second wife (D-1). PW-2 deposed that:

He was student of High School at the time of the incident. His school was closed on that day because of *Diwali*. His younger brother and sister were studying in a primary school, which was different from his school. On the fateful day, their school was open and they had gone to their school; PW-3 alongwith Sunil Kumar (PW-2) had gone upstairs; The Accused had come armed with knife, sword and fire arms and killed his mother (D-1); At the time of the incident, he had hid himself behind the wall; After the incident, he ran away and hid in the sugarcane fields.

64. Amit Kumar (PW-3) was cross examined but, no suggestion was given to him

that his school was not closed. We have no reason to doubt his testimony that his school was closed. In case his school was closed then, his presence in the house is natural.

iind Submission

65. Amit Kumar (PW-3) was 'student of High School at the time of the incident. He deposed that normally he used to come back from school by 13:00 hours. The Accused had all reasons to kill him but might not have seen him in the house thinking that he would be in School.

66. Amit Kumar (PW-2) has given reason that why the Accused could not have seen him. He deposed that he was hiding behind the wall. The Accused could also be under the impression that he would be in the school.

iiird and ivth Submission

67. Amit Kumar (PW-3) also deposed that:

He was terrorised and he ran away and hid himself in the sugarcane field;
He came back after sunset.

68. In case the IO did not meet Amit Kumar (PW-3) in the evening or PW-3 saw the police but did not inform him then it does not mean that he was not present in the village on the fateful day.

The incident happened in October, 2005. The evidence was being recorded in July, 2007. At that time his age is mentioned 15 years. He would be about 13 years at the time of the incident;

Such a young boy would be devastated and emotionally torn due to such a ghastly incident, where everyone from his family including his parents and grand parents were killed.

PW-3 also deposed that he was shocked and perturbed by the incident. He would not know what to do what to say about giving statement.

69. At that time, Amit Kumar (PW-3) was shifted to his maternal uncle's house. This was natural: no one was left in his family. His statement under section 161 CrPC was recorded on 12.11.2005 after about sixteen days of the incident at his maternal uncles' village.

70. The fact that Amit Kumar (PW-3) was shifted to his maternal uncle's house or

his statement was recorded there or could not be recorded earlier does not create any doubt. The situation was such.

vth and vith Submission

71. We have already indicated that Amit Kumar (PW-2) was a young boy at the time of the incident. The evidence was being recorded after about two years. If he did not remember the colour of the clothes that the Appellant was wearing or the size of knife or the sword then it does not matter. Even a mature person may find it difficult to remember.

72. There are injuries on the head. There is little distance between the neck and head. Anyone could be easily mistaken whether the injuries are being caused to the head or the neck. Nothing turns about the same.

PW-2 to PW-4 Were Present

73. The wife of Informant (PW-1) is Pradhan of the village. He is undoubtedly an independent person. He neither has enmity with the Accused nor any special friendship with the victim side. There is no such suggestion of any kind to him. He deposed that:

Sunil Kumar (PW-2) and Smt. Mukesh (PW-4) were present at the time of incident;

He has also deposed that Two children of D-6 had gone to school and he had no knowledge about the third one.

There is nothing to disbelieve his statement regarding presence of PW-3 and PW-4.

74. The presence of Smt. Mukesh (PW-4) and Sunil Kumar (PW-2) has not only been deposed by the Informant (PW-1) but also by Amit Kumar (PW-3). PW-2 and PW-4 both have deposed about the presence of PW-3 in the house at the time of murder of D-1. There is no material contradiction in their statements. We have no reason to disbelieve them.

75. In our opinion:

Smt. Mukesh and Sunil Kumar were present on the spot at the time of the incident. They are eyewitnesses of the murders;

Amit Kumar was present at the spot when D-1 was killed.

3rd POINT: APPELLANT IS GUILTY

No Unrelated or Independent Witness—Not Fatal

76. The counsel for the Appellant submitted that:

In the FIR, it was mentioned that incident was seen by many villagers, but neither any independent eyewitness were named in the FIR nor were produced;

This creates doubt in the prosecution case.

77. The fact that names of witnesses were not disclosed was explained in the FIR. The FIR states that the Accused had threatened the villagers that in case they give evidence or help to the police then they would be killed. This is the reason that names of the eyewitnesses were not mentioned.

78. The IO (PW-7) deposed that:

He reached the spot between 14:45 hours to 15:00 hours after receiving the telephonic message;

He could not take deposition of any person at that time as neither anyone was coming on his calling nor anyone was willing to give statement due to terror.

79. The order sheet of the trial court dated 22.11.2006 indicates that the application was filed by Smt. Mukesh (PW-4) and Sunil Kumar (PW-2). The relatives of the Accused have come and are terrorising the witnesses. They asked for the protection from the court which was granted on the same date.

80. The Informant (PW-1) indicated the different places where murders were committed and how the Accused went about doing it. A reading of his statement and FIR indicates that he was present and saw everything yet he denied seeing the incident. Even he did not dare to depose openly. If the husband of *Pradhan* of village was afraid to depose then how can ordinary villagers is expected to depose.

81. Considering the circumstances of the case, the fact that no villager or unrelated witness has come forward to depose, does not create any doubt in the prosecution case.

Conduct of the Appellant

82. The Informant admitted that he had not seen the incident but deposed about the conduct of the Accused as follows:

Immediately after the incident, the Accused had terrorised the entire village with firearms. They had also threatened the Informant to kill him;

After the incident they had come to the village and were searching for children of D-6;

The Informant had asked the Accused not to do it. On this they had again threatened to kill him.

83. This is the conduct of the accused after the incident. It is relevant under section 8 of the Evidence Act. There is neither any suggestion of any enmity nor any enmity has been pointed out. There is also no suggestion as why the Informant would depose as aforesaid or depose falsely. Mere bald statement that the Appellant is being involved under section 313 CrPC is not sufficient.

84. We have held that eyewitnesses were present on the spot at the time of the incident. Sunil Kumar (PW-2) and Smt. Mukesh (PW-4) deposed that Appellant was involved in all the murders. He used knife.

85. Amit Kumar (PW-2) deposed about the involvement of the Appellant in the murder of D-1.

86. We have believed the presence of the eyewitness on the spot. We have no reason to disbelieve them regarding fact of complicity of the Appellant in the crime.

87. In our opinion, the prosecution has proved its case beyond reasonable doubt against the Appellant. He is guilty under section 302 read with section 34 and 449 IPC.

4th POINT : PUNISHMENT

88. In the incident, six persons were killed. This not only included the sister-in-law and one of the nephews of the Appellant but also four persons of family of Amit Kumar (PW-3). However, the motive for the murder is not proved. It is not known why was this crime committed. There is nothing to show that the Appellant was a psychopath and did it for fun.

89. Considering the circumstances of the case, the death sentence is converted into the imprisonment for life but his fine is enhanced from Rs.5,000 to Rs.52,000.

SOME OBSERVATIONS

90. The incident happened at noon. Six murders were committed. It is not possible that it was not seen by the unrelated or independent witnesses. Yet, no one came forward to depose. While discussing sub-heading 'No Unrelated or Independent Witness —Not Fatal' under third point, we have observed the reasons as to why no one came forward. The IO deposed that no one was coming forward even to get the statement recorded. Even the husband of the *Pradhan* was terrorised.

91. This indicates that everything is not well with our criminal delivery system. Unless remedied, it may be its death knell.

92. Witness protection programme is the need of the hour. Witnesses have to have confidence that system will protect them; the system has to instil confidence in them.

93. Witness Anonymity and witness protection Programme are important aspects of criminal jurisprudence. The Supreme Court, in *NHRC Vs State of Gujrat* {2003 (9) SCALE 329; 2008(16) SCC 497} observed,

'No law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses. For successful prosecution of the criminal cases, protection to the witnesses is necessary as the criminals often have access to the police and the influential people.'

The police is also is not as effective in villages as it should be.

94. Considering the observations of the Supreme Court, the Law Commission of India took up the subject of 'Witness Anonymity' and 'Witness Protection', and came forward with a Consultation Paper alongwith a Questionnaire in August, 2004 seeking responses on various aspects.

95. After receiving the response, the Law Commission submitted its 198th report 'Witness identity protection and witness protection programmes' in August 2006 alongwith recommendation, on both subjects. A draft bill in regard to 'Witness Identity Protection Bill 2006' was also sent.

96. The subject is yet to receive consideration. The sooner it is done, better would be it: not only for criminal justice system but also for the society.

CONCLUSIONS

97. Our conclusions are as follows:

- (i) Smt. Mukesh and Sunil Kumar were present in the village and saw the incident;
- (ii) Amit Kumar was present at the spot, when Manju (D-1) was killed;
- (iii) The prosecution has proved its case beyond reasonable doubts against Rishipal, (the Appellant). He is convicted under section 302 read with section 34, 499 IPC. He is sentenced to,:

Imprisonment for life and fine of Rs. 52,000/- with default stipulation of three years' simple imprisonment rather than rigorous imprisonment;

Ten years rigorous imprisonment and fine of Rs. 2000.- with two months' default stipulation of two months simple imprisonment rather than rigorous imprisonment under section 449 IPC.

Both sentences will run concurrently.

- (iv) The fine so realised will be equally distributed among the children of Virkam (D-1) {e.i. Amit Kumar (PW-3) and his step brother and sister}.

98. In view of our conclusions, the reference No 4 of 2008 is rejected. The conviction of the Appellant in ST No 14 of 2006 is upheld but sentences is modified. The Appellant is in jail. He will be detained to serve out his sentence.

Date: 10.8.2010

SKS

Appendix-1

The Injuries of Manju (D-1) are as follows:

- (i) Multiple Incised Wound on Rt side Head & forehead average size 18 to 20 cms x 1-1/2 cms x craineal cavity deep/Bone deep in AP Direction transversely almost. Tailing Back word in fronto & parietal? & occipital area, Brain Matter is incised & cut & open to Air. They are parallel to each other & four (4) in number. Frontal, parietal occipital Bones are Incised & cut or fractured.
- (ii) Multiple Incised Wound on Lt Head in occipital Parietal area in Transversely direction in AP. Direction tailing Back word above ear (Lt) size average 16 cms x 2 cms x Brain matter deep two in number at 3 cms distance, Temporal & Occipital Bones are Incised with Brain Matter by cut.
- (iii) Incised wound on Back of (Lt) Wrist Transversely and tailing outer side and Hand is Hanging by soft tissue, All carpals are slighting cut surfaces size 9 cms x 1-1/2 cms x CA and through at wrist Hanging at Inner side.
- (iv) (Rt) Hand Index Finger is Amputated at Proximal Phalynex level. By through & through Incised wound size of Amputated at a surface, 1-1/2 cms x 1-1/2 cms x through & through clean cut surface incision.
- (v) Incised wound obliquely at (Rt) Hand Palmer surface obliquely tailing downward size 12 cms x 5 cms x Bone deep. All four (4) 2nd to 5th meta Corporal are Incised by cut with soft tissue in mid of CA palmer side.
- (vi) Incised wound - 6 cms x 1 cm x Bone deep, Obliquely tailing down word at Back of outer surface wrist & Radial area, Radius & carpal are Incised by cut.

Appendix-2

The injuries of Mahendra (D-2) are as follows:

- (i) Incised wound - 16 cm x 7 cm x Muscle deep on (Lt) Fore arm in upper 2/3" area on Back & outer of fore arm obliquely and Tailing down words.
- (ii) Incised wound - 10x2 cm x Bone deep on palmer surface of (Rt) hand Metacarpal of Thumb & of Index & Middle Finger are fractured by cutting extending from the thumb (metacarpal) to downward obliquely.
- (iii) Incised_wound on (Rt) shoulder back 5 cms x 1 cm x bone deep on upper half of scapular area.
- (iv) Incised wound 18 cm x 2-1/2 cm x bone deep on (Lt) face extending from Temporal area to downward upto mandible obliquely. Following Bones are fractured by cut in Temporo mandibular joint. Maxilla & mandible on (Lt) side tailing downward.
- (v) Incised wound 18 cm x 3 cm x bone deep, extending from mid of pinna (Rt) Ear (which is incised in two pieces) to back side upto occipital area. Temporal and occipital Bones are divided in two separate pieces. Tailing Backward transversely base of skull fractured.
- (vi) Incised wound 20 cm x 2-1/2 cm x cranial cavity deep, tailing Backward in AP. Transverse direction # frontal parietal & occipital are incised with Brain matter. It is also incised & open to air.

Appendix-3

The injuries of Shish Pal (D-3) are as follows:

- (i) Incised Wounds at (Lt) parietal area of skull at top size 12 cm x 1-1/2 cms x Brain matter deep obliquely & Tailing Backwards.
- (ii) Multiple Incised Wounds at (Lt) Head Laterally & at Back side. All tailing Back words and Inter Irregular with other on Back ward direction by two Incised Wound Pinna in Incised at two places transversely parallel average Size - 24 cm x 2 cm x Cranial cavity & Brain deep, Brain matter in exposed to air following Bones are Fractured by Cut (LL) frontal parietal (Lt) Temporal & occipital on (Lt) side, All 3 wounds are in AP Oblique Direction.
- (iii) Incised Wound on Palmer surface of (Rt) hand at Proximal Phalanx of (Rt) hand Thumb, Index & Mid Finger in oblique direction phalanx of Index & Middle finger are Incised with Cut, & Fractured tailing obliquely down word, Size 14 cm x 3/4 cmx Bone deep.
- (iv) Incised Wound - 8 cm x 3/4 cm x Bone deep on lower end of (Lt) Forearm at wrist Back, transversely and tailing outer side. Radius Bone is incised at lower end by cut.

Appendix-4

The injuries of Ravi (D-4) are as follows:

- (i) Incised wound Multiple at Palmer side Average size 14 cms x 6 cms x Bone deep, Meta carpels. All are incised by cut with soft tissue tailing downward, on outer side obliquely with little finger which is hanging with soft tissue.
- (ii) Incised wound 9 cms x 3 cms x Bone deep on Rt. side shoulder outer surface tailing Backward, Head of Humerus is Incised by cut with soft tissue.
- (iii) Incised Wound 12 cms x 3 cms x Bone deep and through and through on back of Hand. Lt. side on Palmer surface obliquely and tailing downward and outer side all (5) Metacarples are incised and by cut & almost lower half of Hand is hanging By soft tissue on thumb side.
- (iv) Incised wound 22 cms x 10 cms x Bone and Opposite (Lt) side soft tissue deep in Neck at wound is at (Rt) side extending from Mandible lower surface to Backward side and at cervical vertebrae C3-C4 level vertebra column also incised through and through lat. Neck upper Head Lower Body is only intact? by soft tissue Lt. side of Neck entire vital parts B/L great vessels trachea Oesophagus thyroid gland etc are incised. Tailing backwards transversely.
- (v) Incised wound 24 cms x 6 cms x cranial cavity Brain deep Brain matter incised tailing backward in AP & transversely direction Brain Matter is exposed to air, following Bones are fractured in Incised Wound frontal, Pinna of Ear (Rt) side Parieto temporal bones of (Rt) side.

Appendix-5

The injuries of Smt. Mukesh (D-5) are as follows:

1. Incised wound 6 cms x 1/4 cm x Abdominal cavity deep omentum is open to air. Transversely and tailing Lt. side 1/5 cms above umbilicus in middle area.
2. Incised wound 9 cms x 3/4 cms x Bone deep on mandible of (Lt) side face tailing outwardly transversely in APA direction. Mandible is showing incised Bone by cut at (Lt) sic.
3. Incised wound transversely and obliquely in PACA direction almost obliquely tailing outwardly size 22 cms x 5 cms x Brain cavity deep, Brain Matters incised & open to air extending from occipital area of Head at (Lt) side upto face. Crossing temporal (Lt.) side, Maxilla, (Lt) Pinna of (Lt) Ear, divided in two pieces, above mentioned all Bone are incised by cut.
4. Incised wound almost obliquely extending from (Lt) Pareefat area of Head above ear (2 cms above from ear) to auterorly crossing frontal area (Lt) Eye & upto nose (Lt) side in mid area. These all Bones are incised by cut. Size 24 cms x 2 cms x Brain cavity deep Brain Matter (Lt) side incised & exposed to Air & tailing Anteriorly.

Appendix-6

the injuries of Vikram Singh (D-6) are as follows:

- (i) Incised wound - 6 cms x 3/4 cms x muscle deep, transversely tailing (Rt) side, at Midline area, 1-1/2 cms above umbilicus at abdomen.
- (ii) Multiple Incised wound which Inter Mangled? to each other on (Rt) side & at Back of Head & at (Lt) side of Head. Tailing anteriorly Almost Transverse obliquely, size average 24 cms x 2-1/2 cms x Brain cavity & matter deep, enter occipital Bone, Both parietal Bones, Both Temporal Bone are fractured in multiple pieces, with Brain Matter, & could not be identifiable separately & ensure Brain matter is exposed air in pieces form
- (iii) Incised wound - 12 cms x 1 cm x Bone deep at Mandible surface from chin to upward up to front of ear at (Lt.) side. Mandible is Incised (Cut, obliquely Tailing anterior & down ward.
- (iv) Multiple Incised wound - (four) in number at Front of neck & on (Lt) side laterally, tailing Anteriorly? & obliquely at 1-1/2 cms away to each other parallely Average size 9 cms x 3/4 cm x Cervical vertebra deep, Trachea oesophagus & soft tissue are Incised & cut. Extending from Lt. Lateral side of neck to mid line.
- (v) Incised wound at Back (Lt) wrist & on ulnar side size 7 cms x 1-1/2 cms x Bone deep, ulna Bone is Incised & cut in lower 3rd area & extending from ulna to wrist at back tailing down ward obliquely.
- (vi) Incised wound on back & at part of palmer side of Hand (Rt) side at Knuckle area of little finger size 2-1/2 cm x 3/4 cm x Bone deep proximal phalanx Incised & cut obliquely & tailing down ward obliquely.

HON'BLE YATINDRA SINGH, J.

HON'BLE SURENDRA SINGH, J.

1. We have heard Sri NI Zafri, counsel for the Appellant and Sri DR Chaudhary, GA and Sri Arunendra Kumar Singh and Sri Anand Tiwari, AGAs for the State.

Our Conclusions are:

(i) Smt. Mukesh and Sunil Kumar were present in the village and saw the incident;

(ii) Amit Kumar was present at the spot, when Manju (D-1) was killed;

(iii) The prosecution has proved its case beyond reasonable doubts against Rishipal, (the Appellant). He is convicted under section 302 read with section 34, 499 IPC. He is sentenced to,:

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2. In view of our conclusions, the reference No 4 of 2008 is rejected. The conviction of the Appellant in ST No 14 of 2006 is upheld but sentences is modified. The Appellant is in jail. He will be detained to serve out his sentence.

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