SUPREME COURT OF INDIA

M.A.Antony @ Antappan

Vs.

State of Kerala

Crl.A.No.811 of 2009

(Madan B.Lokur,J., S.Abdul Nazeer and Deepak Gupta,JJ.,)

12.12.2018

JUDGMENT

Madan B.Lokur,J.,

1. The broad allegations against the appellant have been stated in the decision of this Court in the criminal appeal out of which the present Review Petition arises. It would be more convenient to reproduce the allegations from the decision:

> "On the intervening night of 6th and 7th January, 2001, when inmates of Aluva Municipal Town of Ernakulam District in the State of Kerala were in deep sleep, Manjooran House located in the midst of the town became a scene of ghastly crime. Six members of one family in the Manjooran House lost their lives in a matter of three hours, Antony @ Antappan, the appellant herein, in search of greener pastures abroad for which purpose he needed money but was refused to be paid by the members of the Manjooran family, and therefore as per the prosecution's version used knife, axe, and electrocuted and strangulated Kochurani and Clara at about 10 in the night of 6.1.2001 and Augustine, his wife Mary, and their children - Divya and Jesmon at midnight. The Manjooran House full of life at 10 in the night by the stroke of midnight became a graveyard. The appellant after causing the death of Kochurani and Clara is said to have waited for the arrival of other four members of the family who had gone to see a film show. On their arrival he turned them into corpses. He waited for their arrival to kill them as he knew that for the two murders committed earlier by him he would be suspected by them, as he was in the house when they left the house for the film show. The prosecution alleges that all these murders were cold blooded, planned and executed with precision and the appellant ensured that there is no trace of life left in them before he left the scene of occurrence. When put to trial for murders, appellant, however, pleaded innocence and claimed trial."

2. After trial, the Sessions Court in Ernakulam in Kerala in Sessions Case No.154 of 2004 found the appellant guilty of the offences and convicted him by judgment and order dated 31st January, 2005. It appears that submissions on the question whether the appellant should

be awarded life sentence or death sentence were addressed on the same day or immediately thereafter since on 2nd February, 2005 the Trial Judge sentenced the appellant “to be hanged by the neck till he is dead”.

3. The Trial Judge stated, while awarding the sentence of death, as follows:

> “231. The cruel tendency of the accused was writ large even in the manner of attack. His conduct and behaviour is repulsive to the collective conscience of the society. It is clear that he does not value the lives of others in the least. The fact that the murders in this case were committed in such a deliberate and diabolic manner even beyond the slight expectation of the victims, without any provocation whatsoever from the side of the victims that too having enjoyed the hospitality and kindness of the victims, indicate the cold blooded and premeditated approach of the accused to put to death the victims which included two innocent children in their earlier teenages also, for a sordid purpose.
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> 232. It was clearly come out that his wife and child are not residing with the accused. He does not know even the school at which his wife is working as teacher. Even according to him, she has not cared to come to reside with him after the incident in this case. In fact, all my searches for extenuating circumstances in this case are in vain. From various judicial pronouncements of the Hon’ble Supreme Court of India on the subject, it has come out that in the choice of sentence the court has to weigh the aggravating and mitigating factors available on the facts of the case to find out whether special reasons do exist to categories [categorize] the case as one among the “rarest of rare cases”.
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> 233. The accused is a hardened criminal beyond any correction and rehabilitation. In this case the culpability has assumed the preparation of extreme depravity. The accused is a preferred example of blood thirsty, irreclaimable and hardened criminal. This court is of the view that, to spare such a criminal from the gallows is to render the justicing system suspect and to have recourse to the lesser alternative in sentencing this accused will be a mockery of justice. As this incident had sent tremors in the society and the collective conscience of the community as such was shocked, it is not to be humane but to be callous to allow such a criminal to return to the society. When multiple murders are committed in the most cruel, inhuman, extreme, brutal, gruesome, diabolic, revolting and dastardly manner, this court cannot wriggle out of the infliction of the extreme penalty. Matters being so, special reasons do exist in this case under Section 354(3) Cr. P.C. and this case comes within the category of “rarest of rare case” in which the “lesser alternative is unquestionably foreclosed.”

4. The conviction and sentence came up for confirmation before the High Court of Kerala in Death Sentence Reference No.5 of 2005. The appellant was also aggrieved by his conviction and sentence and he preferred Criminal Appeal No.385 of 2005 against the judgment and sentence of the Trial Court.

5. By a judgment and order dated 18th September, 2006 the High Court confirmed the death sentence and dismissed the appeal of the appellant.

6. On the award of the death sentence, the High Court took the view that the crime committed by the appellant was most cruel and diabolical. It was observed that he had no respect, no care, no dignity, no mercy for human life and his living in this world is most dangerous to society. The High Court expressed its views on the sentence to be awarded to the appellant in paragraph 49 of the judgement. This reads as follows:

> "49. On the question of sentence all that has been urged before us by Mr. Ramakumar is that the present is not a 'rarest of rare' case where the appellant should be given capital punishment. No arguments have been raised to show any mitigating circumstances. We have reconsidered and yet reconsidered every aspect of the case. On every reconsideration, our view gets more and more strengthened that in the present case, death penalty has to be imposed. It is indeed a rarest of rare case. In this country of seers and sages, even a worm unconsciously trampled under the foot is considered to be a sin. Guided and motivated by tradition of non-violence, people in this country do not even think of physically harming anyone. Mahatma Gandhi, the Father of the Nation and many other stalwarts brought freedom to this Nation from the British Empire by fighting a bloodless war of independence. The appellant has trampled these lofty ideals and traditions of this country under his foot. He extinguished all members of a family in a most cruel and gruesome manner. He became instrumental in causing black and unmitigated tragedy and caused shudders to the society. In causing death of six members of a family, he acted in a most cruel and diabolical manner. He used every possible instrument in the house to cause their death. As the confession goes if knives would not be enough to kill the inmates, he would use furniture in the house to strike them, and if that be not enough he would axe them, and even if that be not enough he would electrocute them and if still not enough he would strangulate them. In cruelty and brutality, he exceeded all limits. It is unimaginable, unthinkable and difficult to believe that after causing six murders by splashing blood all around the house, he would sit in the same house for almost five hours as if he was not siting amongst six dead people, but amongst trophies won by him in a prestigious event. He has no respect, no care, no dignity, no mercy for human life. His living in this world is most dangerous to the society. We need not refer to various judicial precedents as every case has its own facts, but would hasten to make reference to only one case which appears nearest on facts of the present case. In Dayanidhi Bisoi v. State of Orissa, 2003 Crl.L.J. 3697 (SC), a case which was based upon circumstantial evidence, accused was related to the deceased. He was enjoying hospitality and kindness of deceased in the evening. He killed entire family of deceased which included a three years child in the night. Murders were committed when the victims were sleeping and there was no provocation from the victims. The motive was only to gain financial benefits. The Supreme Court found it to be case of cold blooded murder with premeditated approach of accused. It was held to be a rarest of rare case. The accused was sentenced to death."

7. Feeling aggrieved by his conviction and confirmation of the death sentence, the appellant preferred Criminal Appeal No. 811 of 2009 in this Court which was dismissed by a judgment and order dated 22nd April, 2009. This Court did not at all advert to or discuss the quantum of sentence awarded to the appellant. This was decided on its facts and dismissed.

8. Feeling aggrieved by the dismissal of his appeal, the appellant preferred Review Petition (Crl.) No.245 of 2010 but that was dismissed by an order dated 13th April, 2010.

9. In view of the decision of this Court in *Mohd. Arif alias Ashfaq v. The Registrar Supreme Court of India & others*[1] the said review petition was re-opened for consideration and that is how it is before us.

Submissions

10. Learned counsel for the appellant raised a variety of grounds for commuting the death sentence awarded to the appellant into one of life sentence. It was contended that the case was one of circumstantial evidence and therefore the sentence of death should not be awarded. It was also contended that this Court as well the High Court and the Trial Court failed to consider the probability of reformation of the appellant. It was also contended that the prior history and criminal antecedents of the appellant were not relevant in awarding the sentence. It was submitted that the Trial Judge had erroneously described the appellant as a hardened criminal. In fact, we find that learned counsel for the appellant is correct in this submission since there is absolutely nothing on record to show that the appellant had previously committed any crime whatsoever. Indeed, there is nothing on record to even suggest that the appellant was a hardened criminal.

11. We do not propose to deal with the submissions advanced by learned counsel since similar submissions were raised before us in *Rajendra Pralhadrao Wasnik v. State of Maharashtra*[2] in which we have delivered judgment today. The cases cited by learned counsel for the appellant in this petition as well as in Rajendra Pralhadrao Wasnik were the same and we would only be duplicating our efforts and repeating what we have already said.

12. Apart from the above submissions, it was contended by learned counsel for the appellant that the socio-economic circumstances relating to the appellant are relevant for an objective consideration of the award of sentence and these have not been considered by any court including this Court.

13. It was submitted that the “collective conscience of the society” and reference to it for the purposes of imposition of a sentence is totally misplaced. It is not possible to determine public opinion through evidence recorded in a trial for an offence of murder and it is even more difficult, if not impossible, to determine something as amorphous as the collective conscience of the society.

14. Finally, it was submitted that the appellant has been in custody for a considerable period of time and that by itself is a good ground for commutation of his sentence from death to life

imprisonment. In this context, it was stated that the appellant was arrested on 18th February, 2001. He remained in custody until he was granted bail on 25th January, 2002. He was again arrested when the Trial Court convicted him on 31st January, 2005 and since then he is continuously in custody having spent about 14 years in custody and about three years on bail.
Consideration of socio-economic factors

15. There is no doubt that the socio-economic factors relating to a convict should be taken into consideration for the purposes of deciding whether to award life sentence or death sentence. One of the reasons for this is the perception (perhaps misplaced) that it is only convicts belonging to the poor and disadvantaged sections of society that are awarded capital sentence while others are not. Although *Bachan Singh v. State of Punjab*[2] does not allude to socio-economic factors for being taken into consideration as one of the mitigating factors in favour of a convict, the development of the law in the country, particularly through the Supreme Court, has introduced this as one of the factors to be taken into consideration. In fact, in Bachan Singh this Court recognised that a range of factors exist and could be taken into consideration and accepted this position. In paragraph 209 of the Report it is rather felicitously stated as follows:

> "209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too *good for them*[3]. Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency — a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed." (Emphasis supplied by us).

16. Following the view laid down by the Constitution Bench of this Court, we endorse and accept that socio-economic factors must be taken into consideration while awarding a sentence particularly the ground realities relating to access to justice and remedies to justice that are not easily available to the poor and the needy.

17. The consideration of socio-economic factors is tied up with another important issue (which need not necessarily or always be taken into consideration for sentencing purposes, but could be relevant in a given case) and that is whether the convict has had adequate legal representation. Several accused persons belonging to the weaker sections of society cannot afford defence counsel and they are obliged to turn to the National Legal Services Authority, the State Legal Services Authority or the District Legal Services Committee for legal representation. While these authorities provide the best legal assistance possible at their command, it sometimes falls short of expectations resulting in the conviction of an accused and, depending upon the facts of the case and the sentencing process followed, a sentence of death follows.

18. That the poor are more often than not at the receiving end in access to justice and access to the remedies available is evident from a fairly recent report prepared by the Supreme *Court Legal Services Committee*[4] which acknowledges, through Project Sahyog, enormous delays in attending to cases of the poor and the needy. Quality legal aid to the disadvantaged and weaker sections of society is an area that requires great and urgent attention and we hope that a vigorous beginning is made in this direction in the new year.

19. Reverting to the issue of socio-economic factors, we are not sure when this was introduced as a mitigating factor for consideration in deciding whether life imprisonment or death sentence should be awarded. Be that as it may, the earliest decision to which our attention was drawn is *State of U.P. v. M.K. Anthony*[5] in which this Court cautioned against being overwhelmed by the gravity or brutality of the offence. As held in Bachan Singh, it is not only the crime that is of importance in the sentencing process but it is also the criminal. With this in view, this Court considered the plight of the have-not and commuted the death sentence into one of imprisonment for life. This is what this Court said in paragraph 23 of the Report:

> "23. The last question is what sentence should be imposed upon the respondent. The learned Sessions Judge has imposed maximum penalty that could be imposed under the law, namely, sentence of death. The murder of near and dear ones including two innocent kids is gruesome. We must however be careful lest the shocking nature of crime may induce an instinctive reaction to the dispassionate analysis of the evidence both as to offence and the sentence. One circumstance that stands out in favour of the respondent for not awarding capital punishment is that the respondent did not commit murder of his near and dear ones actuated by any lust, sense of vengeance or for gain. The plight of an economic have-not sometimes becomes so tragic that the only escape route is crime. The respondent committed murder because in his utter helplessness he could not find few chips to help his ailing wife and he saw the escape route by putting an end to their lives. This one circumstance is of such an overwhelming character that even though the crime is detestable we would refrain from imposing capital punishment. The respondent should accordingly be sentenced to suffer imprisonment for life." (Emphasis supplied by us).

20. In *Surendra Pal Shivbalakpal v. State of Gujarat*[6] this Court considered the socio-economic condition of the appellant therein, namely that he was a migrant labourer and was living in impecunious circumstances and therefore it could not be said that he would be a menace to society in future. The sentence of death was converted into one of imprisonment for life. This is what this Court said in paragraph 13 of the Report:

> " The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had been involved in any other criminal case previously and the appellant was a migrant labourer from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to society in future and no materials are placed before us to draw such a conclusion. We do not think that the death penalty was warranted in this case "

21. Similarly, in *Sushil Kumar v. State of Punjab*[7] the poverty of the convict was taken into consideration as a factor for sentencing. This Court in paragraph 46 of the Report held as follows:

> "Extreme poverty had driven the appellant to commit the gruesome murder of three of his very near and dear family members - his wife, minor son and daughter. There is nothing on record to show that appellant is a habitual offender. He appears to be a peace-loving, law abiding citizen but as he was poverty- stricken, he thought in his wisdom to completely eliminate his family so that all problems would come to an end. Precisely, this appears to be the reason for him to consume some poisonous substances, after committing the offence of murder." (Emphasis supplied by us).

22. In *Mulla v. State of Uttar Pradesh*[8] this Court specifically noted in paragraph 80 of the Report that one of the factors that appears to have been left out in judicial decision-making on the issue of sentencing, is the socio-economic factor which is a mitigating factor although it may not dilute the guilt of the convict. This is what this Court held:

> "80. Another factor which unfortunately has been left out in much judicial decision-making in sentencing is the socio-economic factors leading to crime. We at no stage suggest that economic depravity justify moral depravity, but we certainly recognise that in the real world, such factors may lead a person to crime. The 48th Report of the Law Commission also reflected this concern. Therefore, we believe, socio-economic factors might not dilute guilt, but they may amount to mitigating circumstances. Socio-economic factors lead us to another related mitigating factor i.e. the ability of the guilty to reform. It may not be misplaced to note that a criminal who commits crimes due to his economic backwardness is most likely to reform. This Court on many previous occasions has held that this ability to reform amounts to a mitigating factor in cases of death penalty." (Emphasis supplied by us).

23. In *Kamleshwar Paswan v. Union Territory of Chandigarh*[9] this Court noted the fact that the convict was a rickshaw puller and a migrant with psychological and economic pressures.

The socio-economic condition of the convict was therefore taken into consideration for the purposes of sentencing him. It was held in paragraph 8 of the Report as follows:

> "8. We cannot also ignore the fact that the appellant was a rickshaw-puller and a migrant in Chandigarh with the attendant psychological and economic pressures that so often overtake and overwhelm such persons. Village Kishangarh is a part of the Union Territory of Chandigarh and at a stone's throw from its elite sectors that house the Governors of Punjab and Haryana, the Golf Club, and some of the city's most important and opulent citizens. It goes without saying that most such neighbourhoods are often the most unfriendly and indifferent to each others' needs. Little wonder his frustrations apparently came to the fore leading to the horrendous incident." (Emphasis supplied by us).

24. Finally, in *Mahesh Dhanaji Shinde v. State of Maharashtra*[7] it was noted that the convicts were living in acute poverty. However, their conduct in jail was heartening inasmuch as they had educated themselves and has shown that if given a second chance, they could live a meaningful and constructive life. This Court noted as follows:

> "38. At the same time, all the four accused were young in age at the time of commission of the offence i.e. 23-29 years. They belong to the economically, socially and educationally deprived section of the population. They were living in acute poverty. It is possible that, being young, they had a yearning for quick money and it is these circumstances that had led to the commission of the crimes in question. Materials have been laid before this Court to show that while in custody all the accused had enrolled themselves in Yashwantrao Chavan Maharashtra Open University and had either completed the BA examination or are on the verge of acquiring the degree There is no material or information to show any condemnable or reprehensible conduct on the part of any of the appellants during their period of custody. All the circumstances point to the possibility of the appellant-accused being reformed and living a meaningful and constructive life if they are to be given a second chance "

(Emphasis supplied by us).

25. There is, therefore, enough case law to suggest that socio-economic factors concerning a convict must be taken into consideration while taking a decision on whether to award a sentence of death or to award a sentence of imprisonment for life.

26. On the facts of the present case, we find from the decision of the Trial Court that the convict was working as a driver on a casual basis. He was desirous of obtaining employment in the Gulf and was making all attempts in this direction. He managed to arrange a visa but had to pay the agent Rs.62,000/-. Due to severe financial constraints he could only arrange Rs.25,000/- for making the initial payment. He continued making attempts to raise the amount. His economic condition was so severe that for the purposes of going to Gulf he had to proceed from Ernakulam to Mumbai by train and while he could manage to purchase the

ticket, he was unable to pay for reservation charges. Under these circumstances, he had gone to the house of the deceased family for getting money or by stealing it or by grabbing it by any other means. It is under this financial and economic stress that his presence in the house of the deceased family was explained. But unfortunately for him and the deceased family, he was unable to obtain any funds from them and this led to his decision to kill all of them.
Public opinion or collective conscience of the society

27. With regard to the second submission made by learned counsel for the appellant, that is, relating to the collective conscience of the society or public opinion, we draw attention to an extremely educative discussion on the topic in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*[11] in paragraphs 80 to 89 of the Report. We do not find the necessity of repeating the enlightening discussion. We may only note that in this decision, reference was made with regard to this topic in Bachan Singh in paragraph 126 of the Report to the following effect:

> "126. Incidentally, the rejection by the people of the approach, adopted by the two learned Judges in Furman[12], furnishes proof of the fact that judicial opinion does not necessarily reflect the moral attitudes of the people. At the same time, it is a reminder that Judges should not take upon themselves the responsibility of becoming oracles or spokesmen of public opinion: Not being representatives of the people, if is often better, as a matter of judicial restraint, to leave the function of assessing public opinion to the chosen representatives of the people in the legislature concerned." (Emphasis supplied by us).

In our opinion therefore, the learned Trial Judge was in error in coming to the conclusion that the collective conscience of the society was disturbed and felt repulsed by the gravity of the crime committed by the appellant. In view of the Constitution Bench decision of this Court in Bachan Singh and in Bariyar it would be wise if impressions gathered on what is perceived to be public opinion or collective conscience of the society are eschewed while sentencing a convict found guilty of a grave or brutal crime. On the facts of the present case, we find that there was no material whatsoever to come to the conclusion that the gravity of the crime caused revulsion in the society or that it had materially disturbed normal life in the society. Consequently, the view expressed by the learned Trial Judge in this regard must be disregarded for the purposes of imposing an appropriate sentence on the appellant.

Conclusion

28. On an overall consideration of the facts of the case from the point of view of the crime and the criminal, we are of opinion that even though the case may be one of circumstantial evidence, it is now well settled that that by itself is not enough to convert a sentence of death into a sentence of imprisonment for life. We have held so in Rajendra Pralhadrao Wasnik and do not feel the necessity of repeating what has already been said.

29. We are also of opinion that all the courts including this Court overlooked consideration of the probability of reform or rehabilitation and social reintegration of the appellant into

society. There is no meaningful discussion on why, if at all, the appellant could not be reformed or rehabilitated.

30. The Trial Court was in error proceeding on the basis, while awarding a sentence of death to the appellant by observing that he was a hardened criminal. There is no such evidence on material or on record.

31. The socio-economic condition of the appellant was a significant factor that ought to have been taken into consideration by the Trial Court as well the High Court while considering the punishment to be given to the appellant. While the socio-economic condition of a convict is not a factor for disproving his guilt, it is a factor that must be taken into consideration for the purposes of awarding an appropriate sentence to a convict.

32. We do not think it necessary to consider on the facts of this case, the period of incarceration of the appellant as a factor for deciding whether or not he should be awarded the death sentence. This is a factor that ought to have been placed before the Trial Judge and while we could certainly take this into consideration, we hesitate to do so in view of some uncertainty in this regard. In *Ramesh v. State of Rajasthan*[13] an opinion was expressed in paragraph 76 of the Report that since the appellant therein had been languishing on death row for more than six years that would be a mitigating circumstance in his favour. There are a number of cases where convicts have been on death row for more than six years and if a standard period was to be adopted, perhaps each and every person on death row might have to be given the benefit of commutation of death sentence to one of life imprisonment. The long delays in courts must, of course, be taken into account, but what is needed is a systemic and systematic reform in criminal justice delivery rather than ad hoc or judge-centric decisions.

33. In view of the above discussion, the death sentence awarded to the appellant is converted into a sentence of imprisonment for life.

34. The petition stands disposed of accordingly.

Judgment Referred.

[1]*(2014) 9 SCC 0737*
[2]*(1980) 2 SCC 0684*
[3]*We may add that hanging of murderers has never been too good for them either!*
[4]*Website of the Supreme Court Legal Services Committee – www.sclsc.nic.in*
[5]*(1985) 1 SCC 0505*
[6]*(2005) 3 SCC 0127*
[7]*(2009) 10 SCC 0434*
[8]*(2010) 3 SCC 0508*
[9]*(2011) 11 SCC 0564*
[10]*(2014) 4 SCC 0292*
[11]*(2009) 6 SCC 0498*
[12]*Furman v. Georgia, 33 L Ed 2d 346 : 408 US 238 (1972)*
[13] *(2011) 3 SCC 0685*