Iman Ali & Another

Vs

State of Assam

Criminal Appeal No. 232 of 1967

(J. M. Shelat, V. Bhargava, V. Ramaswami – I JJ)

28.03.1968

JUDGMENT

BHARGAVA, J.-

The appellants, Iman Ali Jogesh Chandra Arjya, were convicted by the Court of Session for an offence punishable under section 396 of the Indian Penal Code and sentenced to imprisonment for life. The facts found by the Court of Session for convicting the appellants were that, on the night between 11th and 12th May, 1962, between 1 and 2 a.m., the appellants, along with about 12 or 13 others, committed dacoity in the house of 1 Tenu Arjya. At the time of committing the dacoity the dacoits broke open the door of the house with the cross-bar of a plough. Four dacoits, including the two appellants, entered the house, while the remaining persons remained standing outside. As soon as the door was broken, Golapi, the wife of Tenu Arjya, was shot at with a gun by Iman Ali appellant, and then the other appellant Jogesh Chandra Arjya shot Tenu Arjya. Both Golapi and her husband Tenu Arjya fell down dead. Thereafter, the dacoits demanded money from Hari Charan Arjya, the son of the two deceased persons. They took away a sum of Rs. 2,500/- which was kept in a quilt and also removed the gold ear-rings, one silver necklace and one waist band from the person of Golapi. The commission of this offence in the manner described above was held by the Session Court to be proved on the basis of the evidence given by the prosecution, and, thereupon under s. 396, I.P.C., that court sentenced each of these appellants to imprisonment for life.

Iman Ali appellant filed an appeal in the High Court of Assam and Nagaland. The learned Judges of the High Court, on perusing the judgment, were of the upheld, there was no justification for not awarding to him the sentence of death and, consequently, they issued notice to Iman Ali to show cause why the sentence should not be enhanced. At the same time, a notice was also issued to the other appellant Jogesh Chandra Arjya by the learned Judges suo motu to show cause why his sentence should also not be enhanced to sentence of death. Thereafter, the appeal of Iman Ali was heard and both the appellants were heard in respect of the show cause notices issued to them. Opportunity was, in addition, offered to Jogesh Chandra Arjya to urge whatever could be said on his behalf against his conviction also. The High Court affirmed there findings of fact of the Court of Session and enhance the sentence of both these appellants, so that the sentence of rigorous imprisonment for life was altered to sentence of death, with the direction that they be hanged by the neck till they are dead. Both the appellants sought leave from the High Court to appeal to this Court, but leave was refused. Thereupon, both of them sought special leave under Article 136 of the constitution. By an order dated 8th December, 1967, this Court granted leave limited to the question whether, in this case, the enhancement of the sentence from life imprisonment to sentence of the Consequently, in this order of the High Court enhancing the sentence of the appellants from life imprisonment to death was justified and should be upheld.

Learned counsel for the appellants, in challenging the justification for the order of enhancement of sentence by the high Court, relied on the principle laid down by this Court in Dalip Singh and Others v. State of Punjab [[1954] S.C.R. 145 at p. 156.], which was explained in the following words :-

> "In a case of murder, the death sentence should ordinarily be imposed unless the trying Judge for reasons which should normally be recorded considers it proper to award the lesser penalty. But the discretion is his and if he gives reasons on which a judicial mind could properly be found, an appellate court should not interfere. The power to enhance a sentence from transportation to death should very rarely be exercised and only for the strongest possible reasons. It is not enough for an appellate court to say, or think, that if left to itself it would have awarded the greater penalty because the discretion does not belong to the appellate court but to the trial Judge and the only ground on which an appellate court can interfere is that the discretion has been improperly exercised, as for example, where no reasons are given and none can be inferred from the circumstances of the case, or where the facts are so gross that no normal judicial mind would have awarded the lesser penalty."

It appears to us, however, that, in the present case, this principle is of no assistance to the appellants for challenging the step taken by the High Court. This Court cautioned the appellate court against interfering if the discretion of the trying Judge is exercised for reasons recorded by him and if it appears from the reasons that he had exercised a judicial mind in not awarding the sentence of death. In the present case, as mentioned by the High Court and as is apparent from the judgment of the Court of Session, the trial court awarded the sentence of imprisonment for life without giving any reasons at all for adopting that course. It is true that the appellants were not convicted in the present case for the offence of murder simpliciter under section 302, I.P.C.; but that, in our opinion, is immaterial. The conviction of the appellants under s. 397, I.P.C., was not based on constructive liability as members of the gang of dacoits. There was clear finding by the Court of Session which has been upheld by the High Court that each of these appellants committed a cold-blooded murder by shooting two inmates of the house simply with the object of facilitating commission of dacoity by them. Those persons were shot and killed even though they had not even tried to put up any resistance. The offence under s. 302, I.P.C., was therefore, no less heinous than an offence under s. 302, I.P.C. In these circumstances, when the Court of Session gave no reason at all for not awarding the sentence of death and for sentencing them to imprisonment for life only, it cannot be held that the High Court was not justified in interfering with that order.

Learned counsel in this connection refereed us to a decision of a Division Bench of the Allahabad High Court in Lal Singh v. Emperor [A.I.R. 1938 Alld. 625.], where it was held :

> "We do not consider that as a general rule a sentence of death should necessarily follow a conviction under s. 396, I.P.C., and this Section differs from s. 302, I.P.C., in that respect. The rule is under s. 302, that a sentence of death should follow unless reasons are shown for giving a lesser sentence. No such rule applies to s. 396, I.P.C."

Again, we do not think that the learned Judges of the Allahabad High Court intended to lay down that, even in cases where a person is convicted for the offence under s. 396, I.P.C., and there is clear evidence that he himself had committed a cold-blooded murder in committing the dacoity, a sentence of death should not follow. Clearly, the view expressed was meant to apply to those cases where there could be no definite finding as to which person committed the murder and all the

members of the gang are held constructively guilty of the offence punishable under s. 396, I.P.C. A principle enunciated for such a situation cannot be applied to a case where there is direct evidence that a particular accused committed the murder himself, as is the finding in the present case. In these circumstances, the order made by the High Court must be held to be justified and the appeal is dismissed.

Appeal dismissed.##

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