Francis Alias Ponnan

Vs

State of Kerala

Bhagwanta

Vs

State of Maharashtra

Criminal Appeals Nos. 133 of 1973 and 46 of 1974

(Y. V. Chandrachud, M. H. Beg JJ)

17.05.1974

JUDGMENT

BEG, J. -

1. We propose to decide the two criminal appeal before us by special leave by a common judgment. The only question which arises for consideration is whether the sentence of death imposed upon the appellant in each case is appropriate or deserved. Special leave was granted in each of the two appeals solely on the question of propriety of sentence awarded. It is urged before us that the lesser penalty of life imprisonment was enough, in the circumstances of each of the two cases, to meet the ends of justice.

2. The first case before us is of Francis alias Ponnan v. State of Kerala, where the facts were : The murdered man, Pappachan, with some others had attacked Pandoth Joseph, PW 3, the brother of the appellant on November 28, 1971, and P. P. George, PW 4, the brother-in-law of the appellant, on December 23, 1971, at about 10 p.m. On each occasion, a F.I.R. was lodged and the injured had to be sent to hospital. In the second incident, George, PW 4, the brother-in-law of the appellant, was so badly injured that he had to remain in hospital for 17 days. Close upon the heels of this attack at about 10 p.m. on December 23, 1971, upon the brother-in-law of the appellant, came the incident of December 24, 1971 for which the appellant has been charged convicted for murder, and sentenced to death. It appears that several witnesses spoke of the determined manner in which the appellant had told them that he had made up his mind to kill Pappachan. It is evident that the appellant's mental balance had become seriously disturbed. On December 24, 1971, in the afternoon, the appellant hid himself in a compound waiting for Pappachan to come along. On seeing the deceased pass along a road on a bicycle at about 3 p.m., the appellant came out of the compound with a chopper in his hand and chased and attacked Pappachan with it so that the deceased fell down after exclaiming : "O my mother !". The appellant then left the scene. The incident took place in board daylight and was witnessed by passers-by who gave evidence at the trial. The post-mortem report indicted that there were three incised wounds on the head of the deceased in addition to a contusion below the left eye and abrasions on the leg and another on the left scapular region which was fractured. It was apparent that the appellant intended to kill Pappachan deceased and he made no secret of his intention to do so although, at the trial, he denied knowledge of the incident.

3. The question of appropriate sentence to be awarded in the case was argued particularly in the High Court and both the Judges of the Division Bench which heard the death reference gave their reasons separately for awarding death sentence. Moidu, J. said :

So we have to consider the facts and circumstances of the present case to hold whether the death sentence is the proper sentence to be passed on the appellant. In this case, the appellant met PWs 1 to 9, 13 and 17 before and after the incident and made public declaration that he would do away with Pappachan. He had predetermined to kill the deceased Pappachan. There was absolutely no provocation whatsoever during the incident and nothing of that sort was suggested to PWs 1 and 2. The appellant committed murder only to wreak vengeance against deceased Pappachan on account of two previous incidents mentioned in Exts. P-2 and P-3. This is a case in which the appellant caused the death of Pappachan in a pre-arranged manner to wreak his vengeance against him. The murder was cold-blooded and premeditated. The aggravating circumstances are such that it is difficult to hold that the lesser of the two sentences provided by law would meet the ends of justice. He has rightly been sentenced to death for the murder of Pappachan. We find no ground to interfere with the conviction or the sentence.

Narayana Pillai, J. Said :

I agree. The incident took place in broad daylight on a public road. The first information statement was given by PW 1 within a short time after the occurrence. The facts mentioned therein corroborate his evidence before court. His evidence is also corroborated by the evidence of the other occurrence witness, PW 2. Their evidence is corroborated by the circumstances brought out in the case also. There was a motive for the occurrence. The appellant was absconding for a long time. The chopper MO 1 used by him at the time of the occurrence was recovered pursuant to the information given by him. The prosecution evidence is completely dependable. The victim died immediately after he sustained the injuries. The appellant was waiting for the victim to come that way. He hired a bicycle and came to the place knowing beforehand that the deceased would come that way. It was a revengeful and merciless attack that he made on the deceased. He ran after the deceased and began the attack by striking him with the chopper on the head. Even after the deceased fell down from the bicycle he did not spare him. Two more injuries were inflicted with the chopper. In the circumstances nothing but the extreme penalty would meet the ends of justice.

4. Miss Lilly Thomas, appearing for the appellant Francis, contended that the case did not call for the extreme penalty of death. She also submitted that the appellant had not had a separate opportunity to show cause why sentence of death should not be imposed upon him. In Jagmohan Singh v. State of U. P ((1973) 1 SCC 20 : 1973 SCC (Cri) 169)., the constitutional validity of death penalty was assailed, upon the ground, among others, that no provision is made for a separate hearing on this question, but a Constitution Bench of this court repelled it. The appellant had raised and was heard on the question of correctness of his sentence in the High Court. The procedure for a hearing before confirmation of the death sentence is designed to afford the person sentenced to death a hearing on this question too before the death sentence is confirmed. The question of appropriate sentence, however, deserves some more consideration than the learned Judges of the High Court had given to it.

5. It is clear that there was no case of provocation made out and much less of any grave of sudden provocation to Francis during or immediately preceding the incident so as to enable the appellant to plead the first Exception to Section 300 Indian penal Code. The provocation contemplated by the law must be grave as well as sudden so as to deprive the individual of the power of self-control

before the First Exception to Section 300 could apply. Nevertheless, in deciding whether the case merits the less severe of the two penalties prescribed for murder a history of relations between the parties concerned, the background, the context, or the factual setting of the crime, and the strength and nature of the motives operating on the mind of the offender, are relevant considerations. The state of feelings and mind produced by these, while insufficient to bring in an exception may suffice to make the less severe sentence more appropriate.

6. In Ediga Anamma v. State of A. P. ((1974) 4 SCC 443 : 1974 SCC (Cri) 479) this Court had dealt with a case of a premeditated and cleverly planned murder by a young woman whose mind had become filled with frenzy and irrational jealousy because of rivalry between her and the murdered woman for the affections of an illicit lover or paramour. Her sentence for murder was reduced from death to life imprisonment. If that was done in that case, the motives of the appellant, Francis, before us, who decided, in his obviously alarmed and frenzied state of mind, to do away with someone who appeared to him to be a standing menace to the lives and limbs of his near and dear ones, could not be said to be more reprehensible. Nor could his inflamed feelings be less worthy of consideration in pronouncing upon the question of sentence. It is not enough, for deciding such a question, to find that facts of the case indicated deliberation or premeditation before the offence although this is quite important. It is true that the attack upon the appellant's brother-in-law had taken place on the previous night on December 23, at about 10 p.m. whereas the murder was committed at about 3.30 p.m. on December 24. Nevertheless, even the period of time which had elapsed between the two incidents was not so lengthy as to enable us to say that the effect of the provocation given by the previous night's occurrence, in the background of another similar occurrence, and the feelings of fear or alarm it must have engendered, so as to disturb the mind of a person in the position of the appellant, must have evaporated before the murder was committed. These may have become even intensified by brooding over or talking and thinking about the incidents. No doubt the appellant was about 30 years in age, but that is not a guarantee against the disturbance of mind which could be produced by the kind of attacks which had previously taken place on his elder brother and his brother-in-law. Although, the previous incidents could not constitute sufficient provocation to reduce the crime of murder to one of culpable homicide not amounting to murder, yet, we think that the context of the crime justified the imposition of a lesser penalty than that given in this case.

7. The next case for decision before us is that of Bhagwanta v. State of Maharashtra. Here, we find that the appellant was prosecuted and tried jointly for three murders committed at different times and places close to each other. The three victims for whose murder he was tried were : Bhagubai, the appellant's mother-in-law; Sarjabai, the sister-in-law of the appellant; and, Sakharam, the husband of Sarjabai. The victims used to be beguiled by the appellant on one pretext or another to accompany him on a journey and did not return after that. Three other alleged victims, who similarly disappeared, were : Mainaji, the father-in-law of the appellant; and Bhim, the appellant's own brother; and, Thakubai, the daughter of Sakharam. The appellant was not tried for the murder of the last mentioned three persons presumably because more than three similar charges could not be joined at one trial. The appellant had confessed the commission of murders to his wife, Girjabai, PW 3, when she pestered him too much to find out the whereabouts of her relatives who had disappeared. He had shut her up by threatening to do violence to her also if she divulged the secret. But, she and her sister Sitabai had managed to escape and to reveal to the police the highly suspicious facts and circumstances indicating that the appellant was the murderer. The appellant had also absconded. The bodies of some of the murdered person were discovered and circumstances showing the extremely suspicious movements and conduct of the appellant, who was last seen with the murdered individual on each occasion and then had made false assertions about the whereabouts

of the victim, were duly proved. The appellant had even made a confession recorded before a Magistrate. But, he had gone back on the confession at the trial. However, both the trial Court and the High court had, after thoroughly examining all the facts and circumstances, correctly reached the conclusion that the appellant was the murderer.

8. In Bhagwanta's case no such fact was proved as could so disturb or unhinge the mind of an average individual as to impel him towards murder. It is apparent, from the way in which the appellant committed the gruesome murders, the relationships of those he murdered, the absence of any intelligible reasons for which he could have murdered them, and the casual manner in which he used to dispose of the bodies, that he had no respect whatsoever for the sanctity of human life. He, apparently, murdered for the sheer pleasure which killing those he disliked for some reason seemed to give him.

9. It is possible that the appellant Bhagwanta had the diseased mind of a paranoiac. No evidence was, however, given to show that he suffered from mental ill health of any type. Moreover, every sort of mental disorder does not either absolve the sufferer from criminal liability or justify a less severe punishment. No evidence is there to suggest that the appellant suffered from insanity or mental ill health of a kind which incapacitated him from understanding the nature of the acts committed by him or that they were wrong. Indeed, evidence in the case indicates that he knew very well what he was doing and that this was wrong.

10. It is not possible for courts to attempt, on the slender evidence there generally is on this aspect, to explore the murky depths of a warped and twisted mind so as to discover whether an offender is capable of reformation or redemption, and, if so, in what way. That is a subject on which only experts in that line, after a through study of an individual's case history, could hazard an opinion with any degree of confidence. Judicial psycho-therapy has its obvious and inherent limitations. The mere possession of a warped or twisted mind, which many a criminal has could not either absolve him from criminal liability or mitigate his crime. Courts are generally concerned only with the nature and extent of punishment called for once the accused's guilt is established. In considering the question of appropriate sentence to be awarded, while the common frailties and failings of ordinary human beings, to which the offender gives vent, may, without affecting the criminality of the acts punishment, be enough to show that a lesser sentence will meet the ends of justice, abnormal twists of the mind or indications of an obdurate and unrelenting viciousness of mind and conduct of the offender may show the need for a severer sentence.

11. If, however, proved facts disclose that something even falling short of either legal insanity, satisfying the test laid down in M' Naghten Rules, which will negative criminal liability, or, "insane impulse", which is receiving increasing jurisprudential recognition for absolving its victim from criminal liability, or, grave and sudden provocation, which will reduce a culpable homicide from murder to one which is not murder, is present in the case so as to only disturb the normal balance of an individual's mind, what is proved may be sufficient to avert the death penalty. We think that, while some mitigating circumstances of this kind, discussed above, were shown to exist in the case of Francis appellant, the circumstances revealed in the case of Bhagwanta are of an aggravating kind. Indeed, there is a vast difference between the two cases - the difference between the case of a scared human being, with a weak control over his feelings, carried away by what was too strong and too long lasting a gust of passion against another who had given him genuine cause for anger, and that of a person whose conduct, in carrying out cold blooded and calculated murders of several relatives, who had apparently done nothing to provoke him, discloses nothing short of a fiendish callousness and cruelty. If death sentence, a legally prescribed punishment still considered necessary

to deter potential murderers from violating the basic law of civilised human existence ..... "thou shalt not kill" ..... is deserved by an offender, we think that Bhagwanta, appellant, is such an offender.

12. The result is : We allow the appeal of Francis alias Ponnan only to the extent that we set aside the sentence of death passed upon him, but we maintain his conviction and impose a sentence of life imprisonment upon him for the offence of murder committed by him.

13. We think that Bhagwanta was rightly convicted and sentenced to death. We, therefore, dismiss his appeal.

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