

Harnam

Vs

State of U. P.

Criminal Appeal No. 277 of 1974

(P. N. Bhagwati R. S. Sarkaria JJ)

10.10.1975

JUDGMENT

BHAGWATI, J. -

1. This appeal, by special leave, is limited only to the question of sentence. The appellant has been sentenced to death for an offence under Section 302 of the Penal Code. The question is : Should the extreme penalty of death be commuted to one of life imprisonment ? To answer the question it is necessary to state a few facts.

2. The appellant and a few others were tried in the Court of the Sessions Judge, Unnao for offences under Section 148 and Section 302 read with Section 149 of the Indian Penal Code. The learned Sessions Judge, on an appreciation of the evidence, found that the appellant, Sheo Dayal, Mihi Lal, Dularey and Mewa Lal had formed an unlawful assembly and in pursuance of its common object, the appellant had intentionally caused the death of one Ram Kumar by inflicting on him a severe injury with a banka severing his head from the body and then carried away the head in an angaucha in a most brutal and inhuman fashion. On this finding, the learned Sessions Judge convicted the appellant, Sheo Dayal Mihi Lal, Dularey and Mewa Lal of offences under Section 148 and Section 302, read with Section 149 and sentenced each of them to rigorous imprisonment for one year for the former offence and to death for the latter. The appellant, Sheo Dayal, Mihi Lal, Dularey and Mewa Lal preferred an appeal to the High Court against the order of conviction and sentence recorded against them and their case was also referred to the High Court for confirmation of the death sentence. The High Court agreed with the findings reached by the learned Sessions Judge and confirmed the conviction of Sheo Dayal, Mihi Lal, Dularey and Mewa Lal under Section 148 and Section 302, read with Section 149 but reduced their sentence to one of life imprisonment for the offence under Section 302 read with Section 149 and so far as the appellant was concerned, the conviction was converted to one under Section 302 and the sentence of death was maintained. The appellant thereupon preferred an application for special leave and on that application, special leave was granted by this Court limited only to the question of sentence.

3. Now, there can be no doubt that the crime committed by the appellant was a most reprehensible and heinous crime which disclosed brutality and callousness to human life and no extenuating circumstances could be pointed out on behalf of the appellant which would assuage the conscience of the Court and persuade it not to inflict the extreme penalty of death on the appellant. The only circumstance on which reliance could be placed on behalf of the appellant for mitigating the rigour of the punishment to be inflicted on him was his tender age at the time of the commission of the offence. The record of the case shows that the appellant was about sixteen years of age at the time when he committed this brutal crime. The question is; whether this could be regarded as a valid

circumstance for invoking the clemency of penal justice ?

4. The legislative history in regard to the subject of capital punishment shows that there has been significant change in thinking and approach since India became free. Prior to the amendment of Section 367 (5) of the Code of Criminal Procedure by Act 26 of 1955, the normal rule was to impose sentence of death on a person convicted for murder and, if a lesser sentence was to be imposed, the Court was required to record reasons in writing. But by Act 26 of 1955 this provision in Section 367 (5) was omitted, with the result that the Court became free to award either death sentence or life imprisonment and no longer was death sentence the rule and life imprisonment the exception. Then again, further progress was made in the same direction by Section 354 (3) of the Criminal Procedure Code, 1973. That section provides that when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence. It will be seen that the unmistakable shift in the legislative emphasis is that for murder, life imprisonment should be the rule and capital punishment, the exception to be resorted to only for special reasons. It is only where, in view of the peculiar facts and circumstances, there are special reasons that death sentence may be awarded : otherwise life sentence should be the ordinary rule. This legislative provision in the new Code of Criminal Procedure clearly shows, as pointed out by Krishna Iyer, J. in *E. Anamma v. State of A. P.* ((1974) 4 SCC 443 : 1974 SCC (Cri) 479), [SCC p. 452 : SCC (CRI) p. 488, para 21]

that the disturbed conscience of the State on the vexed question of legal threat to life by way of death sentence has sought to express itself legislatively, the stream of tendency being toward cautious, partial abolition and a retreat from total retention.

The seminal trends in current sociological thinking and penal strategy, tempered as they are by humanistic attitude and deep concern for the worth of the human person, frown upon death penalty and regard it as cruel and savage punishment to be inflicted only in exceptional cases. It is against this background of legislative thinking which reflects the social mood and realities and the direction of the penal and processual laws that we have to consider whether the tender age of an accused is a factor contraindicative of death penalty.

5. The Law Commission, in the 35th Report made by it on capital punishment, fully considered whether the Indian Penal Code should specify the minimum age of the offender who can be sentenced to death and after examining the position under the Children's Acts of various States, it expressed the following opinion :

We feel that, having regard to the need for uniformity, to the views expressed on the subject, and to the consideration that a person under 18 can be regarded as intellectually immature, there is a fairly strong case for adopting the age of 18 as the minimum for death sentence. We are aware that cases will occasionally arise where a person under 18 is found guilty of a reprehensible killing, or, conversely, a person above 18 is found to be immature and not deserving of the highest punishment. A line has, however, to be drawn somewhere and we think that 18 can be adopted without undue risk.

We, therefore, recommend that a person who is under the age of 18 years at the time of the commission of the offence should not be sentenced to death. A provision to that effect can be conveniently inserted in the Indian Penal Code as Section 55B.

The Law Commission in its 42nd Report on the Indian Penal Code agreed with this recommendation of the previous Law Commission vide paragraph 3.34 of the 42nd Report of the Law Commission. The Central Government appears to have accepted this recommendation and a provision to that effect is to be found in the Indian Penal Code (Amendment) Bill, 1972. This being the current sociological and juristic thinking on the subject, it would be legitimate for the Court to refuse to impose death sentence on an accused convicted of murder, if it finds that at the time of commission of the offence, he was under 18 years of age. Krishna Iyer, J. also pointed out in *E. Anamma v. State of A. P.* (supra) that [SCC p. 453 : SCC (CRI) p. 489, para 26] "where the murderer is too young - the clemency of penal justice helps him", and a murderer who is below 18 years age at the time of the commission of the offence would certainly be "too young".

6. The appellant in the present case was, as pointed out above, just around 16 years of age at the time when he committed the offence and, therefore, in the light of the above discussion, he would be entitled to the clemency of penal justice and it would not be appropriate to impose the extreme penalty of death on him. We accordingly commute the sentence of death imposed on the appellant and convert it to one of life imprisonment.

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