

Nattan

Vs

State of Tamil Nadu

Criminal Appeal No. 146 of 1974

(R.S. Sarkaria, P.N. Shinghal JJ)

27.01.1976

JUDGMENT

SARKARIA, J. -

1. The only question that falls to be determined in this appeal by special leave directed against the judgment of the High Court of Madras is whether the extreme penalty of death was rightly awarded in the case of the appellant.

2. Miss Lily Thomas, appearing as amicus curiae for the appellant, has pointed out these circumstances which according to her can be taken in mitigation of the capital sentences :

(1) The appellant had received no less than nine injuries including two incised injuries on the head. In his statement under Section 342, Cr.P.C., he stated that those injuries on the head were caused by PW 9 with a big knife. He has ascribed his other injuries to some of the prosecution witnesses. Unfortunately, no explanation has been given of these injuries by the prosecution.

(2) It was the prosecution case itself that when the appellant and his companions went for assault on the deceased at the house of PW 14, the appellant who was armed with a big sword had first hesitated for a moment to assault the deceased, but A-3 instigated him. Thereupon, he used his sword with both hands chopping off the right hand of the deceased above the wrist. But for this instigation, it is submitted, the appellant would not have committed this crime.

(3) The appellant inflicted only one out of the seven injuries found on the body of the deceased. This injury also, according to the medical officer who conducted the autopsy, caused death by bleeding.

(4) The companions of the appellant to whom the other serious injuries found on the deceased were ascribed have either been acquitted or awarded the lesser sentence on conviction under Section 302/149, Penal Code. There was no justification for meting out a harsher treatment to the appellant in the matter of sentence.

3. Mr. A. V. Rangam for the respondent State, does not dispute the existence of the circumstances, enumerated by Miss Thomas, but points out that the sword which was used, was a formidable weapon and was wielded with both hands and great force in a very cruel manner.

4. We find force in the contentions of Miss Thomas. The circumstances highlighted by her, taken cumulatively, do indicate that the capital sentence was not called for. The award of the lesser penalty

prescribed for the offence of murder would have been commensurate with the ends of justice.

5. We therefore, allow this appeal and while maintaining the conviction of the appellant for the murder of Thangadurai, commute his death sentence to that of imprisonment for life.

</html