

Bachchey Lal

Vs

State of Uttar Pradesh

Criminal Appeal No. 381 of 1976

(P.N. Bhagwati, A.C. Gupta, Syed M. Fazal Ali JJ)

11.03.1976

JUDGMENT

BHAGWATI, J. -

1. This is an appeal by special leave against an order of conviction and sentence passed against the appellant by the sessions court and confirmed by the High Court. The appellant was convicted of offences under Section 302 and Section 394 read with Section 397 of the Indian Penal Code and for the offence under Section 302, he was sentenced to death for the other offences under Sections 394 and 397 he was sentenced to suffer rigorous imprisonment for seven years. On appeal, the order of conviction and sentence was confirmed by the High Court. The appellant thereupon brought the present appeal with special leave obtained from this Court.

2. Though special leave granted by this Court to the appellant was in general terms, the learned Counsel appearing on behalf of the appellant pressed the appeal only in regard to question of sentence of death. He contended that having regard to the fact that the appellant was below 18 years of age at the date of commission of the offence, the sentence of death imposed on him should be commuted to that of life imprisonment. There is force in this contention urged on behalf of the appellant. It appears from the answer given by the appellant to question 35 put to him in his statement under Section 342 of the Code of Criminal Procedure that he was 20-21 years of age on June 12, 1973 when he made the statement. That would mean that he was less than 18 years of age on September 26, 1970 when the offence was committed. If that be so, we think that in view of the modern trend in penology and the observations made by this Court in *Harnam v. State of Uttar Pradesh* ((1976) 1 SCC 163 : 1975 SCC (Cri) 794) it would meet the ends of justice if instead of death penalty, sentence of life imprisonment is imposed on the appellant. Of course, when we say this, we would like to make it clear that is not in every case where the accused is below 18 years of age that the court would necessarily and always decline to impose sentence of death. But the fact that an accused was below 18 years of age at the time of commission of the offence is certainly an important factor which would guide the court in determining whether or not to inflict the penalty of death. Therefore, having regard to the facts and circumstances of the present case, we commute the sentence of death imposed on the appellant to that of imprisonment for life for the offence under Section 302. So far as the conviction and sentence of the appellant for the offences under Section 394 and 397 are concerned, we do not see any reason to interfere with the same.

3. We accordingly reduce the sentence of death imposed on the appellant to that of life imprisonment for the offence under Section 302 and direct that the sentences of imprisonment shall run concurrently. Subject to this modification in the sentence, the appeal fails and is dismissed.

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