

Keran Ali

Vs

State of Uttar Pradesh

Criminal Appeal No. 259 of 1977

(Syed M. Fazal Ali, Jaswamat Singh JJ )

24.10.1977

JUDGMENT

FAZAL ALI, J. -

1. The appellant has been convicted under Section 302, Indian Penal Code and sentenced to death for causing the death of his brother's widow, Smt. Nazira. Special leave was granted by this Court in this case confined only to the question of sentence.

2. Mr. Bana appearing for the appellant has submitted that the Sessions Judge has not complied with the provisions of Section 235(2) of the Code of Criminal procedure, 1973 and given an opportunity to the appellant on the question of the imposition of the sentence. It appears that after passing the order of conviction the Sessions Judge records in the order sheet that he has heard the accused on the sentence and then proceeds to pass the sentence of death. The learned Sessions Judge should have postponed the proceedings after passing the order of conviction and given an opportunity to the accused to produce evidence of circumstances which may lead the Court to pass a lesser sentence. The Sessions Judge has also not recorded the statement of the accused after recording the order of conviction. It appears from the evidence of PW 1, Bashir, that the accused had three daughters and two sons, all of whom are minors and he happens to be the sole member earning for the family. Having regard to the economic condition and special circumstances of this case, we do not think that this is a fit one in which the extreme penalty of death is called for. While we agree with the Courts below that this was a case of brutal murder, yet, having regard to the facts and circumstances mentioned above, we would commute the sentence of death to that of imprisonment for life. The appeal is accordingly allowed to this extent.

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