

Bhagwan Bax Singh and Another

Vs

State of U. P.

Criminal Appeal No. 554 of 1981

(Syed M. Fazal Ali, M P. Thakkar JJ)

JUDGMENT

1. The appellants have been convicted under Section 303, IPC to death. As Section 303 has been struck down as void being violative of Article 14 and 21 of the Constitution of India (See *Mithu v. State of Punjab*, (1983) 2 SCC 277 : 1983 SCC (Cri) 405) it is no longer available for conviction of any offender. The facts of the case are fully narrated in the judgment of the High Court. It appears that on the date of occurrence i.e. December 25, 1978 the deceased Brij Nath was coming back along with his son and others after listening to Bhagwan Katha. When they were passing through the jungle the two appellants accosted the deceased and assaulted him. The appellant Bhagwan Bax Singh shot with his gun on the chest of the deceased. The other appellant assaulted him on the head with a Banka. As Section 303, IPC no longer survives the conviction and sentence under Section 303 has to be set aside and conviction has to be altered to one under Section 302 IPC. The main question is as to what sentence should be awarded to the appellant. Mr. Mulla pressed this case on the question of sentence only. He pointed out that though the High Court was of the opinion that this was not a case which called for extreme penalty of death, in view of the provisions of Section 303, IPC the High Court found itself helpless to impose the lesser sentence. Now that Section 303 has been struck down from the Statute book there is no obstacle in sentencing the appellants to imprisonment for life if considered appropriate by the Court. Having regard to the facts and circumstances of this case we do not think that this case falls squarely within the rule laid down in *Bachan Singh case* ((1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898 : (1983) 1 SCR 145 : 1980 Cri LJ 636 : 1980 MLJ (Cri) 827) of this Court inasmuch as it cannot be said to be the rarest of rare case where death sentence is called for. For these reasons, therefore, we alter the conviction of the appellants from one under Section 303, IPC to one under Section 302, IPC. We also set aside the sentence of death and in its place impose the sentence of imprisonment for life. Having regard to the facts and circumstances of the we further direct the sentence of imprisonment for life will take effect from November 27, 1980 which is the date of the conviction and sentence awarded by the Sessions Judge, and clarify that the provisions of Section 433-A of the Criminal Procedure Code will apply.

2. The appeal is disposed of accordingly.

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