

Ranjit Singh Alias Roda

Vs

Union Territory of Chandigarh

Criminal Appeal No. 418 of 1982

(V. D Tulzapurkar, D. P. Madon, V. B. Eradi JJ)

30.09.1983

JUDGMENT

TULZAPURKAR, J. -

1. The only point raised by counsel for the appellant in this appeal relates to the question of sentence. The appellant, on conviction under Section 303 IPC has been sentenced to death. Counsel has contended that in view of this Court's decision in *Mithu v. State of Punjab* ((1983) 2 SCC 277 : 1983 SCC (Cri) 405 : AIR 1983 SC 473), Section 303 IPC has been held to be unconstitutional and the appellant's case in so far as the sentence is concerned will have to be regarded as any other case falling under Section 302 IPC. Secondly, counsel has urged that the instant case does not fall within the category of rarest of the rare cases so as to attract extreme penalty of death. Thirdly, counsel has brought to our notice that Brahmi, a co-accused along with the appellant, both of whom were involved in the incident in which 32 injuries came to be inflicted to the deceased Ashok Kumar alias Shoki, has been awarded life imprisonment and as regards the circumstances concerning the assault on Ashok Kumar, the case of the appellant is not distinguishable from that of Brahmi and, therefore, the appellant deserves to be awarded lesser punishment, namely, imprisonment for life.

2. After hearing counsel on both the sides and after considering the facts and circumstances relating to the offence in question we are inclined to agree with the submission of counsel for the appellant that the appellant should be awarded the lesser punishment. The only manner in which the counsel for the prosecution sought to distinguish the case of the appellant from that of his co-accused Brahmi was that whereas Brahmi was the first offender the appellant had been convicted earlier under Section 302 IPC and secondly, the appellant had committed the offence in question when he was out on parole while serving life imprisonment under his first conviction which is reprehensible as during the parole he should have behaved like a law-abiding citizen. In our view these two aspects in the facts and the circumstances of this case are not sufficient to take a different view in the matter of sentence qua the appellant. Both the accused were actuated to commit the crime in question with identical motive of vendetta and revenge and both have behaved in a cruel manner in inflicting as many as 32 injuries with knives on the deceased who died immediately as a result of the assault on him. In all circumstances of the case, we feel that life imprisonment would be the proper sentence that should be imposed upon the appellant. We accordingly reduce the sentence of death imposed upon him and sentence him to suffer rigorous imprisonment for life. However, since the present murder was committed by him within a span of one year of his earlier conviction and that too when he was released on parole we are clearly of the view that the instant sentence of imprisonment for life awarded to him should not run concurrently with his earlier sentence of life imprisonment. We, therefore, direct that in case any remission or commutation in respect of his earlier sentence is granted to him the present sentence should commence thereafter.

3. The appeal is dismissed subject to the commutation of death sentence as indicated above.

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