

Attorney-General of India

Vs

Lachma Devi and Others

Writ Petition (Criminal) No. 1601 of 1985

(D. P. Madon, G. L. Oza JJ)

13.12.1985

ORDER

1. This Court has received from the Rajasthan High Court a certified copy of an order dated December 11, 1985 passed by the same Bench which made the earlier order for execution of death sentence by public hanging at the Stadium Ground or Ramlila Ground of Jaipur after giving widespread publicity - through the media - of the date, time and place of such execution. The Bench has, by this order dated December 11, 1985, directed that the execution of the death sentence should be carried out "in terms of the procedure provided in the rules mentioned above in the Jain Manual only, unless by that time any amendment is made in the Rules". It is clear from his order dated December 11, 1985 that it is only because the Jail Rules do not provide for execution of death sentence by public hanging that the Bench appears to have been constrained to revoke the order directing execution of the death sentence by public hanging and that is why the Bench seems to have said that the death sentence should not be carried out by public hanging unless by the time the death sentence comes to be executed, any amendment is made in the Rules by the State Government providing public hanging. It is not because of the barbaric nature of the sentence of public hanging that the Bench appears to have decided to revoke the earlier order made by it. We would like to make it clear that the execution of death sentence by public hanging would be a barbaric practice clearly violative of Article 21 of the Constitution and we are glad to note that the Jain Manual of no State in the country makes provision for execution of death sentence by public hanging which, we have no doubt, is a revolting spectacle harking back to earlier centuries. We have no doubt that the expectation of the Bench that an amendment might be made in the Rules providing for public hanging is bound to be belied. The direction for execution of the death sentence by public hanging is, to our mind, unconstitutional and we may make it clear that if any Jain Manual were to provide public hanging, we would declare it to be violative of Article 21 of the Constitution. It is undoubtedly true that the crime of which the accused have been found to be guilty - (on the merits or correctness of which we do not express any opinion since in one case a statutory right of appeal is given to the accused and in the other, leave to appeal has been granted and both the appeals would, therefore, be before this Court) is barbaric and a disgrace and shame on any civilised society which no society should tolerate; but a barbaric crime does not have to be visited with a barbaric penalty such as public hanging. We would wholly and unconditionally delete the direction given by the High Court in regard to the execution of the death sentence by public hanging.

2. The writ petition is disposed of in these terms.

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