**SUPREME COURT OF INDIA**

Mohan

Vs.

State of Tamil Nadu

(M Mukherjee and G Pattanaik JJ.)

12.05.1998

**JUDGMENT**

**G.B. PATTANAIK,J.**

These four appeals by four different appellants are directed against the common judgment dated 27.5.1997 of the High Court of Madras. By the impugned judgment the High Court has confirmed the conviction and sentence passed by the learned Sessions Judge as under :-

Appellant Fount guilty of an Sentenced offence under (IPC) TO

---------- Mohan S.120-B 7 yrs. R.I.

S. 201 7 yrs. R.I.

S. 365 7 yrs. R.I.

S. 386 10 yrs. R.I.

S. 302 Death

Gopi (A-2) S. 120 B 7 yrs. R.I.

S. 201 7 yrs. R.I.

S. 365 7 yrs. R.I.

S. 386 10 yrs. R.I.

S. 302 Death

Muthu (A-3) S. 120-B 7 yrs. R.I.

S. 201 7 yrs. R.I.

S. 365 r/w 34 7 yrs. R.I.

S. 386 r/w 34 10 yrs. R.I.

S. 302 Death

P. Pushparaj

(A-4) S. 120-B 7 yrs. R.I.

S. 365 7 yrs. R.I.

S. 386 r/w 34 10 yrs. R.I.

S. 302 r/w 34 Death

This Court granted leave limited to the question of sentence. The question that arises for consideration, therefore, is whether the extreme penalty of death passed against each of the appellants is justified? It may be stated that apart from the accused-appellants another co- accused Sampath had been convicted and sentenced to rigorous imprisonment for 7 years' for his conviction under Section 123-B and 365 I.P.C. and 10 years for the conviction under Section 386/34 and was acquitted of the charge under Section 302/34 and Section 201/34 and the said conviction and sentence also was affirmed by the High Court and the Special Leave Petition against the said judgment was dismissed by this Court. There was also a sixth accused Chandrasekaran but he died during the pendency of the case. Since this Court is required to examine the correctness of the extreme sentence of death penalty awarded against the appellants only, it is not necessary to narrate the entire facts in greater detail. Suffice it to say that the Courts below have found that the accused persons entered into a conspiracy to get Rs. 5 lakhs as ransom from the father of the deceased by kidnapping the deceased a young boy to 10 years old. In accordance with the plan accused Pushparaj who was the driver of the car belonging to Singaravelu went to the school on 28th of June, 1993, at 12 noon where the deceased was studying and as soon as he met the deceased told him that his father has been waiting for him at Meenambakkam and sent the car to take the deceased in the car. As Pushparaj was their driver the deceased relied upon his words and got into the Maruti Van which had been parked nearby. In the car accused Mohan, accused Gopi, accused Chandrasekaran, since dead, and accused Sampath were there and all of them took the deceased to a place in Moovarasanpettai Main Road and kept him detained there. They contacted the father of the deceased and demanded Rs. 5 lakhs so that the boy would be released otherwise they would kill the boy. On 29th June, 1993, the accused persons mixed some coppersulphate in a glass of cold drink and offered the same to the deceased while they had already tied legs and hands of the deceased. The accused persons began killing the boy by tying the boy's neck with a rope and pulling its both ends and closing the mouth of the deceased with a piece of cloth. By this process they killed the deceased by strangulation. Thereafter the dead body of the deceased was kept in the empty TV box and the box was dropped into an un- used well near a temple. Even after killing the boy they contacted the father of the deceased Singaravelu to get the ransom of Rs. 5 lakhs and ultimately succeeded in extracting a sum of Rs. 5 lakhs from him on 4.7.1993 and divided the amount among themselves.

This is broadly the prosecution case, as unfolded in course of trial which has been accepted by the learned Sessions Judge as well as by the High Court in appeal. On the very face of it the incident appears to be a gruesome one and indicates the brutality with which the accused persons committed murder of a young boy and in furtherance of the said plan they tried to cause disappearance of the dead body itself. It is true, that the extreme penalty of death should not be imposed in all cases of conviction under Section 302 and should be awarded only in rarest of rare cases where the Court finds that murder has been committed in a pre-meditated and calculated manner with extreme cruelty and brutality and the aggravating circumstances would justify such extreme penalty. While considering the question whether in a given case the extreme penalty of death should be imposed or not the Court should try to find out any mitigating circumstances and on being satisfied about the existence of such mitigating circumstances the Court would be justified in imposing the lesser sentence of imprisonment for life. It would, therefore, be necessary in the case in hand to find out the existence of any mitigating circumstances as against all or any of the four appellants which on consideration would justify a lesser sentence of imprisonment for life and the evidence on record has to be scrutinised from that stand point. But before focusing our attention to the so called mitigating circumstances, as urged, by Mr. Muralidhar, learned counsel appearing for the appellants it would be worthwhile to notice some of the decisions of this Court indicating the criteria where extreme penalty of death can be awarded and where the same should not be awarded.

In Bachan Singh etc. etc. vs. State of Punjab etc. etc. (1980) 2 SCC 684, the Constitution Bench while upholding the constitutional validity of imposition of death penalty for murder came to hold that it is not possible to lay down standards and norms for imposition of death penalty as the degree of culpability cannot be measured in each case; and secondly, criminal cases cannot be categorised, there being infinite unpredictable and unforeseeable variations, and thirdly, on such categorisation, the sentencing process will cease to be judicial; and fourthly, such standardisation or sentencing discretion is a policy-matter belonging to the legislature beyond the court's function. Yet what could be reasonably culled out to be guidelines from the aforesaid decision ;-

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
(ii) Before opting for the death penalty the circumstances of the `offender' also require to be taken into consideration along with the circumstances of the `crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

In Machhi Singh and others vs. State of Punjab - (1983) 3 Supreme Court Cases 470, three learned judges of this Court came to hold that the observation of the Constitution Bench in Bachan Singh's case (supra) that the death sentence should b e given in rarest of rare cases has to be examined in the facts of the individual case in the context of relevant guidelines. Their Lordships indicated that when the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community it would be a rarest of rare cases. Their Lordships also further laid down when the murder is committed for a motive which evinces total depravity and meanness, for example, murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland it would attract the principle of rarest of rare case. Lordships also in the aforesaid case had indicated that when the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community, then it would also satisfy the test of rarest of rare case. In Suresh vs. State of U.P. - (1981) 2 Supreme Court Cases 569, the Court did not feel it safe to impose extreme penalty of death as the conviction was being based on the deposition of a single child witness as of 5 y ears' old. In A. Devendran etc. vs. R. Pandian and Another etc. - (1997) 11 Supreme Court Cases 720, where in course of commission of dacoity the accused persons had also committed murder of three persons it was held by this Court that the case would not come within the category of rarest of rare cases and, as such, the Court will not be justified in awarding death sentence.

In State of U.P. vs. Bhoora and Others - (1998) 1 Supreme Court Cases 128, where four persons have been murdered the Court did not award death sentence and commuted the same to life imprisonment being of the view that the number of persons killed cannot be the sole criteria to bring in the case within the exceptional category of rarest of rare cases and taking into account the fact that the occurrence took place in the year 1978 and more than 20 years have elapsed in the meantime, the Court awarded sentence of imprisonment for life. It is not necessary to notice other decisions on which the learned counsel Mr. Muralidhar relied upon, since applying the principles laid down in the aforesaid cased to the case in hand in order to find out whether there exist any mitigating circumstances for which there can be commutation of death sentence to life imprisonment or there exists aggravating circumstances to bring the cases within the principle of rarest of rare cases so that the penalty of death awarded would depend.

According to Mr. Muralidhar, the learned counsel appearing for the appellants, that appellant no. 1 @ Mohanarangam was not a hardened criminal and even his confessional statement indicates that he had been disturbed and was even ready to commit suicide. Further the pre- meditated plan was only to kidnap the boy and the killing of the boy took place merely out of panic when appellant no.1 learnt that there has been a heavy search for the boy by the police party. Mr. Muralidhar, the learned counsel also contended that if the confession of Mohan is scrutinised carefully it would appear that it is full of remorse and that is suggestive of the fact that he did not act with depraved mind and these mitigating factors have not been duly considered by the learned Sessions Judge while awarding death sentence as well as by the High Court while confirming the said death sentence.

So far as appellant no.2 Muthu is concerned, according to Mr. Muralidhar, learned counsel appearing for the appellants, even the confession of co-accused Mohan clearly indicates that he was not a part of any conspiracy nor did he willingly take part in the commission of the murder. On the other hand it is the statement of Mohan that when he disclosed the plan to Muthu and Pushparaj they were flabbergasted and ultimately they were made to agree out of fear. According to the learned counsel the circumstances under which he was first released on bail and was then re- arrested throws considerable doubt on the exact date and manner of his arrest. Said accused Muthu has also not received any part of ransom money nor has there been any recovery made by the police at his instance and these circumstances can be held to be mitigating circumstances for not confirming death sentence against him.

So far as appellant Pushparaj is concerned, no doubt, he was instrumental in getting the boy from the school by telling him that his father is waiting but thereafter he has not played any role either in conceiving the idea of killing him or factually taken any part in the killing of the boy. On the other hand the evidence discloses that it is he who pleaded with Mohan not to kill the boy when Mohan divulged that boy should be killed. It is he who refused to accompany Mohan to pick up the ransom money after the death of the boy and in fact no ransom money has been paid to him nor any recovery of any incriminating material at his instance has been recovered. He had no criminal history earlier, but as he was known to the father of the deceased and happened to be a neighbour of accused Mohan and Gopi he got himself involved in getting the boy kidnapped. According to Mr. Muralidhar, the learned counsel appearing for the appellants, these mitigating circumstances are sufficient to hold that accused Pushparaj does not deserve the extreme penalty of death. So far as appellant no.4 Gopi is concerned, according to Mr. Muralidhar the learned counsel appearing for the appellants, the only link that has been established is the alleged phone call he supposed to have made to Mohan on the evening of 28th June, 1983 asking him to kill the boy. He has not participated in the actual murder of the boy. On the other hand his statement under Section 313 Cr.P.C. indicates that he has helped in searching of the missing boy. He also did not receive any part of ransom money nor there has been any recovery made at his instance, and, therefore, the decision of this Court in Suresh Chandra vs. State of Bihar - (1995) Supp.1 Supreme Court Cases 80, should squarely apply to his case. According to the learned counsel the learned Sessions Judge as well as the High Court while awarding death sentence to all the four appellants have merely used the expression that the case is diabolical and shocking and must be treated as one of the rarest of the rare case, without any justification for the same. After carefully scrutinising the materials on record and the arguments advanced by the learned counsel for the appellants though we find sufficient force in the arguments so far as appellant Muthu @ Muthuraman and Pushparaj are concerned, we do not find any substance in the contention advanced so far as appellants Mohan and Gopi are concerned. It may be noticed that immediately after the boy was brought from the school by accused Pushparaj. Mohan took him in the van and kept him in confinement at a solitary place. It is he who conceived the idea of taking the life of the young boy. It is he who did not accede to the request of co- accused Muthu who persuaded him not to kill the boy and, on the other hand, Mohan threatened Muthu that unless the boy in killed he would divulge the entire episode and then not only Muthu but his parents will also be in trouble. It is Mohan's master-mind which was responsible for the ultimate act of brutal killing of the boy and it is he who directed Muthu to catch hold of the legs of the boy so that he could easily strangulate the boy with the rope. It is he who mixed some poison with Rasna and gave it to the boy and the boy also drank it having full faith on him and became almost

motionless. Even after the boy vomitted twice and became tired it is Mohan and his brother Gopi who persuaded the boy to play the game of tieing and untieing the hands and legs and when the boy agreed to play the game they not only tied the hands and legs of the boy but also tied the rope around his neck and pulled the rope from both ends. At 11.00 p.m. of the fateful night it is Mohan who told the other accused persons that the time is running fast and they should complete the work. It is at that point of time Gopi, brother of Mohan tied the right hand of the boy and when the boy could not untie the rope Mohan stood on the left hand side and suddenly encircled the rope around the neck of the boy. Gopi pulled one end of the rope by standing on the right hand side of the boy while Mohan pulled the other end of the rope by standing on the left hand side and at the same time Mohan took out a kerchief from his pant pocket and gagged the boy with the kerchief. When the boy struggled for breath by jerking his hands and legs, Mohan folded his left leg and with the knee pressed the kerchief which was put in the mouth. In a couple of minutes the body became motionless. So far as appellant Gopi is concerned, he not only did participate by pulling the rope around the neck of the boy, as already narrated, but went to his house and brought a coir rope. After removing the rope from the neck of the boy he encircled the coir rope again around the boy's neck and pulled the said rope for about 1/2 a minute and the boy stopped breathing. Thereafter he took out one Keltron T.V. Box from underneath the cot and packed the boy in the box. These aggravating circumstances on the part of accused Mohan and Gopi clearly demonstrate their depraved state of mind and the brutality with which they took the life of a young boy. It further transpires that after killing the boy and disposing of the dead body of the boy, Mohan also did not lose his lust for money and got the ransom of 5 lakhs. In view of the aforesaid aggravating circumstances appearing as against appellant Mohan and appellant Gopi who happened to be the brother we cannot but confirm the death sentence awarded against them which has been affirmed by the High Court. Accordingly the appeals of appellants Mohan and Gopi are dismissed.

So far as appellants Muthu and Pushparaj are concerned, we are of the considered opinion that the mitigating circumstances, as already narrated clearly do not bring their case to be the rarest of rare case and do not bring their activities to be either diabolical or act of depraved mind warranting the extreme penalty of death sentence. We would accordingly hold that the death sentence awarded against appellant Muthu @ Muthuraman and appellant Pushparaj is not warranted and we commute the same to imprisonment for life. These appeals are disposed of accordingly.