Mahendra Nath Das Alias Gobinda Das

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State of Assam

Criminal Appeal No. 700 of 1998

(S. M. Quadri, D. P. Mohapatra JJ)

14.05.1999

JUDGMENT

S. SHAH MOHAMMED QUADRI, J. -

1. The appellant was found guilty of offence under Section 302 IPC and was sentenced to death by the Sessions Judge, Kamrup, Guwahati in SC No. 114(K) of 1996 on 18-8-1997 which was confirmed by the Division Bench of the Guwahati High Court in Criminal Death Ref. No. 2 of 1997 and Criminal Appeal No. 254(J) of 1997 on 3-2-1998. Against the judgment of the High Court, this appeal is filed by special leave. This Court admitted the appeal limited to the question of sentence.

2. The gravamen of the charge against the appellant is that in the morning hours, around 7 a.m., on 24-4-1996 Hara Kanta Das was taking his morning cup of tea on the corner tea stall of M. G. Road and Chamber Road, Guwahati along with others. The appellant arrived at the scene with a sword-like weapon and with it dealt blows on Hara Kanta Das who fell down on the ground. The appellant amputated the right hand and thereafter severed the head of Hara Kanta Das (the deceased). With the head of the deceased in one hand and the blood-dripping weapon in the other hand, he moved majestically towards Fancy Bazar Police Outpost. The occurrence was witnessed by the persons standing there of whom PW 3 Kalu Das, PW 5 Gaya Prasad and PW 8 Gauri Sankar Thakur were examined as eyewitnesses. Ratan Rai, PW 1, the sweeper rushed to the police station to inform about the incident. There he found the appellant entering the police outpost. PW 2, Rateshwar Barman was on duty. The appellant asked PW 2 where he should keep the head and the weapon and placed them in the verandah of the police station. The weapon was seized and marked as Ext. 1 after conducting an inquest over the head. After taking the head to the scene of occurrence where the body was lying, another inquest was conducted and the body was sent to the doctors for conducting post-mortem examination. PW 9 Dr Pratap Ch. Sarmah conducted the post-mortem examination and sent the report Ext. 14. PW 9 noted that the head of the deceased was severed from the body which was having as many as nine injuries on it.

3. The learned Sessions Judge, Kamrup, Guwahati having considered the evidence of the eyewitnesses, which was corroborated by the medical evidence, found the appellant guilty of offence under Section 302 IPC. On the question of sentence the learned Sessions Judge gave an opportunity to the appellant to state the mitigating circumstances, if any, and noted that he did not state anything relevant and that he even refused to put his signatures on his statement. The learned Sessions Judge mentioned that the appellant remained uncooperative on being asked further questions in regard to sentence. In the circumstances of the case having applied the principles laid down by this Court, the learned Sessions Judge concluded that it is rarest of the rare case and accordingly sentenced the appellant to death and referred the case to the High Court under Section

366(1) CrPC for confirmation of the death sentence. The reference was numbered as Criminal Death Ref. No. 2 of 1997.

4. Against his conviction and sentence, the appellant filed Criminal Appeal No. 254(J) of 1997 in the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh at Guwahati. That appeal and Criminal Death Ref. No. 2 of 1997 were heard together. After elaborate consideration of all the facts and law, the High Court confirmed the conviction and sentence of death passed by the learned Sessions Judge by its judgment dated 3-2-1998, referred to above.

5. Mr Goswami, learned Senior Counsel appearing for the appellant submitted that the appellant was not properly represented before the trial court as well as the High Court at the material time; he is a young man of 33 years and having three unmarried sisters and aged parents; he was also not well at the time of occurrence. The case has also not been investigated properly and there is no material to show that he has become a menace to the society. He prayed that the death sentence may be commuted to life imprisonment.

6. Mr Sunil Jain, learned counsel appearing for the State contended that the cruel manner in which the crime was committed did not admit of any leniency; the deceased came predetermined duly armed with sword and targeted the deceased among the crowd of persons standing there while the deceased was unarmed and was taking his morning tea and that it is a fit case to confirm the death sentence.

7. The exercise of power to award death sentence is now circumscribed by Section 354(3) CrPC. The said sub-section provides that when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

8. The principles with regard to awarding punishment of death are now well settled by judgments of this Court in Bachan Singh v. State of Punjab ((1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898), Machhi Singh v. State of Punjab ((1983) 3 SCC 470 : 1983 SCC (Cri) 681 : (1983) 3 SCR 413) and Kehar Singh v. State (Delhi Admn.) (1988) 3 SCC 609 : 1988 SCC (Cri) 711).

Briefly stated, the principles are : that on conviction under Section 302 IPC the normal rule is to award punishment of life imprisonment and that the punishment of death should be reserved only for the rarest of rare cases. Whether a case falls within "the rarest of rare" cases has to be examined with reference to the facts and circumstances of each case. The court has to take note of the aggravating as well as the mitigating circumstances and conclude whether there was something uncommon about the crime which renders the sentence of imprisonment for life inadequate and calls for a death sentence. The court is also expected to consider whether the circumstances of the crime are such that there is no alternative but to impose death sentence after according maximum weightage to the mitigating circumstances which speak in favour of the offender. These principles have been applied by this Court in innumerable cases.

9. The learned counsel for the appellant has, however, relied on the judgment of this Court in Raja Ram Yadav v. State of Bihar ((1996) 9 SCC 287 : 1996 SCC (Cri) 1004) in support of his contention that the death sentence has to be commuted to life imprisonment. In that case the appellant-convicts were tried for offences punishable under Section 302 IPC and were sentenced to

death by the trial court. There were feuds between the Rajputs and the Yadavs in Chhechhani. The incident of carnage to which the case related had taken place as the retaliation of the Yadavs by killing the Rajputs. The trial court awarded death sentence which was confirmed by the High Court. The sole eyewitness of the occurrence was a nine-year-old boy. While reiterating the aforesaid principles this Court, on the special facts of the case, held thus : (SCC p. 292, para 17)

> "17. After keeping in mind the relevant considerations for awarding the extreme penalty of death and also on considering the fact that in the instance case, the sole eyewitness did not tell, according to PW 1, the names of four of the appellants we feel that although the murders had been committed in a premeditated and calculated manner with extreme cruelty and brutality, for which normally sentence of death will be wholly justified, in the special facts of the case, it will not be proper to award extreme sentence of death on the appellants."

10. The other case referred to by him is Ronny v. State of Maharashtra ((1998) 3 SCC 625 : 1998 SCC (Cri) 859). There three appellants were convicted under Sections 376 and 302/34 IPC for committing rape and gruesome murder and were sentenced to death by the trial court. The High Court declined to take a different view. This Court while considering the question of sentence observed that as it was not possible to predict as to who among the three played which part and therefore it might be that the role of one had been more culpable in degree than that of the others and vice versa and considered it appropriate to commute the death sentence to imprisonment for life.

11. In State of H. P v. Manohar Singh Thakur ((1998) 6 SCC 158 : 1998 SCC (Cri) 859) the evidence against the convict was circumstantial evidence. The trial court convicted him of offence punishable under Section 302 but the High Court, on appeal, recorded acquittal. On the State's appeal to this Court the judgment of the High Court was set aside and the order of conviction passed by the trial court was restored. On the question of sentence it was observed that though murder by its very nature is shocking, that per se does not justify death penalty. Further this Court found that it was not a rarest of rare case.

12. In Allauddin Mian v. State of Bihar ((1989) 3 SCC 5 : 1989 SCC (Cri) 490 : AIR 1989 SC 1456) this Court laid down that unless the nature of the crime and the circumstances of the offender reveal that the criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the court should ordinarily impose the lesser punishment and not the extreme punishment of death which should be reserved for exceptional cases only.

13. The ratio of these cases is of no help to the appellant. We may, however, note here that in Shankar v. State of T. N. (1994) 4 SCC 478 : 1994 SCC (Cri) 1252) the finding recorded by the High Court was that the crime indulged in was gruesome, cold-blooded, heinous, atrocious and cruel and the accused-appellant was proved to be an ardent criminal and thus a menace to the society. On those findings, the death sentence was confirmed by this Court as the facts disclosed that the culpability of the accused-appellant has assumed extreme depravity and therefore special reasons can be said to exist to order the death penalty.

14. Now coming to the facts of this case, the circumstances of the case unmistakably show that the murder committed was extremely gruesome, heinous, cold-blooded and cruel. The manner in which the murder was committed was atrocious and shocking. After giving blows with a sword to the deceased when he fell down the appellant amputated his hand, severed his head from the body,

carried it through the road to the police station (majestically as the trial court puts it) by holding it in one hand and the blood-dripping weapon in the other hand. Does it not depict the extreme depravity of the appellant ? In our view it does.

15. The mitigating circumstances pointed out by the learned counsel for the appellant are, though the appellant himself did not state any mitigating circumstances when enquired about the same by the learned Sessions Judge, that the appellant is a young man of 33 years and having three unmarried sisters and aged parents and he was not well at that time. These circumstances when weighed against the aggravating circumstances leave us in no doubt that this case falls within the category of rarest of rare cases. The trial court has correctly applied the principles in awarding the death sentence and the High Court has committed no error of law in confirming the same.

16. On these facts, declining to confirm the death sentence will, in our view, stultify the course of law and justice. In Govindaswami v. State Of T.N. ((1998) 4 SCC 531 : 1998 SCC (Cri) 1092 : JT (1998) 3 SC 260) Mukherjee, J. speaking for the Court observed, "If, in spite thereof, we commute the death sentence to life imprisonment we will be yielding to spasmodic sentiment, unregulated benevolence and misplaced sympathy."

17. In these circumstances, we uphold the death sentence. The appeal is accordingly dismissed.