

SUPREME COURT OF INDIA

Devender Pal Singh, Dharmendra Singh @ Dharu Singh, Krishna Mochi

Vs.

State, N.C.T. of Delhi another, State of Bihar

(M.B. Shah J.)

17.12.2002

JUDGMENT

M.B.Shah, J.

I am in respectful agreement with the reasons recorded by learned brother Pasayat, J. in arriving at the conclusion that the review petitions are required to be dismissed. Still however, I record my dissent with regard to sentence aspect. R.P. (CrI.) No.497 of 2002 In W.P. (CrI.) No.993 of 2001. In this case, it is to be stated that I had arrived at the conclusion that the prosecution case depends solely upon the confessional statement. The reasons recorded therein for acquitting him are not required to be reiterated. However, considering the majority view also, in my opinion, if death sentence is altered to imprisonment for life, it would be sufficient to meet the ends of justice. R.P. (CrI.) Nos.626 and 627 of 2002 In CrI. A. No.761 of 2001. In this case, it is to be stated that appeal of the main accused Bihari Manjhi and others was allowed and were acquitted on the basis that there was no other evidence except the so-called confessional statement which was totally unreliable and faulty investigation This is also a fit case for altering the death sentence and imposing sentence of imprisonment for life. For this purpose, I would rely upon the dissent noted by Thomas, J. in *Suthendraraja alias Suthenthira Raja alias Santhan and others v. State*¹ which is reproduced hereunder: 17. The Constitution Bench in *Bachan Singh v. State of Punjab*² has narrowed down the scope for awarding death sentence to the extremely restricted radius of rarest of rare cases in which the alternative lesser sentence of imprisonment for life is unquestionably foreclosed. In the main judgment in the present case one of the three Judges found that sentence of imprisonment for life would be sufficient to meet the ends of justice as far A-1 Nalini. 18. In a case where a Bench of three Judges delivered judgment in which the opinion of at least one Judge is in favour of preferring imprisonment for life to death penalty as for any particular accused, I think it would be a proper premise for the Bench to review the order of sentence of death in respect of that accused. Such an approach is consistent with Article 21 of the Constitution as it helps saving a human life from the gallows and at the same time putting the guilty accused behind the bars for life. In my opinion, it would be a sound proposition to make a precedent that when one of the three Judges refrains from awarding death penalty to an accused on stated reasons in preference to the sentence of life imprisonment that fact can be regarded sufficient to treat the case as not falling within the narrowed ambit of rarest of rare cases when the alternative option is unquestionably

foreclosed. In the result, in my opinion, Review Petition (Crl.) No.497 of 2002 filed by Devender Pal Singh in Crl. Appeal No.993 of 2001; Review Petition (Crl.) No.626 of 2002 filed by Dharmendra Singh @ Dharu Singh in Criminal Appeal No.761 of 2001 and Review Petition (Crl.) No.627 of 2002 filed by Krishna Mochi and others in Criminal Appeal No.761 of 2002, be partly allowed and their sentence be altered to imprisonment for life.

¹(1999) 9 SCC 323

²(1980) 2 SCC 684