

# SUPREME COURT OF INDIA

Des Raj

Vs.

State of Punjab

Crl.A.No.648 of 2007

(R. V. Raveendran and B. Sudershan Reddy JJ.)

07.09.2007

## JUDGMENT

### **RAVEENDRAN, J.**

1. In this appeal by special leave, the common judgment of the Punjab and Haryana High Court dated 22.12.2006 in Murder Reference No. 12 of 2005 and Criminal Appeal No. 10-DB of 2006, affirming the conviction and sentence of death imposed on the appellant by the Sessions Judge, Sangrur by judgment dated 7.12.2005 in Sessions Case No.25 of 2003 is under challenge.

2. The appellant Des Raj is a retired police constable. Chand Singh, the complainant is a distant relative of Des Raj. Des Raj and Chand Singh with their respective families reside in adjoining houses. On 16.2.2003, both families attended the Bhog ceremony in connection with the Birth Anniversary of Baba Ravi Dass and returned home in the afternoon. Des Raj was fully drunk when he returned home. At about 4 P.M., a quarrel arose between Manjit Kaur (wife of Chand Singh) and Jaswant Kaur (wife of Des Raj), when Manjit Kaur objected to the family members of Des Raj throwing rubbish in front of her house. On hearing the quarrel, Chand Singh's brothers - Lal Singh and Bhagwan Singh, and Chand Singh's son - Shamsher Singh, and nephew Tarlok Singh came out of his house. Des Raj also came out of his house along with his three sons and two daughters-in-law. Des Raj was carrying his licensed double barrel gun. Des Raj shouted that if the family members of Chand Singh raised their voice, he would finish them, and fired a shot towards Manjit Kaur, which hit the left side of her head. She collapsed and died. Shamsher Singh, son of Chand Singh, rushed to the rescue of his mother. Des Raj fired another shot which hit the right hand of Shamsher Singh. Shamsher Singh raised an alarm. Bhagwan Singh and Lal Singh, the two brothers of Chand Singh, rushed to the assistance of Shamsher Singh. Des Raj re-loaded his gun and fired at them. Bhagwan Singh was hit on the left side of the chest and died. Lal Singh was hit on left side of his abdomen (and died later in the hospital). Des Raj again loaded his gun and fired towards Chand Singh which hit him on his right arm. A few pellets also hit his nephew Tarlok Singh and a neighbourhood child Raveena. According to the prosecution, all through this, the family members of Des Raj (his wife, three sons and two daughters-in-law) exhorted Des Raj by shouting 'do not leave any members of the family alive'. After the incident, Des Raj and his family members fled from the scene.

2. Des Raj (accused No.1) and his six family members (accused 2 to 7) were charged and tried for offences under sections 148, 302/149, 307/149 and 114 IPC. The prosecution examined 14 witnesses. Chand Singh (PW-2) and his son Shamsher Singh (PW-3) who were injured eye-witnesses gave a graphic account of what transpired. After appreciating the evidence, the Sessions

Judge, Sangrur by judgment dated 7.12.2005, convicted Des Raj under section 302 IPC for the murder of Manjit Kaur, Bhagwan Singh and Lal Singh and also convicted him under section 307 IPC for attempting to murder Shamsher Singh and Chand Singh. After hearing on the question of sentence, the trial court came to the conclusion that the sentence of life imprisonment was inadequate and having regard to the gravity of the offence, the appellant deserved sentence to death. Accused 2 to 7 who allegedly exhorted appellant, were acquitted. The trial court was of the view that as accused 2 to 7 were not armed, and as there was no evidence of any common object to kill Manjit Kaur and others, there was a possibility that the exhortation attributed to Accused 2 to 7 may be only to implicate them in the crime.

3. The reference seeking confirmation of sentence of death was registered as Murder Reference No.12 of 2005. The appeal filed by Des Raj against his conviction and sentence was registered as Criminal Appeal No.10-DB of 2006. The appeal filed by the State against the acquittal of accused 2 to 7 was registered as Criminal Appeal No.670-DBA of 2006. The revision petition filed by Chand Singh challenging the acquittal of accused 2 to 7 was registered as Cri. Revision No. 1835 of 2006. The four cases were heard together. By common judgment dated 22.12.2006, the High Court affirmed the judgment of the trial court, and confirmed the death sentence awarded to Des Raj. It rejected the appeal filed by Des Raj, as also the appeal filed by the State and the revision filed by Chand Singh. The High Court held that on balancing the mitigating circumstance and the following aggravating circumstances, the scales tilted in favour of death sentence :

(i) In order to impress his authority on his neighbours over a petty dispute and to satisfy his ego, Des Raj opened fire, killing three members and injuring three members of the family of a neighbour, and a child who was a bystander -- all unarmed and helpless.

(ii) Premeditation was writ large in view of the fact that Des Raj brought the gun and cartridges from inside the house, and though neither provoked, nor instigated, continued firing by loading and re-loading the gun in order to silence the voice of genuine protest. The only 'fault' of the hapless members of Chand Singh's family was that they objected to the improper act of Des Raj's wife throwing rubbish in front of their house.

(iii) Des Raj went berserk and created havoc by killing and injuring whosoever came in front of him. The accused did not even bother that bystanders are likely to be hit. He did not show any sense of remorse after the incident, but ran away.

The High Court held that the gruesome, unscrupulous and diabolic attack on unarmed and innocent men, woman and child, committed in a cold blooded manner by a person who had been trained to protect the life and liberty of the people as a Police Constable, not only shocked the judicial conscience of the court but also shocked the collective conscience of the society.

4. The said judgment is challenged in this appeal. The appellant does not challenge the finding of guilt and conviction under section 302 IPC. The challenge is restricted only to the imposition of capital punishment. The appellant drew our attention to the various mitigating circumstances and contended that this is not a rarest of rare case, requiring death sentence. The learned counsel for the State countered by relying upon the aggravating circumstances listed by the High Court. The only question that therefore arises for our consideration is whether the courts below were justified in imposing the sentence of death.

5. In *Bachan Singh v. State of Punjab* [1980 (2) SCC 684] and *Machhi Singh v. State of Punjab*

[1983 (3) SCC 470], this Court has stated the principles and guidelines relating to award of death sentence. The principles have been reiterated in several subsequent decisions including State of Rajasthan v. Kheraj Ram [2003 (8) SCC 224], Lehna v. State of Haryana [2002 (3) SCC 76] and Bablu v. State of Rajasthan [AIR 2007 SC 697].

5.1) In Bachan Singh (supra), a Constitution Bench of this Court while upholding the constitutional validity of the provision for penalty of death for murder, indicated the broad criteria which should guide the courts in the matter of sentencing a person convicted of murder under section 302 IPC.

This Court held :

"As we read sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of 'special reasons' in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them.

In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist.

But this much can be said that in order to qualify for inclusion in the category of 'aggravating circumstances' which may form the basis of 'special reasons' in section 354(3), circumstance found on the facts of a particular case must evidence aggravation of an abnormal or special degree.

It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed. "