

SUPREME COURT OF INDIA

Absar Alam @ Afsar Alam

Vs.

State of Bihar

Crl.A.No.1436 of 2010

(A. K. Patnaik and Swatanter Kumar JJ.)

07.02.2012

JUDGMENT

A. K. PATNAIK, J.

1. This is an appeal by way of special leave under Article 136 of the Constitution of India against the judgment and order dated 16.07.2009 of the Patna High Court in Death Reference No. 7 of 2008 with Criminal Appeal (DB) No.169 of 2008. On 18.01.2010, this Court issued notice in the Special Leave Petition confined to the question of sentence only and on 02.08.2010 after hearing learned counsel for the parties, granted leave. Hence, the only question that we have to decide in this appeal is whether the High Court was right in confirming the death sentence of the appellant imposed by the trial court.

2. For deciding this question, the relevant facts as have been found by the trial court are that in the midnight of 14/15.02.2007, the appellant killed his mother by cutting her neck and severing her head and thereafter fled from the house with the head of his mother leaving behind her body. The trial court, after convicting the appellant under Sections 302 and 201 of the Indian Penal Code (for short 'IPC'), held that the appellant committed the murder of his mother in an extremely brutal, grotesque, diabolical and revolting manner and hence it is one of those rarest of the rare cases calling for a death sentence on the appellant. The High Court, while upholding the conviction, confirmed the death sentence relying on the decision of this Court in Machhi Singh and others v. State of Punjab [(1983) 3 SCC 470]. In the aforesaid case of Machhi Singh, this Court has inter alia held that the manner of commission of murder and the personality of the victim of murder have to be taken into consideration while making the choice of the sentence to be imposed for

the offence under Section 302, IPC : life imprisonment or death sentence. The High Court has taken a view that considering the abhorrent, dastardly and diabolical nature of the crime committed by the appellant on none other than his mother, who had given birth to him, the penalty of death has been rightly awarded by the trial court.

3. At the hearing of this appeal, learned counsel for the appellant, relying on the decision of this Court in *Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka* [(2008) 13 SCC 767], submitted that even if it is a case of a son beheading his mother, this is not one of the rarest of rare cases in which the death penalty should have been imposed because the offence had been committed by the appellant in a fit of passion and not after pre-meditation.

4. Learned counsel for the State, on the other hand, submitted that considering the law laid down by this Court in *Prajeet Kumar Singh v. State of Bihar* [(2008) 4 SCC 434], *Surja Ram v. State of Rajasthan* [(1996) 6 SCC 271] and *Atbir v. Government of NCT of Delhi* [(2010) 9 SCC 1], the imposition of death sentence on the appellant for the cruel act of beheading his mother was proper.

5. We find on reading the FIR lodged by the brother of the appellant on the morning of 15.02.2007 at 09:45 hours marked as Ext.2 that the appellant's wife Sakerun Nisha had run away to her maternal house three or four days before the incident and the appellant had been accusing his mother to have been the cause of his wife running away from this house and out of anger and excitement the appellant severed the neck of his mother and fled with the head. The appellant was an illiterate rustic and was a cultivator residing in a village with virtually no control over his emotions and has over-reacted impulsively to the situation and has severed the neck of his mother. On these facts, the appellant is no doubt guilty of the offence under Section 302, IPC, and has to suffer the punishment of imprisonment for life normally awarded for the offence, but should not be condemned to death. We may cite a few authorities in support of this view.

6. In *Lehna v. State of Haryana* [(2002) 3 SCC 76], the facts were that there was a quarrel between the accused and other members of his family, namely, his father, his brother and sister-in-law, over a piece of land and in the assaults that followed the quarrel, the accused killed his mother, his brother and sister-in-law. While upholding the conviction of the accused under Section 302, IPC, this Court held that the mental condition of the accused, which led to the assault, cannot be lost sight of and while such mental condition of the accused may not be relevant to judge culpability, it is certainly a factor while considering the question of sentence.

This Court further held that the factual scenario gave impressions of impulsive act of the accused and not of planned assaults and in this peculiar background, death sentence would not be proper.

7. In *Gyasuddin Khan alias Md. Gyasuddin Khan v. State of Bihar* [(2003) 12 SCC 516], the facts were that in the morning hours of 09.04.1996, in the precincts of a police camp stationed near a village in Bihar, a policeman deployed in the police picket to contain the terrorist activities, unleashed terror by indulging in a firing spree, killing three of his colleagues instantaneously and this Court, relying on *Shamshul Kanwar v. State of U.P.* [(1995) 4 SCC 430], *Lehna v. State of Haryana* (supra) and *Om Prakash v. State of Haryana* [(1999) 3 SCC 19], held that the mental condition or state of mind of the accused is one of the factors that can be taken into account in considering the question of sentence and in the facts of the case, the killing of two other policemen without premeditation and without any motive whatsoever was an act done out of panic reaction and in a state of frenzy and it was not one of the rarest of rare cases where death sentence could be awarded.

8. For the aforesaid reasons, we convert the sentence of death to one of life imprisonment for the offence under Section 302, IPC, committed by the appellant and allow the appeal in part.