

Maheboobkhan Azamkhan Pathan

v.

State of Maharashtra

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE RANJAN
GOGOI

Criminal Appeal No. 2402-2403 Of 2009 | 08-01-2013

1. This criminal appeal is filed by the appellant (Accused No.1) against the judgment and order passed by the High Court of Judicature of Bombay, Bench at Aurangabad in Criminal Appeal No. 551 of 2008 with Confirmation Case No. 1 of 2008. By the impugned judgment and order, the High Court has affirmed the judgment and order passed by the Additional Sessions Judge, Parbhani in Sessions Trial No. 46/2006, dated 22.08.2008 and further confirmed the death sentence awarded by the Trial Court.

2. The facts in extenso need not be noticed by us as the same have been comprehensively noted by the courts below. The background of the facts goes to explain the genesis of the incident that took place when the deceased-Vidya Deshmukh and her family members, after having their dinner, retired to bed. On the fateful day, at about 3.00am - 3.15 am, the appellant- Maheboobkhan along with others barged into the house of the deceased with the intention of committing theft and robbery and threatened the father of the deceased (PW-2), the mother of the deceased (PW-3) and the uncle of the deceased (PW-15), at the point of their knife not to raise any alarm and thereafter tied their hands with the help of a piece of sari. The appellant, while ransacking the house, snatched the mangalsutra and the golden ear-rings of PW-3, and thereafter attempted to remove the golden ear rings of the deceased. Upon resistance, the appellant assaulted the deceased by biting her on her cheek and lips followed by nine to ten successive blows of knife which resulted in the death of the deceased. The Pw-2, in the meanwhile, could extricate his hands and hired an auto -rickshaw to take the deceased to the Civil Hospital, Parbhani, for treatment where the medical officer confirmed that the deceased had succumbed to her injuries. The PW-2, PW-3 and PW-15, the eye-witnesses to the incident, were also present at the hospital and it is there that they described the accused persons and an album containing the photographs of the accused was thus prepared. The Pw-2,

thereafter lodged a complaint and on the basis of the said complaint, offence was registered under section 397, 460, 302 and 354 read with 34 of the Indian Penal Code, 1860. ("the IPC for short).

3. After the completion of the investigation, the appellant was charge-sheeted for the above-mentioned offences. The Trial Court taking into consideration the evidence of the eye-witnesses has come to the conclusion that their testimony cannot be disbelieved as they have correctly identified the appellant from an album containing 30 to 40 photographs of different accused. On the basis of the above finding, the Trial Court convicted the appellant for offence punishable under Section 302, 460, 397 and 354 of the IPC and awarded the death sentence to the appellant.

4. Being aggrieved by the aforesaid conviction and sentence passed by the Trial Court, the appellant has appealed before the High Court. The High Court vide its judgment and order dated 04.12.2008 has confirmed the death sentence so passed by the Trial Court being of the view that the heinous crime committed by the appellant falls into the category of rarest of rare cases. It is the correctness or otherwise of the judgment and order passed by the Courts below which is called in question by the appellant in this appeal.

5. We have heard, Sh. Rangaramanujam, the learned senior counsel for the appellant and Sh. Shankar Chillarge, learned counsel for the respondent.

6. After arguing the matter for quite some time, Sh. Rangaramanujam, maybe knowing the mind of the Court, would restrict his arguments to the punishment of death sentence passed by the Trial Court and affirmed by the High Court. He would submit that the courts below were not justified in holding that the instant case comes under the category of "rarest of rare case".

7. Therefore, the only question that survives for consideration and decision is whether death sentence awarded by the courts below requires to be interfered. For that purpose, we have carefully re-appreciated the entire evidence on record and analyzed the reasoning of the Trial Court as well as the High Court in awarding death sentence to the appellant.

8. Despite the changes in the criminologist thought and movement and the extent of clemency in penal laws, it has not been possible to put to rest the conflicting views on sentencing policy. The sentencing policy, as a significant and inseparable facet of criminal jurisprudence, continues to remain a great subject of social and judicial discussion and it is neither possible nor prudent to state a 'straight jacket' formula which would be applicable to the cases where capital punishment has been prescribed. The Court, therefore, has to consider the factors to the sentencing calculus such as the gravity of the offence, the provocative and aggravating circumstances at the time of the commission of the crime, the possibility of the convict being reformed or rehabilitated, the adequacy of the sentence of life imprisonment and other attendant circumstances.

9. The instant case is a case of a young girl of 20 years who is assaulted by the appellant which has resulted in her death. The post-mortem report and the evidence of the Doctor who performed the autopsy of the dead body of the deceased person speaks volumes the way the appellant assaulted the deceased with a knife on account of her resistance. But on a collective reading of the circumstances, it would indicate that the appellant had entered the house only with a motive of committing theft and robbery which subsequently led the appellant to outrage the modesty of the deceased. Therefore, in our opinion, it is not a case where the court could arrive at only one conclusion, that is imposition of death penalty is the only punishment that would serve the ends of justice.

10. In view of the above, considering the mitigating circumstances, we do not subscribe to the view of the High Court that the case falls within the parameters of the rarest of rare case and believe that with the possibility of rehabilitation, reformation and consequent deterrence by life-long prison terms, the present case cannot be brought within the ambit of offence resulting in social menace. Therefore, we partly allow these appeals and commute the sentence awarded by the Trial Court and confirmed by the High Court from death sentence to life imprisonment. The life imprisonment will continue for a life-term but subject to the orders of remission granted by the State Government by passing appropriate speaking orders.

Ordered accordingly.

