

CASE NO.:
Appeal (crl.) 178 of 2003

PETITIONER:
Ram Pal

RESPONDENT:
Vs.
State of U.P.

DATE OF JUDGMENT: 06/08/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

In this appeal, while granting leave, this Court confined the scope of the appeal to the consideration of the question of sentence only.

The appellant along with seven others, who survived the trial out of the eleven persons originally tried, were convicted for offences punishable under Sections 302, 307 436 and 440 all read with Section 149 IPC. The trial court imposed varying sentences on them, but in regard to appellant and one other person, awarded the sentence of death and referred the said sentence to the High Court of Judicature at Allahabad, Lucknow Bench for confirmation. The High Court by the impugned judgment has accepted the reference and confirmed the death sentence awarded to the appellant but taking into consideration the age of the other accused who was also sentenced to death converted his sentence from death to life imprisonment. In this appeal, the appellant questions the sentence of death awarded to him on various grounds.

Mr. Rakesh Dwivedi, learned senior counsel appearing for the appellant submitted that the crime of which the appellant is charged with cannot be termed as a rarest of the rare cases calling for extreme penalty of death even though 21 persons had lost their lives due to the acts of the appellant and other accused persons. He submitted that there was sufficient provocation from the side of the victims which lead to the incident on the fateful day because the victims party was earlier responsible for the double murder of appellant's close relatives in regard to which the members of the said party were being prosecuted in a sessions trial. In spite of the said proceedings, on the day of the incident another relative of the appellant by name Bhagwati was found murdered which the appellant and his family members had reasons to believe was due to the act of the family of the victims. These facts according to the learned counsel was the provocation for the murders for which the appellant is being punished. Hence the facts of the case in hand did not call for the extreme penalty of death. He also submitted that the appellant was not the leader of the group of accused which caused the death of so many victims nor he had exhorted others either to kill or to set fire to the houses. His act was at the most on par with the other accused who have been awarded lesser sentence. He also submitted that even according to the prosecution case, there was considerable doubt as to the role played by the

appellant in the incident in question, hence, he has been roped in with the aid of Section 149 IPC. His further submission was that the incident in question had taken place nearly 17 years ago and ever since then the appellant has been in jail, therefore the appellant should be given an opportunity of redeeming himself.

Shri Ravi Malhotra learned counsel appearing for the State opposed the reduction of the sentence on the ground that both the courts below have considered all aspects of the case including the question of quantum of punishment and having come to the conclusion that the incident in question which caused the death of 21 innocent victims was a rarest of the rare cases, considered the death penalty as the appropriate sentence in regard to this accused, therefore, this is a case in which no interference in the sentence awarded by the courts below is called for.

We have carefully considered the argument addressed on behalf of the parties. It is true the incident in question has prematurely terminated the life of 21 people but then number of deaths cannot be the sole criterion for awarding the maximum punishment of death. While in a given case death penalty may be the appropriate sentence even for a single murder, it would not necessarily mean that in every case of multiple murders death penalty has to be the normal punishment. Guidelines to be borne in mind while awarding death sentences have been considered and laid down by this Court in a number of cases but for the purpose of deciding this appeal it would suffice if we refer to a Constitution Bench judgment of this Court in the case of Bachan Singh vs. State of Punjab (1980 2 SCC 684). In the said case this Court after considering the constitutional validity of the provisions which empowers the court to award death sentence laid down the following broad guidelines to be borne in mind by the courts while considering the question of awarding a sentence in cases involving murder :

"One thing however stands clear 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. This is so because 'style is the man'. 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 compartmentsâ\200!â\200!..

As to the aggravating circumstances, pre-planned, calculated cold-blooded murder has always been regarded as one of an aggravated kind; so also a murder "diabolically conceived and cruelly executed" and the test of Ediga Anamma : "The weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim".

In the said judgment this Court also laid down circumstances which could be considered as aggravating

circumstances. These circumstances are as follows :-

- (a) if the murder has been committed after previous planning and involves extreme brutality; or
- (b) if the murder involves exceptional depravity; or
- (c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed â\200\223
 - (i) while such member or public servant was on duty; or
 - (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or
- (d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code."

Similarly it also considered the following circumstances as mitigating circumstances :-

- (1) That the offence was committed under the influence of extreme mental or emotional disturbance.
- (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
- (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
- (4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

- (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
- (6) That the accused acted under the duress or domination of another person.
- (7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

Bearing in mind the above broad guidelines laid down by

this Court in the case of Bachan Singh (supra), if we consider the facts of the case we notice the fact that the appellant was a party to an incident in which 21 people including young children were murdered by gun shot injuries or by burning them in latched houses itself could be considered as aggravating circumstances to consider awarding of death sentence. According to the judgment in Bachan Singh's case (supra), then we will have to weigh the same with any mitigating circumstances that may be available on the facts of this case. While doing the said exercise of searching for mitigating circumstances in the present case, we find the incident in question was sequel to the murder of Bhagwati a close relative of the appellant and other principal accused, which was suspected to have been committed by the members of the victims family. Prior to that the victims family was accused of having committed the murder of 2 of the close relatives of the appellant's family for which some of the members of the victims family were being prosecuted. On facts and circumstances of this case, we think this circumstance can be treated as a circumstance which amounts to a provocation from the victims side. We also notice that the role played by the appellant is somewhat similar to the role played by the other accused persons who have been given lesser sentence while the appellant has been awarded death sentence that too with the aid of Section 149 IPC therefore, a question arises why this appellant should not be considered at par with those accused for the purpose of awarding the sentence. We also notice from the argument of the learned counsel which is supported by material on record, that the specific overt act attributed to the appellant that he climbed the house of the informant and threatened to shoot the victims if they came out of their houses, while the other accused latched and set the houses on fire seems to be an afterthought not having been told to the investigating officer by the witnesses when their statements were recorded by him. We also notice that the appellant was not treated by the prosecution itself as the leader of the gang but was considered to be one amongst other accused who took part in the incident. The fact that accused has spent nearly 17 years in custody after the incident in question can also be treated as a mitigating circumstance while considering the question of sentence.

The above noted circumstances which we consider as mitigating circumstances, in our opinion, outweigh the aggravating circumstances as found by the courts below. In the said view of the matter, we think it appropriate to allow this appeal and in substitution of sentence of death awarded to the appellant, we sentence the appellant under Section 302 read with Section 149 IPC to undergo imprisonment for life. The said sentence shall run concurrently with the substantive sentence imposed by the trial court on other counts. The appeal is allowed partly.