

PETITIONER:
BULLU DAS

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 03/11/1998

BENCH:
G T NANAVATI, S P KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT

Nanavati. J.

The appellant was convicted by the trial court for the offence punishable under Section 302 IPC and sentenced to death. The High Court confirmed the conviction and also the death sentence. Co-accused - Doran Dass was convicted under Section 302 read with Section 120B IPC and sentenced to suffer imprisonment of life. His conviction and sentence were also confirmed by the High Court. Both the accused then filed special Leave Petitions in this court for obtaining leave to appeal against the judgment and order passed by the High Court. The Special leave petition filed by Doran Dass was dismissed. Leave was granted to the appellant on the question of sentence only. Therefore, only point that we are required to consider in this appeal is whether the sentence of death imposed upon the appellant is proper.

For awarding the death sentence, the trial court gave the following reasons :

1)that the appellant committed murder of Kusum Devi at the instance of Doran Dass and on payment of Rs. 10,000/-,

2)that the appellant is a professional killer and

3)that the appellant is such a dare devil that he committed murder of Kusum Devi in broad day light on a public street.

It was of the view that such a professional killer does not deserve to remain in the world.

On the question of sentence, the High Court has observed as under :

"From the materials brought on record, I have already indicated the cruel manner in which this appellant had committed murder of a young and helpless lady in a broad day light at a public place. It has also been proved that this appellant had a previous history of committing murder. Therefore, having regard to the guidelines enumerated by the Apex Court in the case of Machhi Singh & Ors. Vs State of Punjab

A.I.R. 1983 S.C. 957, there appears no difficulty in concluding that this case falls in the category of one of the 'rarest of rare cases' where death penalty can be fully justified."

Thus, the main reason which induced the trial court and the High Court to impose the extreme penalty of death was that the appellant is a professional killer with a previous history of committing murders.

The only evidence on that point consists of the depositions of Pw 5 - Arjun Das and PW 19 - Sukumari Devi and the confessional statement of the appellant - Ex.5, recorded by Rakesh Kumar Brahamchari - PW 21. Arjun Das has deposed that when he had tried to find out who had committed murder of Kusum Devi, he had come to know that it was committed by Doran Das through a professional killer on payment of money. He did not say through whom he came to know it. He had no personal knowledge that Bullu Das, the appellant, is a professional killer. PW 19 - Sukumari Devi was declared hostile as she did not support the prosecution. She was cross-examined by the learned Public Prosecutor and during that cross-examination it was brought out that she had stated before the police that people of the locality know that Bullu Das commits murder on payment of money. This was brought on record by way of a contradiction. Thus, the statement made by her that Bullu Das commits murder by taking money was not substantive evidence.

The confessional statement, Ex-5, stated to have been made by the appellant was before the Police Officer Incharge of the Godda Town Police Station where the offence was registered in respect of the murder of Kusum Devi. The FIR was registered at the Police Station on 8.8.95 at about 12.30 p.m. On 9.8.95, after the appellant was arrested and brought before Rakesh Kumar that he recorded the confessional statement of the appellant. Surprisingly, on objection was taken by the defence for admitting it in evidence. The trial court also did not consider whether such a confessional statement is admissible in evidence or not. The High Court has also not considered this aspect. The confessional statement was clearly inadmissible as it was made by an accused before a Police Officer after the investigation had started.

Really, there was no evidence on record on the basis of which it would have been held that the appellant is a professional killer having a previous history of killing others on payment of money. If this circumstance is discarded from consideration, then the rest of the circumstances do not make it a rarest of rare case. We, therefore, allow this appeal and modify the order of sentence passed by the High Court by substituting the sentence of imprisonment for life for the sentence of death imposed by the trial court and confirmed by the High Court.