

Bachan Singh vs . State Of Punjab Air 1980 Scc 898 Laid ... on 29 August, 2008

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IN THE COURT OF MS. BIMLA KUMAR, ADDL. SESSIONS
JUDGE, ROHINI, DELHI.

Case.ID. No. 02404R0332292007

SC No. 25/07

FIR No. 213/07

P.S. Mangol Puri.

U/S.: 302/34 IPC

S/V. 1. Kanhiya Lal
S/O Sh.Binoka Prasad
R/O W-28/153 G Block Jhuggies
Mangol Puri, Delhi.

2. Badlu Ram
S/O Sh. Tanku Ram
R/O W28/153 G Block Jhuggies
Mangol Puri, Delhi.

3. Suraj
S/O Sh. Kanhiya Lal,
R/O W28/153 G Block Jhuggi,
Mangol Puri, Delhi.

Order on sentence.

1.

Vide my separate judgment announced on 19-8-08 accused Kanhiya Lal, Badlu Ram and Suraj were convicted in respect of offence under section 302 read with section 34 IPC. I have heard arguments on the point of sentence from Ld. Counsel, Ms. Dineshwari and Ld. Addl. PP for the State. Ld. Counsel for accused has submitted that convict Suraj is 19/20 years old. He is well educated. He is studying in Jail. He is 12th class pass. He is not a previous convict. Accused Badlu is 65/70 years old. He is government employee. He is also not a previous convict. He, being the head of the family, has liability to maintain the family. Accused Kanhiya is also not a previous convict. He has to support five children and his wife. His son Suraj is also involved in this case. Ld. Counsel for the convicts has prayed for a lenient view. On the other hand, Ld. Addl. PP has prayed for severe punishment for the proved commission of offence.

2. Section 302 of the Indian Penal Code runs as below:-

"Whoever commits murder shall be punished with death, or imprisonment for life,

and shall also be liable to fine".

Section 354 (3) of Code of Criminal Procedure 1973 provides as below:-

"When the conviction is for an offence punishable with death, or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for sentence awarded, and, in the case of sentence of death, the special reasons for such sentence".

3. Constitution Bench of Hon'ble Supreme Court in Bachan Singh Vs. State of Punjab AIR 1980 SCC 898 laid down broad criteria which should guide the courts in the matter of sentencing a person convicted of murder under section 302 IPC. Hon'ble Supreme Court held as below:-

"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 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 case, 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), circumstances 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 ever-more 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 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".

4. In Machhi Singh and others Vs. State of Punjab AIR 1983 SC 957 Hon'ble Supreme Court addressed the issue of practical application of the 'rarest of rare case' rule laid down in Bachan Singh.

Hon'ble Supreme Court observed as follows:

".....every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it.Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by 'killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in rarest of rare cases' when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability otherwise of retaining death penalty. The community may entertain such a sentence when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime..."

5. Hon'ble Supreme Court in *Des Raj Vs. State of Punjab* (2007) (4) JCC 2974 mentioned the following guidelines for assistance to decide whether death sentence is warranted, on the facts and circumstances of a case:

(i) life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant facts and circumstances of the crime.

(ii) There must be special reasons for imposing the sentence of death. Except in gravest cases of extreme culpability, the extreme penalty of death should not be inflicted. The circumstances of the crime should leave no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances. In short, death penalty is warranted only in the rarest of rare cases.

(iii) A balance-sheet of aggravating and mitigating circumstances has to be drawn up. The circumstances of the 'offender' as also the circumstances of the 'crime' should go into such balance sheet. Only when the aggravating circumstances overwhelmingly outweigh the mitigating circumstances, the court should consider the opinion of death penalty".

6. Hon'ble Supreme Court in *Subhash Ram Kumar Bina @ Vakil Vs. State of Maharashtra*, AIR 2003 S.C 269 observed as follows:-

"Undoubtedly brutality is involved in every incident of murder but that brutality by itself will not bring it within the ambit of the rarest of the rare cases, for the purposes of death penalty".

7. In Prakash Dhawal Khairnar (Patil) Vs. State of Maharashtra AIR 2002 SC 340, accused killed his brother, brother's wife and children because of frustration, as he was not partitioning alleged joint property. Hon'ble Supreme Court observed that it is a heinous and brutal crime but is not rarest of rare case. Accused did not have any criminal tendency. He was not a menace to society.

8. In the present case all the convicts have committed murder of deceased Maya Ram in furtherance of their common intention by giving sariya blow on the head of deceased Maya Ram by accused Suraj. However, the injury proved to be fatal and Maya Ram died on account of head injury. I am of the considered view that the case of the convicts cannot be said to be 'rarest of rare cases' for which death penalty can be imposed upon them. Accused Suraj is quite young and other accused Kanhiya and Badlu have great responsibilities upon them, being head of the family. The accused do not appear to be menace to the society. They have no criminal record. In view of above facts, I am of the considered view that ends of justice would be met, if the accused are sentenced to imprisonment for life. Accordingly, all the accused are sentenced to imprisonment for life. Sentence of fine is compulsory. Hence, convicts are also sentenced to a fine of Rs.15,000/- each. In default of payment of fine, the defaulting accused will suffer simple imprisonment for 5 months. All the accused are in custody. The benefit of section 428 Cr.P.C is being provided to all the accused persons. Copy of the order be sent to Jail Superintendent for compliance. File be consigned to the Record Room.

Announced in the open Court.

Dated:29-8-08. (Bimla Kumari) ADDL. SESSIONS JUDGE, ROHINI, DELHI.