Anguswamy And Anr. vs State Of Tamil Nadu on 20 April, 1989

Equivalent citations: JT1989(2)SC184, 1989(1)SCALE1073, (1989)3SCC33, AIRONLINE 1989 SC 48, 1989 (3) SCC 33, (1989) 2 JT 184, 1989 SCC (CRI) 481, (1989) 2 JT 184 (SC)

Bench: A.M. Ahmadi, S. Natarajan

JUDGMENT

Ahmadi, J.

1. The two appellants having been convicted under Section 302/34, I.P.C. and sentenced to death have approached this Court by way of special leave. The facts leading to their conviction are that on 8th April, 1984, at about 3.15. p.m., when PW 2 was sitting near a printing press on 12th Street in Briyant Nagar the appellants came there hurling abuses to the Naicker community stating that their women deserve to be stripped naked and raped and their houses set on fire. When PW 2 objected to the use of such filthy and abusive language the first appellant challenged him by catching him by the shoulder. PW 2 brushed aside the hand of the first accused and beat him. The first appellant fell down but got up saying he would deal with PW 2 later. So saying, he along with the second appellant went to wards the south. At that time, a police constable in uniform by name Sharmuga Sadaksharam (PC No. 219) (hereinafter referred to as 'the deceased') came there on a cycle. Since a crowd had collected he made inquiries whereupon PW 2 informed him about the incident. He also told him that both the appellants had run away towards the south. The deceased went in pursuit of the appellants on his cycle. Sometime thereafter, PW 1, another constable attached to the Tuticorin Police Station, came there on his cycle. Since a crowd had collected in front of Perumal's shop he made inquiries and learnt that there was a quarrel between the appellants and some members of the Naicker community. He was also told that the deceased had gone in pursuit of the appellants Thereupon PW 1 also went in that direction followed by PW 2. PW 3, a resident of 13th Street had noticed the two appellants running away with the deceased chasing them. PW 3 saw appellant No. 1 run into his house while his companion appellant No. 2 went towards Bharathi Nagar. The deceased left his cycle, chappals and the police cap on one side and ran after the second appellant. The second appellant fell down and was caught by the deceased. While the deceased was dragging him to the east, the first appellant came with an 'aruval' and attempted a blow on that neck of the deceased. The deceased warded off that blow with his left hand and sustained an injury. The first appellant made a second attempt to inflict another blow on the neck of the deceased but this blow too was warded off by the deceased with his left hand. All this time the deceased was holding the second appellant by his right hand. As a result to the injuries caused to him and on the first appellant landing a third blow on the neck of the deceased lost his grip over the second appellant. After the second appellant wriggled out from the clutches of the deceased, the former took out an aruval from his back and inflicted a cut on the nape of the deceased. Thereafter, both the appellants inflicted

injuries on different parts of the body of the deceased and fled. The deceased fell down bleeding profusely. Both the courts below relying on the above version unfolded by PWs 1 to 4, the four eye witnesses, and PW 5 who saw the appellants fleeing from the scene of occurrence with arrivals convicted them under Section 302/34, I.P.C. The Trial Court recorded the conviction on 19th February, 1985. On the same day, the appellants were asked if they had anything to say on the question of sentence. It appears that the appellants reiterated that they were not guilty. Thereafter, the learned Sessions Judge proceeded to observe as under :

> In this case both the accused have murdered the constable in broad day light. They have done so with the motive of killing him. Based on the evidence, under Section 302, I.P.C., read with Section 34, I sentence each one of them to death till their death and the sentence is to be confirmed by the High Court.
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> It will be seen from the above that the only reason given for awarding the death penalty is that the deceased, a constable, was murdered in broad day light.

2. The appellants filed an appeal challenging their convictions. Since the Trial Court had awarded the death penalty, a reference also came to the High Court. Both the appeal and reference were disposed of by a common judgment dated 17th September, 1986. The learned Judges of the High Court confirmed the conviction of the appellants under Section 302/34, I.P.C. and also came to the conclusion that the Trial Court had rightly visited the appellants with the extreme punishment of death. Taking note of the fact that the deceased being a police constable could not have ignored the behaviour of the appellants in abusing members of the Naicker community proceeded to add as under :

> Only in such a situation, the deceased constable, even at the risk of his life, had chased both the accused and caught hold of A 2 and had dragged him, evidently to take him to the police station. It was at this moment, A 1 had pounced upon the constable who was in the police uniform discharging his duty, and ruthlessly attacked him in a ghastly manner. Meanwhile, A 2 who wriggled out of the hold of the deceased, also joined A 1 and deliberately cut the deceased several times and indiscriminately on the vulnerable parts of his body.
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> Thereafter, referring to this Court's decision in Machhi Singh v. State of Punjab , the High Court came to the conclusion that the murder was committed in an extremely aggravated manner, there being no mitigating circumstances, and hence the extreme penalty prescribed by law was warranted. While dismissing the appeal preferred by the appellants the High Court accepted the reference and confirmed the death penalty. It is against the said order of the High Court that the present appeal by special leave is preferred.

3. The requirement of Sub-section (2) of Section 235 of the CrPC is mandatory and confers a right on the offender to be heard on the question of sentence. The scope of the said provision has been considered in Allauddin Mian and Ors., Sharif Mian and Anr. v. The State of Bihar (Criminal

Appeals Nos. 343 and 446 of 1988 decided on April 13, 1989) wherein it is pointed out that it satisfies a dual purpose, namely, (i) the rule of natural justice inasmuch as it gives the offender an opportunity of being heard on the question of sentence and (ii) it seeks to assist the Court in determining the appropriate sentence. In Allaudin Mian's case we have emphasised the need to strictly follow the mandate of Section 235(2) of the Cr.P.C. However, the opportunity, statutorily afforded by that sub-section to an offender does not absolve the Court of its obligation to apply its judicial mind on the question of sentence but casts additional obligations (i) to give the offender an opportunity to make a representation on the question of sentence and (ii) to take into consideration such representation while determining the appropriate sentence to be awarded to the offender. Since we have in Allauddin Mian's case already pointed out in detail the obligations casts of the sentencing Judge, we need not dilate and elaborate on the various factors which must exercise the judicial mind on the choice of sentence.

4. In the prevent case the learned Sessions Judge failed to take into consideration several relevant factors and was solely influenced by one factor for awarding the death sentence, namely, that the deceased was a police constable and was murdered while on duty. However, provocative the behaviour of the appellants may have been towards the members of the Naicker community, the incident had come to an end after PW 2 had floored appellant No. 1 and the appellants had thereafter left the place of occurrence albeit v wing revenge on a future occasion. The whole episode was over and could have been forgotten as there was no immediate danger of retaliation by the appellants and consequently there was no immediate need for their arrest. No report was made against the appellants for their provocative behaviour and no case was registered against them for the commission of any cognizable offence. The deceased acted over-zealously and attempted to apprehend the appellants. As the earlier incident had passed off, the appellants were perhaps unable to fathom the reasons for their attempted arrest and therefore tried to wriggle out from the clutches of the deceased by the use of force. Since the appellants felt that they were being unjustly treated by the deceased, they in order to free themselves attacked the deceased and caused the injuries. It cannot be said that the attack was a pre-planned one. It was rather sudden and actuated by a desire to free themselves. It, therefore, follows that the murder cannot be said to belong to the rarest of rare category warranting the sentence of death. The High Court too failed to take note of these factors when it confirmed the death sentence awarded by the Sessions Court. We, therefore, hold that in the facts and circumstances of this case the sentence of death is not called for and the sentence of life imprisonment would adequately meet the ends of justice.

5. Accordingly while confirming the conviction of the appellants under Section 302/34 I.P.C., we allow this appeal insofar as the sentence is concerned and substitute the sentence of death with one of imprisonment for life.