Mohd.Chaman vs State (N.C.T.Of Delhi) on 11 December, 2000

Author: D.P. Mohapatra

Bench: K.T.Thomas, D.P. Mohapatra

CASE NO.:
Appeal (crl.) 68-69 1999

PETITIONER:
MOHD.CHAMAN

Vs.

RESPONDENT:
STATE (N.C.T.OF DELHI)

DATE OF JUDGMENT: 11/12/2000

BENCH:
D.P.Mohapatro, K.T.Thomas

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J D.P. Mohapatra, J.

Mohd.Chaman, the accused in Sessions Case No.134 of 1996 (State Vs. Mohd. Chaman) has filed these appeals by special leave challenging the judgment passed by the High Court of Delhi in Murder Ref.No.5/97 and Crl. Appeal No.305/97 confirming sentence of death passed against him by the Additional Sessions Judge, Shahdara, Delhi. This court, by the order dated 22.1.99 granted leave confined to the question of sentence and further directed execution of death sentence be stayed during pendency of the appeal. Thus the matter to be considered in the case relates to sentence only. The question for determination is whether, on the facts and in the circumstances appearing from the materials on record the trial Court and the High Court were right in imposing death sentence against the appellant. The answer to this question depends on the finding whether the case can be classified as a rarest of rare cases for imposition of the maximum penalty of death. The facts of the case relevant for the determination of the question may be stated thus: The appellant Mohd.Chaman was aged thirty years at the time of the incident and the victim girl Kumari Ritu (deceased) was aged one and half years then. Bindu Shah (PW-4), father of the deceased along with his wife Smt.Lalita (PW-2) and two daughters Soni and Ritu used to reside in House No.5416/6, Gali No.4, Shakti Gali, Amar Mohalla, Raghupura, Gandhi Nagar. Bindu Shah was running a tailoring factory near his house. The appellant was residing in the same house in a room adjacent to the room of Bindu Shah. On 10-4-95 at about 7.30 p.m. when Bindu Shah was in his factory, Smt.Lalita left her two daughters

in the care of a neighbour and went out for marketing. On her return Smt.Lalita did not find Ritu in the house. She made a search in the locality nearby and sent her elder daughter to call her brother Vidya Nand Sagar (PW-7). Vidya Nand Sagar accompanied by Shankar (PW- 15) reached the house of Smt.Lalita and made some search for Ritu but did not find her. However, Smt.Lalita found the room of the appellant half open and on peeping into it saw Ritu lying on the floor and the appellant present in the room. On seeing Smt.Lalita, the appellant picked up Ritu from the floor in her unconscious state and handed her over to Smt.Lalita. At that time the mother found that Ritu was without undergarment (kaccha) and was wearing a frock. She observed several bleeding teeth bite marks on the cheek and other parts of the body of Ritu. On her query about the condition of Ritu the appellant told her to go away silently otherwise she would also meet the same fate and the Police could do nothing against him. Thereafter Smt.Lalita rushed to the factory of her husband. The parents took Ritu to a doctor who advised them to take her immediately to a hospital. Then Ritu was taken to Surya Hospital where she was declared brought dead by the doctor. In the meantime some people who had collected at the place of occurrence, kept the appellant under close guard till sub-inspector Magan Singh (PW-16) of Gandhi Nagar Police Station reached the spot and took control of the situation. Soon thereafter SHO, N.S.Khan (PW-20) arrived at the scene of occurrence on receiving information about the incident. The police officers were told by the persons at the spot that the appellant had raped and killed Ritu. SHO N.S.Khan took the investigation. He noticed that there were teeth bite marks on the breast, neck, abdomen and thighs of the deceased. He also observed that private parts of the deceased were swollen. He recorded the statement of Smt.Lalita, mother of the deceased and that statement was treated as the FIR of the case. Ex-PW 3/A, post-mortem report was prepared by Dr.K.Goel (PW-3), who found the following external and internal injuries on the body of Ritu:- External: 1. Teeth bite marks in the form of two linear, semi-linear marks with intermittently placed abrasions. These marks are 3.5 cm. long, placed 2.5 cm. apart with thejr concavity facing each other over Rt. Cheek near Rt. angle of mouth.

2. Abrasion 1.7 x 0.6 cms. Over chin. 3. One oval bruise having width of about 6 mm. With central pale area with dimensions 4.5 x 4 cm. & an another same bruise of same width overlapping lower point of previous one having dimensions about 5 x 4 cm. Both are present over Rt. Side of abdomen at upper part.

4. Oval bruise about 6.5 mm. Diameter c central pale area c dimensions 5.5 cm. x 4.5 cm. c two small abrasion marks at periphery each about 3 mm. Size at 4 & 5 O clock position.

5. Small abrasions with bruising in the vaginal wall at 4, 5 and 6 Oclock positions. Hymen is partially torn admitting two fingers, small tear present over posterior fornix. Small blood clots present over injured parts in the vagina.

Internal: Head Scalp tissues, bones intact, meninges and brain matter intact and NAD and pale.

Neck All structures are intact. No extra vasation of blood.

Chest Rib cage intact. Heart and Lungs intact and NAD.

Abdomen Rt.lobe of liver is badly lacerated with vertical deep laceration. Large amount of blood and clots present in peritonial cavity and around liver.

Spleen and kidneys intact and pale.

Stomach contains small amount of semi-digested food having no abnormal small and NAD.

Bowels Intact. Bladder and Rectum empty.

Pelvis Intact. Uterus empty and NAD.

Blood sample, vaginal swab, rectal swab, swam from surrounding area of genitalia and swab from injury sides are preserved sealed and handed over to the police.

OPINION:- All injuries were ante-mortem in nature. Injury no.1 is love bite marks. Injury no.3 and 4 (pattern bruises) are probably as a result of impact of some object of the shape described in the injuries. Injuries to genitalia are caused during sexual assault. Injury to the liver is caused by application of blunt forch and is sufficient to cause death in ordinary course of nature.

Cause of death is haemorrhagic shock consequent to liver injury.

Time since death is about 19 hours.

On completion of the investigation the charge-sheet was submitted against the appellant of having committed the offences of murder and rape punishable under Sections 302/376 of the Indian Penal Code. The case against the appellant was based on circumstantial evidence only. The circumstances which have emerged from testimony of the relevant witnesses, like, PWs 2, 3, 4, 7, 10, 15, 19 and PW- 20 are the following: 1. On 10.4.1996 at 7.30 p.m. Smt.Lalita, PW-2 left her two daughters, namely, Soni and Ritu in the care of a neighbour and went out for marketing.

2. PW 10 and PW 15 saw the accused taking Ritu to his room.

3. When at 7.45 p.m. on that very date Smt.Lalita returned, she found Ritu missing.

4. Smt.Lalita sent her elder daughter Soni to fetch her brother Vidya Nand Sagar, PW7.

5. A search for Ritu was made by Smt.Lalita and Vidya Nand Sagar in the vicinity.

6. Smt.Lalita peeped into the room of the accused and found Ritu lying on the floor and the accused present there.

7. On query made by Smt.Lalita, the accused handed over the body of Ritu to her and when she made injuries about the condition of the girl, the accused told her to go away otherwise she would also meet the same fate and that Police could not do anything against him.

8. Smt.Lalita took Ritu to her husband Bindu Shah, who was working in his tailoring factory.

9. Vidya Nand Sagar, PW 7 remained standing near the door of the room of the accused, who remained in his room.

10. Several persons collected at the place of occurrence and held the accused.

11. Bindu Shah, took Ritu to a neighbouring Doctor, who told him to take her to a hospital.

12. Bindu Shah took Ritu to Surya Hospital where she was declared brought dead at 8.15 p.m.

13. Bindu Shah along with his wife returned to the place of occurrence with the dead body of Ritu.

14. PW 16 SI Magan Singh arrived at the place of occurrence and found the accused in the custody of some persons outside the room and that the persons were shouting that the accused had raped Ritu inside his own room and had killed her. He controlled the scene and took the accused in his custody.

15. PW 20, N.S.Khan, SHO of the police station and the IO of this case, on receiving information about this case, reached the place of occurrence at 9.35 p.m. on that very day and found a large crowd having gathered there and shouting that the accused present there had committed rape and murder of Ritu. He took the accused in custody and sent him to the police station with police escort for safety.

16. PW 13, Dr.K.Goel, who performed the post-mortem examination opined that the incident took place on 10.4.1995 around 7.45 p.m. The learned trial Judge on appreciation of the evidence in the case in the light of settled principles for judging a case based on circumstantial evidence, held that the prosecution has succeeded in establishing the guilt of the accused and accordingly convicted him under Sections 302 and 376 IPC. Regarding the sentence the court considered the relevant aspects of the case like the appellant being a neighbour of the family of the deceased; that during the temporary absence of the mother of the child (deceased) from the house had taken over her (deceased) to his room where he committed the barbaric act of rape on the innocent child aged one and half years and in the process of committing rape inflicted injuries on her liver which resulted in death of the child. The learned trial Judge while sifting the relevant materials on record referred to the principles laid down by this Court in the case of Bachan Singh vs. State of Punjab AIR 1980 SC 898, Machhi Singh & Ors. Vs. State of Punjab (1983 (3) SCC 470), Kamta Tiwari v. State of MP Vol.III (1996) CCR, SC page 141, Laxman Naik v. State of Orissa, Vol.III (1994) SCC page 381, and came to the conclusion that it is fit case in which the extreme penalty of death should be awarded. The High Court on assessing the evidence on record held that the trial Court rightly convicted the accused of rape and murder of Kumari Ritu. On the point of sentence the High Court observed, In the case before us a baby girl aged about one and half years, like a growing bud of a flower, had been a prey to the lust of a thirty years old man and had been killed in a most revolting manner arousing intense and extreme indignation of the community. It is an act of extreme depravity and arouses a sense of revulsion in the mind of the common man. Such a person is menace to the society. The facts of the case persuade us to hold that this is a rarest of the rare cases where the sentence of death is

eminently desirable. The High Court confirmed the death penalty against the appellant.

The question that arises for consideration is whether the accused in this case deserves the harshest punishment of death. In this connection we can do no better than take note of the observations and the formulations made by this Court in Bachan Singh (supra). Therein a Constitution Bench of this Court after an exhaustive discussion of the relevant provisions like sections 299,300 and 302 of the IPC, sections 235(2) and 354(3) of the Criminal Procedure Code, and Articles 13,14,19(2) to (6) and 21 of the Constitution held, inter alia, that the founding fathers recognised the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law; that there are several other indications, also, in the Constitution which show that the Constitution- makers were fully cognizant of the existence of death penalty for murder and certain other offences in the Indian Penal Code. This Court further observed that the mention in the legislative list, right of Governor and President to suspend, commute or remit death sentence and right of appeal to the Supreme Court under Article 134 show that death penalty or its execution cannot be regarded as an unreasonable, cruel or unusual punishment. Nor can it be said to defile "the dignity of the individual" within the preamble to the Constitution. On parity of reasoning, it cannot be said that death penalty violates the basic structure of the Constitution. Regarding the question of laying down standards and norms restricting the area of imposition of death penalty, if by "laying down standards", it is meant that 'murder' should be categorised beforehand according to the degrees of its culpability and all the aggravating and mitigating circumstances should be exhaustively and rigidly enumerated so as to exclude all free play of discretion, the argument merits rejection. Such standardisation is well-nigh impossible. Firstly, degree of culpability cannot be measured in each case; secondly, criminal cases cannot be categorised, there being infinite, unpredictable and unforseeable variations; thirdly, on such categorization, the sentencing process will cease to be judicial; and fourthly, such standardisation or sentencing discretion is a policy-matter belonging to the legislature beyond the court's function.

In paragraphs 176-177 of the Judgment this Court quoted with approval the following observations of Earl Loreburn L.C. in Hyman V. Rose (1912 AC 623) :

> "I desire in the first instance to point out that the discretion given by the section is very wide... Now it seems to me that when the Act is so expressed to provide a wide discretion... it is not advisable to lay down any rigid rules for guiding that discretion. I do not doubt that the rules enunciated by the Master of the Rolls in the present case are useful maxims in general, and that in general they reflect the point of view from which Judges would regard an application for relief. But I think it ought to be distinctly understood that there may be cases in which any or all of them may be disregarded. If it were otherwise, the free discretion given by the statute would be fettered by limitations which have nowhere been enacted. It is one thing to decide what is the true meaning of the language contained in an Act of Parliament. It is quite a different thing to place conditions upon a free discretion entrusted by statute to the court where the conditions are not based upon statutory enactment at all. It is not safe, I think, to say that the court must and will always insist upon certain things when the Act does not require them, and the facts of some unforeseen case may make

the court wish it had kept a free hand.

> "Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the courts, by devising a formula which will confine the power to grant anticipatory bail within a strait-jacket. While laying down cast iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises. Therefore, even if we were to frame a 'code for the grant of anticipatory bail', which really is the business of the legislature, it can at best furnish broad guidelines and cannot compel blind adherence."

From what has been extracted above, it is clear that this Court should not venture to formulate rigid standards in an area in which the Legislature so warily treads. Only broad guidelines consistent with the policy indicated by the legislature in Section 354(3) can be laid down. Taking note of the decision of the Supreme Court of the USA in Gregg v. Georgia [428 US 153 = 49 L Ed 859] this Court observed :

> "Critically examined, it is clear that the decisions in Gregg v. Georgia and its companion cases demonstrate the truth of what we have said earlier, that it is neither practicable nor desirable to imprison the sentencing discretion of a judge or jury in the strait-jacket of exhaustive and rigid standards. Nevertheless, these decisions do show that it is not impossible to lay down broad guidelines as distinguished from iron-cased standards, which will minimise the risk of arbitrary imposition of death penalty for murder and some other offenses under the Penal Code."

Then this Court proceeded to consider the question of indicating the broad guidelines which should guide the Court in the matter of sentencing a person convicted of murder under section 302, Indian Penal Code. Making a cautious approach, this Court observed :

> "Before we embark on this task, it will be proper to remind ourselves, against that "while we have an obligation to ensure that the constitutional bounds are not overreached, we may not act as judges as we might as legislatures."

Reiterating the principles laid down in Jagmohan vs. State of U.P. [(1973) 1 SCC 207)] this Court held that:

> the application of those principles is now to be guided by the paramount beacons of legislative policy discernible from Sections 354(3) and 235(2), namely : (1) The extreme penalty can be inflicted only in gravest cases of extreme culpability; (2)In making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender also.

> Noticing some of the aggravating circumstances this Court observed that: pre-planned, calculated, cold-blooded murder has always been regarded as one of an aggravated kind. Some other aggravations were enumerated in para 202 of the Judgement.
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> After enumerating the circumstances, this Court added:
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> "Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other."

Similarly some of the mitigating circumstances suggested by the counsel appearing in the case were enumerated in para 206 of the Judgement :

> "Mitigating circumstances :- In the exercise of its discretion in the above cases, the court shall take into account the following 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.

This Court further observed that :

> "We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence. Some of these factors like extreme youth can instead be of compelling importance. In several States of India, there are in force special enactments, according to which a 'child', that is, 'a person who at the date of murder was less than 16 years of age', cannot be tried, convicted and sentenced to death or imprisonment for life for murder, nor dealt with according to the same criminal procedure as an adult. The special Acts provide for a reformatory procedure for such juvenile offenders or children."

The views of the majority of the judges were summed-up as follows:

> "There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological

> imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency-a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore 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 the 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."

In the case of Machhi Singh (Supra) three learned Judges of this Court making an in-depth examination of the principles laid down in Bachan Singh case (supra) observed that between the protagonists of the 'an eye for an eye' philosophy who demand 'death-for- death'; the 'Humanists' on the other hand who press for the other extreme viz., 'death-in-no- case'; a synthesis has emerged in Bachan Singh case (supra) wherein the 'rarest-of-rare-cases' formula for imposing death sentence in a murder case has been evolved by this Court. This Court then took note of the problems emerging for identification of the guidelines spelt out in Bachan Singh case in order to determine whether or not death sentence should be imposed. Discussing the question of application of the rarest of rare case rule to the facts of individual cases in the context of the relevant guidelines this Court observed (at p.487-88): "The reasons why the community as a whole does not endorse the humanistic approach reflected in 'death sentence -in-no- case' doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of 'reverence for life' principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that 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. The very existence of the rule of law and the fear of being brought to book operates as a deterrent of those who have no scruples in killing others if it suits their ends. 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 or otherwise of retaining death penalty. The community may entertain such a sentiment 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, such as for instance:

> I. Manner of Commission of murder
>
> 33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,
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> (i) when the house of the victim is set aflame with the end in view to roast him alive in the house. (ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner."

This Court in the background of the guidelines indicated in Bachan Singh case (supra) formulated the following propositions for application to the facts of each case for determination of the question (at p.489):

> (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
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> (ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.
>
> (iii)Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
>
> (iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

39. In order to apply these guidelines inter alia the following questions may be asked and answered:

> (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?
>
> (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating

circumstances which speak in favour of the offender?"

The principles laid down in Bachan Singh case (supra) and the formulations made in Machhi Singh case (supra) as noted earlier have been applied by this Court in different cases depending on the facts and circumstances thereof. In the case of Nirmal Singh and ors. Vs. State of Haryana [JT 1999 (2) SC 225] this Court while confirming the death sentence imposed on accused Dharam Pal, commuted such sentence to life imprisonment of the co- accused, taking note of the facts that the accused had no criminal antecedents, no possibility of continued threat to society, he was only accompanying his brother co-accused and gave three blows to one deceased only after his brother had given 2-3 blows to deceased. No assault by him on other victims who were killed by his brother; This Court, in the above case held that his case is not of "rarest of rare" nature and hence commuted death sentence to life imprisonment. A Bench of two learned Judges of this Court in case of Anshad and others vs. State of Karnataka [1984 (4) SCC 381] observed (at p.389-90):

"The Courts must be alive to the legislative changes introduced in 1973 through Section 354(3) Cr.PC. Death sentence, being an exception to the general rule, should be awarded in the "rarest of the rare cases" for 'special reasons' to be recorded after balancing the aggravating and the mitigating circumstances, in the facts and circumstances of a given case. The number of persons murdered is a consideration but that is not the only consideration for imposing death penalty unless the case falls in the category of "rarest of the rare cases". The courts must keep in view the nature of the crime, the brutality with which it was executed, the antecedents of the criminal, the weapons used etc. It is neither possible nor desirable to catalogue all such factors and they depend upon case to case.

This Court in the above case, preferred to adopt the safer course and imposed the sentence of life imprisonment on A-1 to A-3 for the offences under section 302/34 IPC and set aside the sentence of death. Coming to the case in hand, the crime committed is undoubtedly serious and heinous and the conduct of the appellant is reprehensible. It reveals a dirty and perverted mind of a human-being who has no control over his carnal desires. Then the question is: whether the case can be classified as of a 'rarest of rare category justifying the severest punishment of death. Testing the case on the touchstone of the guidelines laid down in Bachan Singh (supra), Machhi Singh (supra) and other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, we are not persuaded to accept that the case can be appropriately called one of the 'rarest of rare cases deserving death penalty. We find it difficult to hold that the appellant is such a dangerous person that to spare his life will endanger the community. We are also not satisfied that the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the offender. It is our considered view that the case is one in which a humanist approach should be taken in the matter of awarding

punishment. Accordingly, the capital sentence imposed against the appellant by the Courts below is set aside, instead the appellant shall suffer rigorous imprisonment for life. Subject to the above modification of sentence, the appeals filed by the accused are dismissed.