Ram Narain And Ors. vs State Of Uttar Pradesh on 11 December, 1970

Equivalent citations: AIR1971SC757, 1971CRILJ649, (1970)3SCC493, 1971(III)UJ117(SC), AIR 1971 SUPREME COURT 757, 1971 ALLCRIR 319, 1971 CRI APP R (SC) 1, 1971 UJ (SC) 117, (1971) 2 SC CRI R 273

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Bench: I.D. Dua, S.M. Sikri, V. Bhargava

JUDGMENT

I.D. Dua, J.

1. In this appeal by special leave we are only concerned with the question of sentence imposed on appellants 1, 2 and 3 by the High Court. They are Ram Narain son of Manni Lal Ahir, Babulal son of Bhikhari Ahir and Nankau son of Manni Lal. Special leave was declined to the other convicts who had applied along with the present appellants.

2. Eight persons were tried in the Court of the 1st Temporary Sessions Judge, Kanpur for the murder of one Bitta. The three appellants with whom we are now concerned were alleged to have been armed respectively with deadly weapons like gandasa, sword and ballam. They were charged Under Section 148, I.P.C. with having formed an unlawful assembly along with the five co-accused with the common object of committing the murder of the deceased. They were further charged Under Section 302 read with Section 149, I.P.C. for committing the said murder.

3. At the trial evidence was led to show that five accused persons had direct enmity with the deceased and about the remaining three it was admitted that Shivnath, accused, is the brother of the wife of Rameshwar, accused, and Jai Ram and Nankau (one of the appellants here) are cousins of the accused Rameshwar and Babulal. The actual occurrence took place at 3.30 a.m. on the night between 17th and 18th April, 1966. Prosecution evidence was led to show that Rameshwar, Shivnath, Baboo alias Babua and Jailal pressed the deceased with their lathis when the three appellants along with Lallu, accused, who was armed with a lathi inflicted injuries on the deceased killing him. The trial Court came to the conclusion that all the eight accused persons had motive for killing the deceased and that they had jointly committed his murder after forming an unlawful assembly with the common object of doing so. In considering the question of sentence that Court took the view that all the accused were equally guilty of murder and it made no difference as to who actually gave the blow with the gandasa, sword or the ballam or as to who pressed the victim with lathis. The final conclusion of the trial Court may be stated in its own words :

> Considering the entire evidence on the record and the circumstances of the case, I have come to the conclusion that all the eight accused jointly committed the murder of Bitta after forming an unlawful assembly of which the common object was to commit the murder of Bitta and this offence was committed by all of them in prosecution of the said common object of the unlawful assembly formed by them. Thus all the accused are clearly guilty of the offence of rioting and murder with which they stand charged.
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> Coming to the question of sentence it is to be noted that all the accused are equally guilty so far as the offence of murder is concerned irrespective of the fact whether some particular accused actually gave blow of a gandasa or a sword or a ballam or pressed the victim with a lathi. As most of the accused had some cause of grievance against he deceased and because no revolting cruelty was committed on the dead body of the deceased after he had died, the lesser penalty for murder, that is life imprisonment would meet the ends of justice in this case.

4. The eight convicted persons appealed to the High Court by three separate appeals and the complainant Mahabir preferred a criminal revision for enhancement of the sentence imposed on Nankau, Ramnarain and Babulal with whom we are concerned in this appeal. The High Court dismissed the appeal preferred by the convicts and allowed the criminal revision as a result which the sentence on the present three appellants was enhanced to one of death. After discussing the injuries caused to the deceased the High Court observed :

> From the above it is evident that each of these appellants Nankau, Ramnarain and Babulal inflicted fatal injuries on Bitta which were individually sufficient to cause his death. The murder of Bitta was cold-blooded and a premeditated one. We are accordingly of the opinion that the three appellants Nankau, Ramnarain and Babulal each inflicted fatal injuries on Bitta and deserve the extreme penalty of death.

5. We are asked by Shri Chari, learned Counsel for the appellants, to set aside the sentence of death and restore that of life imprisonment imposed by the trial Court. The question of sentence, it is well settled, is always a matter of judicial discretion of the trial Court within the statutory limits. In the case of murder of the discretion is limited to two alternatives for the sentence can be either one of death or of imprisonment for life. The proper exercise of discretion in this respect is generally a matter of some difficulty. This discretion has, however, like all discretions, to be exercised on a proper consideration of all the relevant facts and circumstances keeping in view the broad objective of the sentence being neither too severe nor too lenient. If the reasons for awarding the lesser penalty by the trial Court in case of murder are such on which a judicial mind may appropriately do so then the appellate Court is not expected to enhance the sentence and impose the extreme penalty of death. Merely because the appellate Court feels that left to itself it would have preferred to impose the sentence of death is by itself and without more not a sufficient ground to justify enhancement. It is only when the sentence appears on the facts and circumstances of the case to be so manifestly inadequate as to have resulted in failure of justice that enhancement of the sentence may be justified by the appellate Court.

6. In the present case reasons given by the learned Sessions Judge for imposing the lesser penalty appear to us to be such that a Judicial mind may well do so they are neither contrary to any well-established principle nor so erroneous as to persuade us to hold that the sentence imposed is manifestly inadequate. It has to be remembered that under the existing lat in cases of murder it is not necessary for the Court to give reasons for not imposing the extreme penalty of death and the discretion of the Court in awarding the lesser penalty is, therefore, wider than before the amendment of the law in this respect. It is further noteworthy that the State had not considered it proper to ask for enhancement of the sentence. The High Court was moved by private complaint who was apparently inspired by consideration of private vengeance. The High Court appears to have ignored this aspect.

7. It is true that this Court normally does not interfere with the discretion exercised by the High Court on the question of sentence even though the same has been enhanced but where the trial Court has exercised its discretion on proper consideration of the material on record and its order cannot be described to be either contrary to recognised principle or otherwise having caused failure of justice and further when the State does not consider that the ends of justice require enhancement of the sentence but the High Court interferes at the instance of a private complaint this Court would be fully justified in considering for itself the propriety of the sentence as enhanced by the High Court. In our view the High Court was in error in enhancing of the three appellants from life imprisonment to that of death. We accordingly allow the appeal and setting aside the sentence of death, restore the sentence of life imprisonment imposed by the trial Court.