State Of U.P vs Dharmendra Singh & Anr on 21 September, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3789, 1999 AIR SCW 3854, 1999 ALL. L. J. 2402, 2000 (2) LRI 350, (1999) 7 JT 207 (SC), 1999 (8) ADSC 334, 1999 (8) SCC 325, 1999 (7) JT 207, (1999) 3 EASTCRIC 379, (1999) 39 ALLCRIC 747, (1999) 3 CHANDCRIC 78, (1999) 4 CURCRIR 25, (1999) 6 SCALE 113, (1999) 8 SUPREME 183, 1999 SCC (CRI) 1425, (2000) SCCRIR 552, (1999) 4 ALLCRILR 245, (1999) 26 ALLCRIR 2176, (1999) 4 RECCRIR 250, (2000) 1 SCJ 55, 2000 (1) ANDHLT(CRI) 66 SC, (2000) 1 ANDHLT(CRI) 66

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
DHARMENDRA SINGH & ANR.

DATE OF JUDGMENT: 21/09/1999

BENCH:
N. Santosh Syed Shah Mohammed quadri

JUDGMENT:

SANTOSH HEGDE, J.

Leave granted in the above S.L.Ps. Heard learned counsel for the parties. These appeals are preferred against the judgment and order dated 19.8.1997 passed in Crl.A.Nos.2090/95 and 2011/95 by the High Court of Allahabad wherein the High Court while confirming the conviction of the respondents herein and 4 others in connected appeals, rejected the reference made by the learned Sessions Judge for confirmation of death sentence of the respondents and commuted the said sentence to life imprisonment for offences punishable under Section 302 IPC. There is an accompanying SLP filed by the complainant in the case from which these appeals emanate. We consider it proper to deal with it separately. The two respondents in these appeals along with 4 other persons were charged with offences punishable under Sections 147/148/149/302 IPC for having committed the murders of Pitamber Singh aged about 75 years, Ramwati Devi aged about 32 years, (Ravi) Ravindra and Narendra both aged 12 years and Reeta aged about 15 years. The prosecution case, narrated in brief, necessary for the disposal of these appeals is as under : The complainant - Chander Mohan had purchased a part of the family house and some land belonging to the family of Dharmendra, respondent herein, from latter's grand-father and started living with his family in that part of the residential building purchased by him. Dharmendra resented this purchase as he himself

was intending to purchase the same. Narendra, the other respondent in these appeals who is stated to be a student of LL.B., was harbouring evil designs on Kumari Reeta and in furtherance thereof he was constantly teasing her when she used to be on her way to school. It is stated by the prosecution that in order to fulfil his lust, about 4-5 days prior to the occurrence, he had tried to molest her and also threatened her with dire consequences should she dare to complain against him. It is stated that inspite of the threat Reeta did complain to her Uncle, the complainant, about the misdemeanour of Narendra sequel to which the complainant and his nephew gave a thrashing to the said accused Narendra. It is in this background of hatred entertained by Dharmendra and Narendra for their own causes that they enlisted the support of the other accused who happened to be their close friends to wreak vengeance on the family of the complainant, consequent to which the 6 accused together at about 3 a.m. in the night intervening 26th and 27th May, 1994 caused the death of all the 5 persons in their sleep by inflicting multiple stab injuries. It is stated by the prosecution that Pws.1 to 3 had witnessed and identified these 6 accused persons leaving the place of occurrence with blood stained weapons. The learned Sessions Judge on considering the material placed by the prosecution before him, came to the conclusion that the prosecution had proved the charges against the accused persons and held them guilty of the said charges, and while convicting the said persons awarded life sentence in regard to the 4 accused persons who are not before us now. In regard to the two accused respondents who are before us now, the learned Judge from the facts and circumstances of the case came to the conclusion that they had committed a crime which could be termed as `rarest of the rare cases'. Hence, after assigning reasons, proceeded to award the extreme penalty of d eath. The matter was taken to the High Court at Allahabad both by way of appeal by the accused persons and also by way of `reference' for confirmation of the death sentence. The High Court vide its judgment dated 19.8.1997 upheld the conviction of all the accused persons and while confirming the sentence awarded on the other accused persons, who are not respondents herein, came to the conclusion that the sentence of death was not called for in view of the fact that the two respondents - Dharmendra and Narendra - were languishing in death cell since 3.6.1994 and 28.5.1994 respectively which is for a period of more than 3 years and consequently, reduced t he sentence to that of imprisonment for life. Against the judgment of the High Court confirming the conviction and awarding of sentence, the accused had preferred SLP (Crl) Nos.73-75/98 before this Court which came to be dismissed on 23.1.1998. Against the order of the High Court refusing to confirm the sentence of death awarded to the respondents herein, the State has preferred the above appeals and the complainant has also preferred a companion petition which we have already stated that we will deal with separately. At the outset, the learned counsel appearing for the respondents herein contended that if the Court is inclined to go into the merits of the State appeal then we should consider the effect of Section 377(3) of the Code of Criminal Procedure (for short `the Code') read with Section 386c(iii) thereof. It is his contention that in the event of the appellate court entertaining an appeal of the State against sentence then it is open to the accused not only to show cause against the enhancement of such sentence but also to plead for his complete acquittal or for reduction of the sentence. It was also pointed out to us that in view of the provisions of Section 386 of the Code, it is open to us as an appellate court in an appeal for enhancement of sentence to alter the sentence also. He placed strong reliance on a decision of this Court in U.J.S. Chopra v. State of Bombay (AIR 1955 SC 633). Section 377(3) of the Code reads thus :-

> "377. Appeal by the State Government against sentence.-(1) x x x (2)x x x (3)When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence."

A perusal of this Section shows that this provision is applicable only when the matter is before the High Court and the same is not applicable to this Court when an appeal for enhancement of sentence is made under Article 136 of the Constitution. It is to be noted that an appeal to this Court in criminal matters is not provided under the Code except in cases covered by Section 379 of the Code. An appeal to this Court under Article 136 of the Constitution is not the same as a statutory appeal under the Code. This Court under Article 136 of the Constitution is not a regular court of appeal which an accused can approach as of right. It is an extraordinary jurisdiction which is exercisable only in exceptional cases when this Court is satisfied that it should interfere to prevent a grave or serious miscarriage of justice, as distinguished from mere error in appreciation of evidence. While exercising this jurisdiction, this Court is not bound by the rules of procedure as applicable to the courts below. This Court's jurisdiction under Article 136 of the Constitution is limited only by its own discretion (See Nihal Singh & Ors. v. The State of Punjab {AIR 1965 SC 26}). In that view of the matter, we are of the opinion that Section 373(3) of the Code in terms does not apply to an appeal under Article 136 of the Constitution. We are supported in this view of ours by a judgment of this Court in Chandrakant Patil etc. v. State through CBI etc. (1998 3 SCC 38) wherein this Court while considering a similar argument held : "The right envisaged in Section 377(3) of the present Code shall be confined to appeals presented by the Government to the High Court against sentence on the ground of its inadequacy." On the contrary, the judgment relied upon by learned counsel for the respondents in Chopra's case (supra) will not assist him because in that case this Court was dealing with the right of an accused to plead for acquittal in a statutory appeal filed by the State for enhancement of sentence before the High Court which is available under the Section itself. This does not mean that this Court will be unmindful of the principles analogous to those found in the Code including those under Section 373(3) of the Code while moulding a procedure for the disposal of an appeal under Article 136 of the Constitution. Apart from the Supreme Court Rules applicable for the disposal of the criminal appeals in this Court, the Court also adopts such analogous principles found in the Code so as to make the procedure a "fair procedure"

> depending on the facts and circumstances of the case. In the instant case both the Trial Court and the High Court have considered the entire material on record and have concurrently found the respondents guilty of the offence they are charged. As against the said conviction and sentence, the respondents had preferred a substantive special leave petition under Article 136 of the Constitution before this Court which was dismissed on merits, and the respondents have not chosen to prefer any review petition against the said dismissal order. In this background we do not consider it appropriate to accede to this request of the respondents because neither the facts and circumstances of the case nor public interest requires us to do so. In the light of the fact that the appeal is one for seeking the extreme penalty of death, we have also permitted the learned counsel representing the appellant in the companion matter to

address us on the merits of the State appeal even though that petition is not taken up for hearing with these appeals. On behalf of the State as well as the complainant, it was argued that the learned Sessions Judge had while awarding death sentence to the respondents herein, given cogent and acceptable reasons as required under Section 354(3) of the Code and the High Court while agreeing with the said finding of the trial court seriously erred both in law and in fact in coming to the conclusion that the respondents herein were languishing in death cell since 3.6.1994 and 28.5.1994 respectively i.e. for more than 3 years, hence, it is not proper to award death sentence. It was contended that this reasoning of the High Court is not sustainable either in law or on facts. It is contended that factually the High Court was in error in saying that the said persons were in death cell since 3.6.1994 and 28.5.1994 respectively. It was pointed out to us that 28.5.1994 and 3.6.1994 are the dates on which the respondents were taken into custody as under-trial prisoners and they were not in death cell. The learned Sessions Judge awarded death sentence to these accused persons only on 5.12.1995 which came to be altered by the judgment of the High Court on 19.8.1997. It is argued that even this period cannot be labelled as being in the death cell since the death sentence was yet to be confirmed by the High Court. At any rate, according to the State, the time-lag between awarding of death sentence i.e. 5.12.1995 by the trial court and the judgment of the High Court i.e. 19.8.1997 being 21 months (not even two years), the High Court seems to have misdirected itself in refusing to confirm the sentence of death. It was also argued that on facts the crime committed by these respondents along with other accused persons is such a dastardly and heinous crime which cannot but be called `rarest of the rare' case in which these 2 respondents being the principal perpetrators of the crime, were rightly awarded capital punishment by the Sessions Court. It is further argued that the High Court has agreed with this finding but refused to confirm the sentence on an erroneous ground which is unsustainable in law, therefore, it is a fit case in which the judgment of the High Court be reversed and the sentence be enhanced. Learned counsel for the respondents, per contra, has strenuously argued that this is not a fit case even for conviction; much less a case for extreme penalty of death. It was contended that both the courts below have based the conviction on conjectures and surmises against all probabilities. At any rate, the prosecution has failed to establish who amongst the 6 accused persons has actually dealt the blows i.e. individual overt acts that have not been established. Therefore, even if the conviction is to be upheld, the capital punishment should not be granted. In support of this contentions, respondents' counsel relied upon a judgment of this Court in Ronny @ Ronald James Alwaris & Ors. V. State of Maharashtra (1988 3 SCC 625). It was also argued that even otherwise the facts of the case do not warrant imposition of death sentence and these two respondents having reconciled themselves to the judgment of the High Court, have an expectation of survival and which expectation of theirs should not be destroyed. We have carefully perused the evidence adduced in this case, to the limited extent of examining whether the case in hand is a case which could be termed as rarest of the rare cases so as to invoke the extreme penalty of death. The learned Sessions Judge while assigning special reasons for awarding the capital punishment

> came to the conclusion that the crime in question was a dastardly crime involving the death of 5 innocent human beings for the purpose of achieving the sadistic goals of Dharmendra and Narendra, respondents herein, to avenge their respective grouse against the complainant and his niece Reeta by eliminating 5 members of the family. Learned Sessions Judge distinguished the case of the 4 other accused with that of these respondents based on the motive and on the ground that these respondents were the principal perpetrators of the crime. It is seen that the High Court has concurred with this reasoning of the Sessions Judge. However, the High Court on the ground that the accused have languished in the death cell for 3 years, altered the sentence to life imprisonment. At this stage, it is necessary to extract the reasoning of the High Court on this score : "x x x the appellants Dharmendra and Narendra are languishing in death cell since 3.6.1994 and 28.5.1994, respectively, i.e. more than three years. Consequently now it may not be proper to confirm the sentence of death passed on them by the trial court."

The High Court has erred in coming to this conclusion both factually as well as inferentially. First of all these respondents were not in death cell for 3 years nor is there a law which says that a person in death cell for 3 years ipso facto is entitled for commutation of death sentence. While it is true that prolonged trial or execution of the death sentence beyond all reasonable period may be a ground for commuting the death sentence in a given case, it will be highly erroneous to lay down as a principle in law or draw an inference on fact that awarding of death sentence is improper in cases where accused persons are in custody for 3 years or more, even though the facts of the case otherwise call for a death sentence. If the view taken by the High Court in this case is to be accepted as a correct principle then practically in no murder case death sentence can be awarded, since in this country normally a murder trial and confirmation of death sentence takes more than 3 years. This Court speaking through a Constitution Bench in Smt. Triveni Ben etc. vs. State of Gujarat etc. (1988 4 SCC

574) has held : "No fixed period of delay could be held to make the sentence of death inexecutable . . ." It is useful to notice herein that in Triveni Ben's case, this Court was considering the delay in execution of the sentence and not even imposition of sentence, a stage much earlier to execution. Therefore, we have no doubt in coming to the conclusion that the High Court has erred in the reasoning given by it in refusing to confirm the sentence of death awarded by the trial court. Before examining the case of the State for enhancement of the sentence on merits, we will have to bear in mind that this Court would not ordinarily interfere in the sentence unless there is any illegality or it involves any question of principle. We are also aware of the legal principle that the question of sentence is a matter of discretion and that it is well-settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused except for very strong and cogent reasons. We have noticed earlier that the basis of the High Court's judgment to the extent that it has refused to confirm the death sentence awarded by the trial court is factually incorrect and opposed to accepted legal principles. Consequently, it has failed to exercise its discretion along accepted judicial lines. We will now consider whether there are strong reasons for accepting the decision of the trial court to impose death sentence and are these reasons strong enough to reverse the decision of the High Court. We have already noticed that the trial court has given cogent reasons for awarding the extreme penalty of death in regard to these respondents.

We have also noticed that the High Court has, as a matter of fact, concurred with the conclusions arrived at by the trial court in this regard. In this context, it is useful to extract the observations of the High Court which are as under : "x x x As the whole episode was planned and prepared by Dharmendra and Narendra; hence they deserve extreme penalty for the commission of five murders two boys of 12 years, Km. Reeta, Ramwati, wife of complainant, and Pitamber an old person of 70 years. They have committed murders in a very cruel and brutal manner inflicting as many as 53 injuries on five persons. The court below has not committed any error in awarding the extreme penalty of death to Narendra and Dharmendra, who were instrumental behind the whole episode of awful tragedy."

A perusal of this conclusion of the High Court gives the impression that but for the erroneous impression it carried, it would have confirmed the sentence of death awarded to these 2 respondents. It was argued on behalf of the respondents that the findings of the courts below even in regard to the commission of the offence, are contrary to facts. Hence, at least, in regard to the awarding of sentence, we should not interfere in these appeals. So far as the commission of the offence is concerned, the Special Leave Petition filed by the respondents was dismissed by this Court and the findings of the courts below have become final. As stated above, we have examined ourselves the evidence in this case for the limited purpose of ascertaining whether this case could be treated as one of the rarest of rare cases, calling for the extreme penalty of death; more so in the background of the argument on behalf of the respondents that the prosecution has not been able to establish the individual o vert acts of the accused persons. The prosecution in this case, as accepted by the two courts below, has established the fact that Dharmendra nursed a grudge against the complainant for having purchased the family property including the residential part against his desire to own the same. The prosecution has also established that Narendra, though an educated person who at the time of the incident, was pursuing his LL.B. course had been entertaining a lust towards Reeta and in furtherance of this desire had been teasing her and also a few days prior to the incident, had tried to molest her consequent to which, upon a complaint made by Reeta, the complainant and his nephew had assaulted Narendra. This case of the prosecution shows that these two persons in furtherance of their diabolic motive conspired to teach a lesson to the complainant by killing such of those members of the family who were vulnerable and helpless. This is clear from the timing of the attack which was when other able members of the family were away from the house and only the aged and the weak remained alone in the house. Also the fact that they solicited the help of four of their friends (other accused) shows that the intention was to kill as many members of the complainant family as possible, irrespective of the fact whether the victims were the cause of their vengeance or not. The ghastly manner of attack on the deceased, which is evident from the post mortem report, shows that the act in question was premeditated, senseless, dastardly and beyond all human reasoning inasmuch as 53 wounds were inflicted on the 5 deceased persons; each one suffering at least 10 wounds on an average. The attacks were aimed at such parts of the body in succession where even a single stab would have, in the ordinary course, sufficed to cause death. The denuding of the lower part of the body of Reeta showed an element of perversity which could be attributed to the mind of frustrated men who totally lacked human sensitivity. A holistic examination of the material on record shows that the barbaric offence in question could only be termed as a `rarest of the rare' case. Learned counsel for the respondents, however, relied upon the judgment of this Court in Ronny's case (supra) in support of his contention that even if the act of

murder is to be assumed to be brutal since the prosecution has failed to establish the overt acts of the individual accused, the sentence of death should not be awarded. We have carefully perused the said judgment. We do not find that this Court has enunciated any such proposition in absolute terms. It is possible in a given set of facts that the court might think even in a case where death sentence can be awarded, the same need not be awarded because of the peculiar facts of that case like the possibility of one or more of the accused being responsible for offences less culpable than the other accused. In such circumstances, in the absence of their being no material available, to bifurcate the case of each accused person, the court might think it prudent not to award the extreme penalty of death. But then such a decision would rest on the availability of evidence in a particular case. We do not think that a straight-jacket formula for awarding death sentence can be evolved which is applicable to all cases. The facts of each case will have their own implication on the question of awarding sentence. In the Ronny's case (supra), this Court on facts found extenuating factors to curb the sentence which is clear from the following extract from the said judgment :- "From the facts and circumstances, it is not possible to predict as to who among the three played which part. It may be that the role of one has been more culpable in degree than that of the others and vice versa. Where in a case like this it is not possible to say as to whose case falls within the "rarest of the rare" cases, it would serve the ends of justice if the capital punishment is commuted into life imprisonment." Whereas in the appeals before us the trial court as well as the High Court have distinguished the case of these two respondents vis-a-vis the other accused persons for cogent reasons. We have also agreed with this view of the courts below. Therefore, the predicament that was existing in Ronny's case (supra), apart from the extenuating factors, does not exist in this case. In Ronny's case itself, this Court while discussing the role of the Court in imposing the extreme penalty in Para 40 of the said case, has observed thus : "The obligation of the court in making the choice of death sentence for the person who is found guilty of murder is onerous indeed. But by sentencing a person to death, the court is giving effect to the command of law which is in public interest whereas in committing the murder or being privy to commit murder, even if it be a vengeance for another murder, the convict is violating the law which is against public interest." These observations of this Court show that there is an obligation on the courts in appropriate cases to award the sentence of death. The last argument advanced on behalf of the respondents is based on the expectation of survival entertained by the respondents after the judgments of the High Court. It is contended that after the High Court refused to confirm the death sentence, the respondents have entertained a just expectation of survival and, therefore, we should not interfere with the said judgment. We do not find any legal basis for this argument. In a judicial system like ours where there is hierarchy of courts, possibility of reversal of judgments is inevitable, therefore, expectations of an accused cannot be a mitigating factor to interfere in an appeal for enhancement of sentence if the same is otherwise called for in law. Taking into consideration the brutality of attack, number of persons murdered, age and infirmity of the victims, their vulnerability and the diabolic motive, acts of perversion on the person of Reeta, cumulatively we find the sentence awarded by the trial court was just and proper. We have examined this case carefully and having given our anxious thought to the facts, we have found no mitigating circumstances in favour of the respondents herein. We are, therefore, constrained to reverse the judgment of the High Court by allowing these appeals, setting aside the judgment and orders of the High Court to the extent impugned in these appeals, and confirm the sentence of death awarded by the trial court.

SLP (Crl) ___/99) (Crl.MP Nos.:2445-46/98) In view of the judgment delivered by us in Crl.A. Nos._____/99 (@ SLP (Crl) Nos.1712-13/98), no orders are called for in this case and the same is disposed of accordingly.