Lehna vs State Of Haryana on 22 January, 2002

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Author: Arijit Pasayat

Bench: M.B. Shah, B.N. Agrawal, Arijit Pasayat

CASE NO.:
Appeal (crl.) 733 of 2001

PETITIONER:
LEHNA

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 22/01/2002

BENCH:
M.B. Shah, B.N. Agrawal & Arijit Pasayat

JUDGMENT:

J U D G E M E N T ARIJIT PASAYAT, J.

Lehna (hereinafter referred to as accused) was awarded "Sentence of Death" by the learned Sessions Judge, Sonepat which has been confirmed by the Punjab & Haryana High Court. Accusations against him were that he took away the lives of his mother, brother and sister-in-law. It was also alleged that he caused injury on his father Suraj Mal (PW-6) and nephew Chand (PW-7). He was tried for allegedly committing offences punishable under Sections 302, 458 and 324 of the Indian Penal Code 1860 (in short 'IPC'), was found guilty and accordingly convicted. Corresponding sentences imposed were sentence of death, 4 years and 6 months respectively. The sentences were

directed to run concurrently.

Prosecution version sans unnecessary details is as follows :-

> Suraj Mal (PW-6) had two sons i.e. the accused and Jai Bhagwan (hereinafter referred to the deceased by that name) and a younger brother Dariya Singh. The accused and deceased-Jai Bhagwan were residing separately. Suraj Mal (PW-6) owned 10 acres of land and had given 2 acres to the accused for the purpose of cultivation. But the accused who was a person of bad habits and a drunkard wasted time in useless pursuits and did not pay any attention to cultivation. He tried to alienate the land that was given to him by his father. This led to rethinking by Suraj Mal (PW-6), who took back the land. This led to serious disputes among the members of the family and there were frequent quarrels. On August 5, 1998, deceased and his wife, Saroj were sleeping on the roof of the house. Suraj Mal (PW-6), his wife Manbhari, their grandsons Chand (PW-7) and Wazir were sleeping in the courtyard. After mid-night Suraj Mal (PW-6) heard a noise from the roof of the house and he switched on the electric light. Chand, Wazir and Manbhari woke up and they rushed up stairs and found the accused armed with a Gandasa inflicting blows on both deceased Saroj and Jai Bhagwan. After causing injuries to these two, the accused turned towards Suraj Mal (PW-6) and others; but they ran down the stairs screaming in fear. The accused followed them and after pushing Manbhari to the ground inflicted blows on her neck and when PW-6 and PW-7 tried to intervene, he also inflicted blows on both of them. Then he ran away from the spot. PW-6 found that his wife had already succumbed to her injuries. So was the case with his son and daughter-in-law. Next morning, report was lodged at the police station and investigation was undertaken. On completion of investigation, charge-sheet was placed and the accused was charged for offences punishable under Sections 302/458/324 of the IPC. The accused pleaded innocence. The Trial Court relied on the evidence of PW-6 and PW-7 who were injured eye-witnesses and found the accused guilty of the aforestated offences. After hearing on the question of sentence, he awarded death sentence as noted above. The matter was submitted to the Punjab & Haryana High Court for confirmation of the death sentence in terms of Section 366 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The High Court held that the judgment suffered from no infirmity to warrant any interference. Accordingly, the reference was accepted and the appeal filed by the accused against the conviction and sentence was dismissed.
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> In support of the appeal before this Court, learned Counsel submitted that both the Trial Court and the High Court ignored a very significant fact that the evidence on which prosecution rested, its version was that of relatives. There was admitted hostility, rendering the same suspect. The injuries which were of serious nature on the accused were not explained. That added to vulnerability of prosecution version. Finally, it was submitted that this is not a case which belonged to the category of "rarest of rare" to warrant death sentence. The non application of mind according to

the learned Counsel is evident from the fact that accused has been treated to be a trespasser in his own house, for holding him guilty of offence punishable under Section 458 of IPC. There is no discussion whatsoever as to how ingredients of that Section are present.

In reply, learned counsel for the State of Haryana submitted that there is no probation on conviction being not possible on the evidence of relatives. Additionally, mere non-explanation of injuries, if any, on the accused cannot be a ground for disbelieving prosecution version. The brutal nature of the assaults which resulted in loss of three valuable lives is evident from the nature of injuries noticed on postmortem and on examination of the injured witnesses. In essence, submission was to the effect that no interference is called for in this appeal.

We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

In Dalip Singh and Ors. vs. The State of Punjab (AIR 1953 SC 364), it has been laid down as under :

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last person to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts".

The above decision has since been followed in Guli Chand and Ors. vs. State of Rajasthan (AIR 1974 SC 276), in which Vadivelu Thevar vs. The State of Madras (AIR 1957 SC 614) was also relied upon.

We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent

witnesses. Speaking through Vivian Bose J., it was observed:-

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eye- witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - 'Rameshwar v. State of Rajasthan', AIR 1952 SC 54 at p. 59 (A). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel".

Again in Masalti vs. The State of Uttar Pradesh (AIR 1965 SC 202), this Court observed:-

> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

To the same effect is the decision in State of Punjab vs. Jagir Singh, Baljit Singh and Karam Singh (AIR 1973 SC 2407).

Presence of PWs 6 and 7 at the site of occurrence is natural. They were inmates of the house, and therefore no suspicion as suggested by the accused, regarding their presence can be entertained. Merely because there was some hostility between accused and PWs 6 and 7, it is unbelievable that they would shield the actual culprits to falsely implicate the accused. Their testimony has not been shaken in spite of incisive cross- examination. On the contrary, its credibility has been enhanced because of their acceptance of the fact regarding assault on the accused. The plea that deceased Jai Bhagwan and Suraj Mal (PW-6) had many enemies because of their questionable credentials, and they may be the real assailants is too shallow to warrant acceptance.

Considering the legal position as analysed above, there is no force in the plea that evidence of PWs 6 and 7 is liable to be discarded merely because they were relatives of the deceased persons.

As rightly submitted by the learned Counsel for the accused - appellant, there is no finding recorded by the Courts below as to how ingredients of the offence punishable under Section 458 IPC exist. That being the position, conviction for the said offence is set aside and consequentially, the sentence. In view of the unimpeached evidence of the injured witnesses of PW-6 and PW-7, the conviction for offence punishable under Section 324 IPC does not require any interference.

The other question of vital importance is whether death sentence is the appropriate one. Section 302, IPC prescribes death or life imprisonment as the penalty for murder. While doing so, the Code instructs the Court as to its application. The changes which the Code has undergone in the last three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. It is not difficult to discern that in the Code, there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for 'special reasons', as provided in Section 354(3). There is another provision in the Code which also uses the significant expression 'Special reason'. It is Section 361. Section 360 of the 1973 Code re-enacts, in substance, Section 562, of the Criminal Procedure Code, 1898 (in short 'old Code'). Section 361 which is a new provision in the Code makes it mandatory for the Court to record 'special reasons' for not applying the provisions of Section 360. Section 361 thus casts a duty upon the Court to apply the provisions of Section 360 wherever, it is possible to do so and to state 'special reasons' if it does not do so. In the context of Section 360, the 'special reasons' contemplated by Section 361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the Legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. Section 361 and Section 354(3) have both entered the Statute Book at the same time and they are part of the emerging picture of acceptance by the legislature of the new trends in criminology. It would not, therefore, be wrong to assume that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. Criminal justice deals with complex human problems and diverse human beings. A Judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed.

It should be borne in mind that before the amendment of Section 367(5), old Code, by the Criminal Procedure Code (Amendment) Act, 1955 (XXVI of 1955) which came into force on January 1, 1956, on a conviction for an offence punishable with death, if the Court sentenced the accused to any punishment other than death, the reason why sentence of death was not passed had to be stated in the judgment. After the amendment of Section 367(5) of old Code by Act XXVI of 1955, it is not correct to hold that the normal penalty of imprisonment for life cannot be awarded in the absence of extenuating circumstances which reduce the gravity of the offence. The matter is left, after the amendment, to the discretion of the Court. The Court must, however, take into account all the circumstances, and state its reasons for whichever of the two sentences it imposes in its discretion. Therefore, the former rule that the normal punishment for murder is death is no longer operative and it is now within the discretion of the Court to pass either of the two sentences prescribed in this section; but whichever of the two sentences he passes, the Judge must give his reasons for imposing a particular sentence. The amendment of Section 367(5), of the old Code does not affect the law regulating punishment under the IPC. This amendment relates to procedure and now Courts are no longer required to elaborate the reasons for not awarding the death penalty; but they cannot depart from sound judicial considerations preferring the lesser punishment.

Section 354(3) of the Code, marks a significant shift in the legislative policy underlying the old Code as in force immediately before 1st April, 1974, according to which both the alternative sentences of death or imprisonment for life provided for murder were normal sentences. Now, under Section 354(3) of the Code the normal punishment for murder is imprisonment for life and death penalty is an exception. The court is required to state the reasons for the sentence awarded and in the case of death sentence 'special reasons' are required to be stated, that is to say, only special facts and circumstances will warrant the passing of the death sentence. It is in the light of these successive legislative changes in Code that the juridical decisions prior to the amendment made by Act 26 of 1955 and again Act 2 of 1974 have to be understood.

This Court in Ediga Anamma vs. State of Andhra Pradesh (AIR 1974 SC 799) has observed: "Let us crystallize the positive indicators against death sentence under Indian Law currently. Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the Court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under Section 302, read with Section 149, or again the accused has acted suddenly under another's instigation, without premediation, perhaps the Court may humanely opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime. On the other hand, the weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of the law for a sterner sentence. We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning retributive ruthlessness, amending the deterrent creed and accepting the trend against the extreme and irrevocable penalty of putting out life".

In Bachan Singh vs. State of Punjab (AIR 1980 SC 898), it has been observed that "a real and abiding concern for the dignity of human life postulates resistance to taking 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". 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. 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 the life inadequate and calls for a death sentence?; and (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?

Another decision which illuminatingly deals with the question of death sentence is Machhi Singh & Ors. vs. State of Punjab (1983 (3) SCC

470).

In Machhi Singh's and Bachan Singh's cases (supra), the guidelines which are to be kept in view when considering the question whether the case belongs to the rarest of the rare category were indicated.

In Machhi Singh's case (supra), it was observed:-

> "The following questions may be asked and answered as a test to determine the 'rarest of the rare' case in which death sentence can be inflicted :-
>
> (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 following guidelines which emerge from Bachan Singh's case (supra) will have to be applied to the facts of each individual case where the question of imposition of death sentence arises:-

> (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
>
> (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. 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 has 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.

In rarest of rare cases when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal

opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:-

(1) 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.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion.

For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the Court would proceed to do so.

A convict hovers between life and death when the question of gravity of the offence and award of adequate sentence comes up for consideration. Mankind has shifted from the state of nature towards a civilized society and it is no longer the physical opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment following conviction at a trial in a system wedded to the rule of law is the outcome of cool deliberation in the Court-room after adequate hearing is afforded to the parties, accusations are brought against the accused, the prosecuted is given an opportunity of meeting the accusations by establishing his innocence. It is the outcome of cool deliberations and the screening of the material by the informed man i.e. the Judge that leads to determination of the lis.

The principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt.

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence; sometimes the desirability of keeping him out of circulation, and sometimes even the traffic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies; but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now a single grave infraction that is thought to call for uniformly drastic measures. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime. Uniformly disproportionate punishment has some very undesirable practical consequences.

As the background facts go to show the genesis of dispute between the accused and the other members of his family was land. Accused seems to have taken exception to his father taking away the land from him. As the evidence indicates, he considered his brother, sister- in-law to be responsible for the same. It is also in evidence that 2-3 days before the occurrence, there was a bitter quarrel between the accused and other members of his family. Evidence of PW-7 is to the effect that there used to be constant quarrel between PW-6, deceased Jai Bhagwan, deceased Saroj on one hand and the accused on the other, over ancestral land. It is also in evidence that the deceased Jai Bhagwan was not of moral character and PW-6 had forcibly occupied the land of temple for which villagers had set on fire a piece of their house. Though injuries on accused person do not per se affect prosecution version if reliable; when not explained it assumes importance if they are serious in nature. The fact that the injuries were sustained in the present case by the accused is not disputed. In fact, PW-7 has admitted that PW-6 had given a thorough thrashing to the accused in the court-yard after assaults on the three accused persons. As the medical evidence indicates, the injuries sustained by the accused were of very serious nature. It is true three lives have been lost. But at the same time, the mental condition of the accused which led to the assault cannot be lost sight of. The same may not be relevant to judge culpability. But is certainly a factor while considering question of sentence. There is no evidence of any diabolic planning to commit the crime, though

cruel was the act. Deprived of his livelihood on account of the land being taken away, the accused was, as the evidence shows, exhibiting his displeasure, his resentment. Frequency of the quarrels indicate lack of any sinister planning to take away lives of the deceased. The factual scenario gives impressions of impulsive act and not planned assaults. In the peculiar background, death sentence would not be proper. A sentence of imprisonment for life will be more appropriate. The sentence is accordingly modified, while confirming the conviction for offence punishable under Section 302 IPC.

Appeal is allowed to the extent indicated above. We record our appreciation for the assistance rendered by Mr. Vishal Malik who was appointed as amicus curiae.

..J. (M. B. SHAH) .J. (B. N. AGRAWAL) J. (ARIJIT PASAYAT) January 22, 2002