

Bhagwan Bax Singh And Anr. vs State Of U.P. on 27 April, 1983

Equivalent citations: AIR1984SC1120, 1984CRILJ928, 1983(2)CRIMES941(SC), 1983(1)SCALE861, (1984)1SCC278, AIR 1984 SUPREME COURT 1120, 1984 (1) SCC 278, 1984 CRIAPPR(SC) 77, 1984 SCC(CRI) 62, 1984 2 CRIMES 941, (1983) 2 CRIMES 941, (1984) 1 ORISSA LR 41

Bench: M.P. Thakkar, S. Murtaza Fazal Ali

JUDGMENT

Fazal Ali, J.

1. The appellants have been convicted under Section 303 I.P.C. to death. As Section 303 has been struck down as void being violative of Articles 14 and 21 of the Constitution of India it is no longer available for conviction of any offender. The facts of the case are fully narrated in the judgment of the High Court. It appears that on the date of occurrence i.e. 25th December, 1978 the deceased Brij Nath was coming back along with his son and others after listening to Bhagwat Katha. When they were passing through the jungle the two appellants accosted the deceased and assaulted him. The appellant Bhagwan Bax Singh shot with his gun on the chest of the deceased. The other appellant assaulted him on the head with a Banka. As Section 303 I.P.C. no longer survives the conviction and sentence under Section 303 has to be set aside and conviction has to be altered to one under Section 302 I.P.C. The main question is as to what sentence should be awarded to the appellant. Mr. Mulla pressed this case on the question of sentence only. He pointed out that though the High Court was of the opinion that this was not a case which called, for extreme penalty of death, in view of the provisions of Section 303, I.P.C. the High Court found itself helpless to impose the lesser-sentence. Now that Section 303 has been struck down from the Statute Book there is no obstacle in sentencing the appellants to imprisonment for life if considered appropriate by the Court. Having regard to the facts and circumstances of this case we do not think that this case falls squarely within the rule laid down in Bachan Singh's case of this Court in as much as it cannot be said to be the rarest of rare case where death sentence is called for. For these reasons, therefore, we alter the conviction of the appellants from one under Section 303 I.P.C. to one under Section 302 I.P.C. We also set aside the sentence of death and in its place impose the sentence of imprisonment for life. Having regard to the facts and circumstances of the case we further direct the sentence of imprisonment for life will take effect from 27.11.80 which is the date of the conviction and sentence awarded by the Sessions Judge, and clarify that the provisions of Section 433A of the Criminal Procedure Code will apply.

2. The appeal is, disposed of accordingly.