Gurdev Singh & Anr vs State Of Punjab on 1 August, 2003

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Bench: K.G. Balakrishnan, B.N. Srikrishna

CASE NO.:
Appeal (crl.) 392 of 2002
Appeal (crl.) 393 of 2002

PETITIONER:
Gurdev Singh & Anr.

Piara Singh & Anr ..

RESPONDENT:
Vs.

State of Punjab ..

State of Punjab

DATE OF JUDGMENT: 01/08/2003

BENCH:
K.G. Balakrishnan & B.N. Srikrishna.

JUDGMENT:

J U D G M E N T K.G. BALAKRISHNAN, J.

The appellants Gurdev Singh and Satnam Singh were tried by the Addl. Sessions Judge, Amritsar, and found guilty of offence punishable under Section 302 read with Section 149 IPC and other allied

offences. As per the prosecution case, these appellants, along with three others had caused the death of 17 persons. The Addl. Sessions Judge held that the prosecution proved beyond reasonable doubt that these appellants were members of an unlawful assembly which accomplished its common object of causing death of 15 persons. These appellants were convicted and sentenced to death. They preferred an appeal before the High Court of Punjab and Haryana and the matter was also referred to the High Court for confirmation of the death sentence. The High Court affirmed the death sentence in respect of these appellants. These appellants challenge the judgment of the High Court. Though the incident occurred on 21.11.1991, these appellants were absconding and could be apprehended only on 26.8.1996 whereas the other three accused, namely, Piara Singh, Sarabjit Singh (Appellants in Criminal Appeal No. 393 of 2002) and Jasvinder Singh were tried by Sessions Judge, Amritsar, in Sessions Case No. 94 of 1992 and the Sessions Judge held that Piara Singh and Sarabjit Singh were members of an unlawful assembly whose common object was to kill 15 persons. By judgment dated 15.1.1996 the Sessions Court found Piara Singh and Sarabjit Singh guilty of offence punishable under Section 302 read with Section 149 IPC and sentenced them to death. Another accused, Jasvinder Singh was acquitted on the ground of benefit of doubt. Piara Singh and Sarabjit Singh filed an appeal before the High Court and there was also a reference regarding confirmation of the death sentence. The appeal preferred by them was dismissed and the High Court confirmed the death sentence imposed on Piara Singh and Sarabjit Singh. They filed an SLP registered as Special Leave Petition (Criminal) No. 275 of 1997 challenging their conviction and sentence. The Special Leave Petition was disposed of on 28.2.1997 with the following order :

> "We have heard learned counsel for the parties at great length and have also gone through the record submitted along with the appeal as well as the judgments of the courts below. In our view, the judgment and orders of the High Court require no inteference. The Special Leave Petition is therefore dismissed."

They also filed a Review Petition, which was dismissed.

When the Special Leave Petition (Criminal) preferred by Gurdev Singh and Satnam Singh came up for consideration, the counsel brought to the attention of the Court the decision of this Court in Harbans Singh vs. State of Uttar Pradesh and Ors. (1982) 2 SCC 101 and prayed for recalling the order of dismissal dated 28.2.1997 passed earlier in Special Leave Petition (Criminal) No. 275 of 1997 which had been preferred by Piara Singh and Sarabjit Singh. By order dated 18.3.2002, this Court directed that in view of the decision in Harbans Singh's case (supra), the order of dismissal dated 28.2.1997 in Special Leave Petition (Crl.) No. 275 of 1997 be recalled and leave was granted. Simultaneously, this Court stayed the execution of death sentence on Piara Singh and Sarabjit Singh. Subsequent to this order, the Registry numbered their appeal as Criminal Appeal No. 393 of 2002 and posted the same to be heard along with the present Criminal Appeal No. 392 of 2002.

At the outset, we must say that the decision of this Court in Harbans Singh's case (supra) does not lay down any rule that an Appeal/Special Leave Petition already disposed of by this Court is to be re-heard when an appeal preferred by another set of accused involved in the same incident comes up for consideration at a later stage. In Harbans Singh's case, four accused were found guilty of murder and other offences and they were sentenced to death. The High Court confirmed the death sentence.

After their conviction and sentence, one of the convict died and the other three convicts filed separate special leave petitions before this Court. The first special leave petition when came up for consideration, was dismissed and the death sentence imposed on the convict was confirmed. In the second special leave petition filed by another convict which came up for consideration before a different Bench of this Court, leave was granted and the death sentence was commuted to life imprisonment. In the third petition preferred by yet another convict, the death sentence imposed on him was confirmed. His petition for mercy was dismissed by the President of India. When the date of execution of death sentence was fixed, he filed a writ petition under Article 32 contending that his co-accused escaped the death sentence, therefore, the death sentence imposed on him be also commuted to life imprisonment. It is pertinent to note that this Court did not commute the sentence of death imposed on him to life imprisonment and observed that in the interest of comity between the powers of this Court and the powers of the President of India it will be more in the fitness of things if the Court recommends to the President for commutation of death sentence to life imprisonment in exercise of power under Article 72. It is also to be noticed that the petitioner therein was tried along with three others and in the case of one of his co- accused, the sentence of death was commuted to life imprisonment. In the present appeals, appellants Gurdev Singh and Satnam Singh were not tried along with appellants Piara Singh and Sarabjit Singh. As appellants Gurdev Singh and Satnam Singh were absconding, they could be tried only subsequently in a separate trial. As the Special Leave Petition of Piara Singh and Sarabjit Singh came to be finally disposed of on 28.2.1997 and the conviction and sentence entered against them attained finality, we do not think that it is just, proper and legal to hear the appeal and consider the question involved therein on merits again. Therefore, the Criminal Appeal No. 393 of 2002 (corresponding number assigned by the Registry to SLP(Crl.) No. 275 of 1997) is only to be dismissed and we do so and vacate the stay of execution of the death sentence imposed on the appellants therein.

In the Criminal Appeal No. 392 of 2002, the case of the prosecution is that the appellants, Gurudev Singh and Satnam Singh, along with three other accused went to the house of Smt. Swaran Kaur on 21.11.1991 at about 9.00 P.M. In the house of Smt. Swaran Kaur, the marriage of her son, Angrez Singh was to be celebrated on the next day. A 'shamiana' had been erected and the area was sufficiently lit by electric bulbs. Several relatives and family friends of Smt. Swaran Kaur had gathered in her house and a feast was going on. It is the case of the prosecution that out of the five accused, three accused scaled over the wall of 'kotha' and two of the accused remained at the gate. Piara Singh was armed with a double barrel gun and Sarabjit Singh was armed with a service rifle. Appellant Gurudev Singh was armed with an SLR and the second appellant, Satnam Singh and another accused Jasvinder Singh, who stood at the gate, were also carrying firearms. All the five accused then started firing from their weapons and continued shooting for 10-15 minutes. PW-6, Swaran Kaur and her son Angrez Singh managed to hide themselves behind a heap of firewood in the house. When all the five accused left the house, they could see a ghastly scene where 13 persons were lying dead and eight others were found seriously injured. The further case of the prosecution is that all the five accused, after leaving the house of PW-6, proceeded to the house of PW-15, Sarabjit Singh. There also, they started firing as a result of which Gurpal Singh and Sukhdev Singh, father and brother respectively of PW-15 Sarabjit Singh died on the spot. The prosecution alleged that these accused then went to two other places and killed two other persons, but the prosecution could not adduce any satisfactory evidence regarding those two incidents. PW-6 gave the First

Information statement at about 11 P.M. on 21.11.1991 and the police arrested Piara Singh and Sarabjit Singh immediately after the incident. The dead bodies of victims [altogether 17] were sent for post-mortem examination and it has been proved that all of them died of firearm injuries. On the side of the prosecution, PW-6 Swaran Kaur, PW-7 Kashmir Kaur, PW-8 Baldev Singh and PW-9 Angrez Singh were examined as eye- witnesses to prove the first incident where 13 persons died. PW-15, Sarabjit Singh was examined as eye-witness to prove the second incident in which his father and brother were killed.

We have carefully examined the evidence adduced by the prosecution. PW-7, Kashmir Kaur and PW-8 Baldev Singh were injured witnesses; so their presence at the scene of the crime cannot be doubted. PW-6, Swaran Kaur is the mother of the groom and PW-9, Angrez Singh, was the groom himself for whose marriage-celebration the victims had gathered at the house of PW-6. Therefore, the presence of PW-6 and PW-9 cannot at all be doubted. On behalf of the appellants, the counsel, Shri Seeraj Bagga, strenuously contended before us and pointed out various infirmities in the prosecution case. We do not, however, think that the minor infirmities pointed out, in any way, would cast doubt on the prosecution case. For instance, the counsel argued that PW-6 stated that she had given the F.I. statement on the next day whereas the F.I. statement was recorded on the night of the occurrence. PW-6 was examined in court after a long lapse of time and the inconsistency in narrating the events by her subsequently may have been due to fading of memory and it cannot be considered a serious mistake. The counsel for the appellants also contended that the FIR reached the Magistrate belatedly. Here is a case where a serious crime had been committed and the dead bodies of as many as 17 victims had to be taken care of and inquest and post-mortem had to be conducted at the instance of the police. This must have caused few hours' delay in sending the FIR to the Magistrate. All the eye-witnesses deposed in unmistakable terms that these appellants were present at the scene of the crime and used firearms and they continuously went on firing on the innocent victims for about 10-15 minutes. The prosecution also alleged that there was some motive on the part of Piara Singh to attack the members of the family of PW-6 Swaran Kaur. It is alleged that one of the sons of PW-6, namely, Jagir Singh had an encounter with Piara Singh and in that incident, one servant of Piara Singh had died. It is alleged that Piara Singh thus nurtured an ill-will against the members of the family of Jagir Singh. As regards the second incident in which Gurpal Singh and Sukhdev Singh died, no infirmity could be pointed out in the testimony of PW-15 and the prosecution case. PW-15 deposed that accused persons had shouted that they would teach the victims a lesson for helping Jagir Singh and his family members.

It is proved beyond reasonable doubt that the appellants Gurudev Singh and Satnam Singh were responsible for causing the death of 15 persons, besides causing grievous injuries to eight others. They have been rightly convicted by the sessions court for the various offences charged against them. It is contended on behalf of the appellants that the trial court had pronounced the sentence on the same day on which the conviction was passed. Hence, relying upon certain observations in the judgments of this Court in Muniappan vs. State of Tamil Nadu AIR 1981 SC 1220 and Allauddin Mian & Ors. vs. State of Bihar AIR 1989 SC 1456 = (1989) 3 SCC 5, it was urged that the obligation of the trial court under Section 235(2) of the Code of Criminal Procedure, 1973, was not properly discharged as the trial court did not adjourn the hearing of the case for sentencing after the order of conviction was pronounced.

In our view, the contention is entirely misplaced. As pointed out in Ramdeo Chauhan vs. State of Assam (2001) 5 SCC 714, both the aforesaid judgments were delivered prior to the addition of the third proviso to Section 309(2) of the Code of Criminal Procedure, 1973 by Amending Act 45 of 1978 which reads thus :

> "Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him."

It was held that the mandate of the legislature is clear that no adjournment can be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed upon him. Nonetheless, the Court can in appropriate cases grant adjournment for the aforesaid purpose, if the proposed sentence is a sentence of death. From the material on record, it does not appear that any request was made to the learned Sessions Judge for adjournment. In the circumstances, we see no substance in the contention that the sentence imposed was vitiated for non-compliance with Section 235 (2) of the Code of Criminal Procedure, 1973.

The only question that remains is whether the appellants are liable to be sentenced to the extreme penalty of capital punishment. The counsel for the appellants brought to our notice a series of decisions rendered by this Court and beseeched for commutation of death sentence imposed upon the appellants. The counsel also brought to our attention many errors committed by the High Court by not properly adverting to the mitigating circumstances. In fact, the High Court did not consider the various aspects to be taken into account before awarding the extreme punishment of death penalty. The sessions court considered the matter in some detail and held that appellants deserved death penalty. It was argued by the appellants' Counsel that the Court failed to strike a balance between the aggravating and mitigating circumstances. The counsel for the appellant contended that there are so many mitigating circumstances, which should have been taken into consideration by the sessions court as well as High Court. It is argued that the appellants Gurudev Singh and Satnam Singh were young at the time of the commission of the crime and no motive whatsoever was proved against them and that the evidence would only indicate that they followed the dictate of their father, who, in all possibility, must have instigated them. It was submitted that the appellants had no other criminal antecedents and there was nothing on record to show that the appellants would be a menace to the society or that they are beyond the pale of any reformation. After amendment of Criminal Procedure Code 1898 in 1974, there was significant change in the legislative policy with regard to the sentence of death or imprisonment for life provided for murder and certain other capital offences under the Indian Penal Code. As per the changed policy, when conviction for an offence punishable with death or in the alternative with imprisonment for life or imprisonment for a term of years is recorded, the judgment should state reasons for the sentence awarded and in the case of sentence of death, special reasons must be given. Therefore, as per Section 354(3) Cr.P.C., in every case where the court finds that the capital punishment is the inevitable consequence, the court should give special reasons. The Constitutional validity of death sentence itself was challenged in Bachan Singh vs. State of Punjab (1980) 2 SCC 684. One of the grounds of attack was that Section 354(3) Cr.P.C. provides for imposition of death penalty in an arbitrary and whimsical manner inasmuch as it does not lay down any rational principle or criteria for invoking the extreme penalty.

The Constitutional validity of the said Section was upheld and the Constitution Bench stated that it is difficult to lay down a formula of universal application when facts are bound to be different from case to case and it would frustrate the very purpose of conferring a discretion on courts. In Ediga Anamma vs. State of Andhra Pradesh AIR 1974 SC 799, V.R. Krishna Iyer, J. , speaking for the Bench, said :

> " Weapons used and the manner of their use, 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."

But, later in Rajendra Prasad vs. State of Uttar Pradesh (1979) 3 SCC 646, a 3-Judge Bench decision observed that the focus had shifted from crime to criminal and the special reasons necessary for imposing death penalty must relate not to the crime as such but to the criminal. But this view was overruled in Bachan Singh's case (supra), in which it was held as under :

> "As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist."

It was further held as under:

> "It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines 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 the death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance of 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."

The consistent view of this Court in a series of rulings is to the effect that no rigid formula or standards can be fixed and only a broad guideline consistent with the legislative policy indicated by

the Legislature in Section 354(3) of Cr.P.C. alone shall be considered for invoking the extreme penalty of death sentence. A survey of some of the decisions of this Court would give an idea as to how this Court viewed various circumstances, which would warrant invocation of death penalty.

In Allauddin Mian & Ors. vs. State of Bihar (1989) 3 SCC 5, a group of six persons came armed with deadly weapons to the house of PW-6 and two of them advanced menacingly towards him. On seeing them PW-6 ran to the adjoining room. Accused 1 and 2 then killed the two daughters of PW-6. The High Court confirmed the death sentence awarded to both of them by the trial court. This Court stated that unless the nature of the crime and the circumstances of the offender reveal that the criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the court should ordinarily impose the lesser punishment and not the extreme punishment of death which should be reserved for exceptional cases only and that in cases in which the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community, it would be permissible to award the death sentence. The mere fact that infants are killed, without more, is not sufficient to bring the case within the category of 'the rarest of rare' cases. This Court commuted the death sentence imposed on the accused to life imprisonment. Janki Dass vs. State (Delhi Administration) 1994 Supp. (3) SCC 143 is the case of a person who was in serious penury and who found himself unable to pay his debts. He committed the murder of his three children. He was sentenced to death and his conviction was confirmed by the High Court. Although the case was found to be so shocking to the conscience, this Court commuted the death penalty to life imprisonment stating that the convict committed the offence in question not with the intention to commit the murder of his own children, but only by way of deliverance from the day to day strain of life, he being financially crippled.

In Sheikh Ishaque & Ors. vs. State of Bihar (1995) 3 SCC 392, ten persons came to the house of the complainant during night armed with bombs and firearms. The house was burned and three persons were burnt to death. Four of the accused were sentenced to death by the trial court and the High Court confirmed the same. This Court observed that as there was no evidence as to which of the accused had sprinkled kerosene and set fire to the room, it is a mitigating circumstance while considering the question of sentence. The fact that the accused, though armed with firearms, did not use the weapons was also taken note of by this Court. It was also observed that there was no evidence to show that the appellants knew or had reason to believe that there were three persons inside the room when the same was set on fire.

A. Devendran vs. State of Tamil Nadu (1997) 11 SCC 720 is a case of triple murder. This Court held that the trial court was not justified in awarding death sentence as the accused had no pre-meditated plan to kill any person and as the main object was to commit robbery.

In Kumudi Lal vs. State of U.P. (1999) 4 SCC 108, the accused was alleged to have raped and murdered a young girl aged 14 years. This Court held that in order to prevent her from raising shouts the appellant tied the salwar around her neck which resulted in strangulation and her death. It was not a fit case in which the extreme penalty of death sentence deserves to be imposed on the accused.

In Om Prakash vs. State of Haryana (1999) 3 SCC 19, a dispute over a small house between two neighbours resulted in the murder of seven persons. Death sentence was imposed on the accused by the trial court which was confirmed by the appellate court. This Court observed that the bitterness increased to a boiling point and the agony suffered by the appellant and his family members at the hands of the other party, and for not getting protection from the police officers concerned or total inaction despite repeated written prayers, goaded or compelled the accused to take law in his own hands which culminated in the gruesome murders. The accused was a BSF Jawan aged 23 at the time of incident. This Court commuted the death penalty to imprisonment for life.

In Mohd. Chaman vs. State (NCT of Delhi) (2001) 2 SCC 28, the accused was alleged to have committed rape on a girl aged 1–1/2 year and caused injuries which resulted in the death of the child. This Court held that the crime committed by the accused was undoubtedly serious and heinous and the conduct of the appellant was reprehensible. It showed a dirty and perverted mind of a human being who had no control over his carnal desires. Treating the case on the touchstone of the guidelines laid down in Bachan Singh's case (supra) and in Machhi Singh & Ors. vs. State of Punjab (1983) 3 SCC 470, this Court substituted the sentence of life imprisonment for the capital sentence. In Lehna vs. State of Haryana (2002) 3 SCC 76, the accused had killed his mother, brother and sister-in-law. He was sentenced to capital punishment. This Court, applying the principle laid down in Machhi Singh's case (supra), held that the appellant did not deserve the death penalty. There are several other cases also where this Court commuted the death sentence to imprisonment for life. But the facts and circumstances of many of those cases are not parallel to the facts of the case on hand. Machhi Singh's case (supra) reveals almost identical facts. There was a family feud between two sets of families and the accused, with a motive of reprisal, committed 17 murders in five incidents occurring in the same night in quick succession in five neighbouring villages. This Court elaborately considered the question of death sentence imposed on Machhi Singh, Kashmira Singh and Jagir Singh and confirmed the same.

Coming back to the instant appeal, the counsel for the appellants pointed out that there were some mitigating circumstances to award lesser sentence. According to the counsel, there was no evidence on record to show that the appellants were involved in any other criminal case. Normally, the evidence regarding the character of the accused will not be adduced by the prosecution. It is true that there is no direct evidence regarding the motive except that there was a suggestion that there was earlier a confrontation between Piara Singh and a son of the complainant and in that incident one of the servants of Piara Singh died. Regarding that also, there is no direct evidence. The aggravating circumstances of the case, however, are that the appellants, having known that on the next day a marriage was to take place in the house of the complainant and there would be lot of relatives present in her house, came there on the evening of 21.11.1991 when a feast was going on and started firing on the innocent persons. Thirteen persons were killed on the spot and eight others were seriously injured. The appellants thereafter went to another place and killed the father and brother of PW-15. Out of the thirteen persons, one of them was seven year old child, three others were at the threshold of their lives. The post-mortem reports show their age ranged between 15 to 17 years. They had also their right to live in this world peaceably and these appellants had no grievance or enmity against any one of them. In the course of wide ranging submissions, the Counsel for the appellants laid stress on the point that the underlying principle of our sentencing jurisprudence is

reformation and there is nothing in evidence to show that the appellants may be a threat or menace to the society. It is true that we cannot say that they would be further menace to the society or not as "we live as creatures saddled with an imperfect ability to predict future". Nevertheless, the law prescribes for future, based upon its knowledge of past and is being forced to deal with tomorrow's problems with yesterday's tools. The entire incident is extremely revolting and shock the collective conscience of the community. The acts of murder committed by the appellants are so gruesome, merciless and brutal that the aggravating circumstances far outweigh the mitigating circumstances. Moreover, the two accused who were earlier tried are already sentenced to death and their Special Leave Petition was finally disposed of by this Court.

Having regard to these facts, we do not think that this is a case where imprisonment for life is an adequate sentence to meet the ends of justice. Though we have deep sympathy to the members of the family of the appellants, we are constrained to reach the inescapable conclusion that death sentence imposed on the appellants be confirmed. Accordingly, Criminal Appeal No. 392 of 2002, preferred by Gurdev Singh and Satnam Singh is dismissed and the conviction of these appellants on various other counts is also confirmed. Order passed earlier by this Court staying the execution of the capital punishment on Piara Singh and Sarabjit Singh is vacated.