Supreme Court of India
Harnam vs State Of U.P on 10 October, 1975
Equivalent citations: 1976 AIR 2071, 1976 SCR (2) 274
Author: P Bhagwati
Bench: Bhagwati, P.N.

PETITIONER:
HARNAM

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT10/10/1975

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
SARKARIA, RANJIT SINGH

CITATION:
1976 AIR 2071 1976 SCR (2) 274
1976 SCC (1) 163
CITATOR INFO :
F 1977 SC1822 (1)
R 1977 SC2094 (2)
RF 1979 SC 916 (105)

ACT:
Penal Code-Murder-Sentence to be impossed-Life imprisonment-Capital punishment-When could be imposed.

HEADNOTE:
The legislative history in regard to the subject of capital punishment shows that there has been a significant change in thinking and approach Since India became free. Prior to the amendment of s. 367(5) of the Code of Criminal Procedure by Act 26 of 1955, the normal rule was to impose sentence of death on a person convicted for murder and if a lesser sentence was to be imposed, the Court was required to record reasons in writing. But by Act 26 of 1955, this provision in s. 367(5) was omitted with the result that the Court became free to award either death sentence or life imprisonment, and no longer was death sentence the rule and life imprisonment the exception. Then again a further progress was made in the same direction by s. 354(3) of the Criminal Procedure Code, 1973. That section provides that when the conviction is for an offence punishable with death

or in the alternative with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded and, in the case of sentence of death, the special reasons for such sentence. The unmistakable shift in the legislative emphasis is that for murder, life imprisonment should be the rule and capital punishment the exception to be resorted to only for special reasons. It is only where, in view of the peculiar facts and circumstances, there are special reasons that the death sentence may be awarded: otherwise life sentence offence would certinly be "too young." [277G; E, F]

The seminal trends in current sociological thinking and penal strategy tempered as they are by humanistic attitude and deep concern for the worth of the human person, frown upon death penalty and regard it as cruel and savage punishment to be inflicted only in exceptional cases. [276G]

In the instant case the appellant was charged with an offence of murder by severing the head of the deceased from the body and then carrying it away in a most brutal and inhuman manner. The trial court convicted and sentenced him to death. Both the conviction and sentence were upheld by the High Court.

On the question of sentence,

Allowing the appeal to this Court,

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HELD: The appellant was just around 16 years of age at the time when he committed the offence and, therefore, he would be entitled to the clemency of penal justice. It would not be appropriate to impose the extreme penalty of death. Taking into account the current sociological and juristic thinking as could be seen from the recommendation of the Law Commission which appears to have been incorporated in the Indian Penal Code (Amendment) Bill 1972, it would be legitimate for the Court to refuse to impose death sentence on an accused convicted of murder, if it finds that at the time of the commission of the offence the appellant was under 18 years of age. A murderer who is below 18 years of age at the time of commission of the offence would certainly be "too young." [277G; E, F]

E. Anamma v. State of Andhra Pradesh, A.I.R. 1974 S.C. 799, followed.

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 277 of 1974.

Appeal by Special Leave from the Judgment and order dated the 22nd February, 1974 of the Allahabad High Court Lucknow Bench in Criminal Appeal No. 498 of 1973 and Capital Sentence No. 13 of 1973.

A. N. Mulla and N. S. Das Behal for the appellant. O. P. Rana for the respondent.

The Judgment of the Court was delivered by BHAGWATI, J.-This appeal, by special leave, is limited only to the question of sentence. The appellant has been sentenced to death for an offence under s. 302 of the Penal Code. The question is: Should the extreme penalty of death be commuted to one of life imprisonment? To answer the question it is necessary to state a few facts.

The appellant and a few others were tried in the Court of the Sessions Judge, Unnao for offences under s. 148 and s. 302 read with s. 149 of the Indian Penal Code. The learned Sessions Judge, on an appreciation of the evidence, found that the appellant, Sheo Dayal, Mihi Lal, Dularey and Mewa Lal had formed an unlawful assembly and in pursuance of its common object, the appellant had intentionally caused the death of one Ram Kumar by by inflicting on him a severe injury with a bank severing his head from the body and then carried away the head in an angaucha in a most brutal and inhuman fashion. On this finding, the learned Sessions Judge convicted the appellant, Sheo Dayal, Mihi Lal, Dularey and Mewa Lal of offences under s. 148 and s. 302 read with s. 149 and sentenced each of them to rigorous imprisonment for one fear for the former offence and to death for the latter. The appellant, Sheo Dayal, Mihi Lal, Dularey and Mewa Lal preferred an appeal to the High Court against the order of conviction and sentence recorded against them and their case was also referred to the High Court for confirmation of the death sentence. The High Court agreed with the findings reached by the learned Sessions Judge and confirmed the conviction of Sheo Dayal, Mini Lal, Dularey and Mewa Lal under s. 148 and s. 302 read with s. 149, but reduced their sentence to one of life imprisonment for the offence under s. 302 read with s. 149 and so far as the appellant was concerned, the conviction was converted to one under s. 302 and the sentence of death was maintained. The appellant thereupon preferred an application for special leave and on that application, special leave was granted by this Court limited only to the question of sentence.

Now, there can be no doubt that the crime committed by the appellant was a most reprehensible and heinous crime which dis-

closed brutality and callousness to human life and no extenuating circumstances could be pointed out on behalf of the appellant which would assuage the conscience of the Court and persuade it not to inflict the extreme penalty of death on the appellant. The only circumstance on which reliance could be placed on behalf of the appellant for mitigating the rigour of the punishment to be inflicted on him was his tender age at the time of the commission of the offence. The record of the case shows that the appellant was about sixteen years of age at the time when he committed this brutal crime. The question is : whether this could be regarded as a valid circumstance for invoking the clemency of penal justice?

The legislative history in regard to the subject of capital punishment shows that there has been significant change in thinking and approach since India became free. Prior to the amendment of s. 367(5) of the Code of Criminal Procedure by Act 26 of 1955, the normal rule was to impose sentence of death on a person convicted for murder and, if a lesser sentence was to be imposed, the Court was required to record reasons in writing. But by Act 26 of 1955 this provision in s. 367(5) was omitted, with the result that the Court became free to award either death sentence or life imprisonment and

no longer was death sentence the rule and life imprisonment the exception. Then again a further progress was made in the same direction by s. 354(3) of the Criminal Procedure Code, 1973. That section provides that when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence or death, the special reasons for such sentence. It will be seen that the unmistakable shift in the legislative emphasis is that for murder, life imprisonment should be the rule and capital punishment the exception to be resorted to only for special reasons. It is only where, in view of the peculiar facts and circumstances, there are special reasons that death sentence may be awarded : otherwise life sentence should be the ordinary rule. This legislative provision in the new Code of Criminal Procedure clearly shows, as pointed out by Krishna Iyer, J., in E. Anamma v. State of Andhra Pradesh(1), "that the disturbed conscience of the State on the vexed question of legal threat to life by way of death sentence has sought to express itself legislatively, the stream of tendency being towards cautious, partial abolition and a retreat from total retention." The seminal trends in current sociological thinking and penal strategy, tampered as they are by humanistic attitude and deep concern for the worth of the human person frown upon death penalty and regard it as cruel and savage punishment to be inflicted only in exceptional cases. It is against this background of legislative thinking which reflects the social mood and realities and the direction of the penal and processual laws that we have to consider whether the tender age of an accused is a factor contraindicative of death penalty.

The Law Commission, in the 35th Report made by it on capital punishment fully considered whether the Indian Penal Code should specify the minimum age of the offender who can be sentenced to death, and after examining the position under the Children's Acts of various States it expressed the following opinion :

> "We feel that, having regard to the need for uniformity, to the views expressed on the subject, and to the consideration that a person under 18 can be regarded as intellectually immature, there is a fairly strong case for adopting the age of 18 as the minimum for death sentence. we are aware that cases will occasionally arise where a person under 18 is found guilty of a reprehensible killing, or, conversely, a person above 18 is found to be immature and not deserving of the highest punishment. A line has, however, to be drawn somewhere and we think that 18 can be adopted without undue risk.
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> We, therefore recommend that a person who is under the age of 18 years at the time of the commission of the offence should not be sentenced to death. A provision to that effect can be conveniently inserted in the Indian Penal Code as section 558."

The Law Commission in its 42nd Report on the Indian Penal Code agreed with this recommendation of the previous Law Commission vide paragraph 3.34 of the 42nd Report of the Law Commission. The Central Government appears to have accepted this recommendation and a provision to that effect is to be found in the Indian Penal Code (Amendment) Bill, 1972. This being the current sociological and juristic thinking on the subject, it would be legitimate for the Court to refuse to impose death sentence on an accused convicted of murder if it finds that at the time of

commission of the offence he was under 18 years of age. Krishna Iyer, J., also pointed out in E. Anamma v. State of Andhra Pradesh (supra) that "where the murderer is too young-the elemency of penal justice helps him", and a murderer who is below 18 years age at the time of the commission of the offence would certainly be "too young".

The appellant in the present case was, as pointed out above, just around 16 years of age at the time when he committed the offence and, therefore, in the light of the above discussion he would be entitled to the elemency of penal justice and it would not be appropriate to impose the extreme penalty of death on him. We accordingly commute the sentence of death imposed on the appellant and convert it to one of life imprisonment.

P.B.R. Appeal allowed and sentence reduced.