Supreme Court of India
Neti Sreeramulu vs State Of Andhra Pradesh on 2 April, 1973
Equivalent citations: 1973 AIR 2551, 1973 SCR (3) 844
Author: I Dua
Bench: Dua, I.D.

PETITIONER:
NETI SREERAMULU

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT02/04/1973

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
MATHEW, KUTTYIL KURIEN

CITATION:
1973 AIR 2551 1973 SCR (3) 844
1974 SCC (3) 314
CITATOR INFO :
R 1974 SC 799 (15)
E&D 1989 SC1335 (62)

ACT:
Indian Panel Code, s. 302-Accused convicted for murder-Whether sentence to be reduced from death to life imprisonment.

HEADNOTE:
Appellant, aged 20, was convicted and sentenced to death for murdering his wife on October 30, 1971 and the High Court confirmed the death sentence on January 24, 1972. The appeal to this Court was limited only to the question of sentence.
In the High Court it was argued that the sentence should be reduced to life imprisonment because, the appellant was a young man of 20 years of age, the incident arose out of sexual jealousy and the crime was not pre-meditated. The High Court did not consider these circumstances to be sufficient to merit a lesser sentence.
In this Court it was contended that appellant acted under grave provocation and secondly, the Courts below had ignored the effect of the recent amendment of s. 357 Cr.P.C.
Allowing the appeal,

HELD : (1) While confirming the capital sentence, the High Court has an obligation to itself to consider why sentence should be imposed and should not be content with the trial court's decision on the point. It is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials, apart from the view expressed by the Sessions Judge., In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge but the law requires that the High Court should come to an independent conclusion of its own. [847E] Jumman & others v. The State of Punjab, A.I.R. 1957 S.C. 469, referred to.

(ii)In the present case, assuming the trial court was justified in imposing the capital sentence, the long lapse of time since the imposition of the capital sentence by the trial court and the consideration of the question by this Court, constitutes a relevant ground for reducing the sentence to life imprisonment. The appellant must have been in the condemned cell ever since the death penalty was imposed on him. The appellant must have been subjected to acute mental agony ever since the death penalty was imposed on him. Therefore, the sentence of capital punishment must be reduced to life imprisonment in the present case. [848C] in Piare Dusadh & Others v. Emperor A.I.R. 1944 F.C. 1, the sentence of death was reduced to one of transportation for life when the convict had inter alia, been awaiting execution of death sentence for over a year.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 50 of 1973.

Appeal by special leave from the judgment and order dated January 24, 1972 of the Andhra Pradesh High Court in Cr. A. No. 796 of 1971 and Referred Trial No. 9 of 1971. O. P. Rana, for the appellant.

The Judgment of the Court was delivered by DUA, J.-In this appeal from the judgment and order of the Andhra Pradesh High Court convicting the appellant for the murder of one Gadusula Seetha under s. 302, I.P.C. and sentencing him to death, special leave granted by this Court was limited only to the question of sentence. The preparation of the record was dispensed with and the appeal was directed to be heard on the S.L.P. paper book. In the order granting special leave dated March 1, 1973 it was specifically directed as under :

> "Let an actual date of hearing of the appeal be fixed ,which will not be longer than one month from today, and notice of the actual date of hearing of the appeal shall be sent to the respondent forthwith."

Earlier, on July 5, 1972 the special leave petition has been placed before the vacation Judge (K. K.

Mathew J) and notice was directed to go to the respondent to show cause why special leave should not be granted in regard to the sentence only. It is unfortunate that the matter could not be placed before the Bench after service of 'show cause notice for nearly eight months. The appellant had been sentenced to death as far back as October 30, 1971 by the Additional Sessions Judge, West Godavari Division at Eluru and the death sentence was confirmed by the High Court. on January 24, 1972..

The prosecution story as upheld by the High Court stated briefly is that the deceased, who was a married woman, was having :an illicit intimacy with the appellant and they were both living at Tadimalla. Before they came to Tadmalla to settle down there, the deceased was married to one Basavaiah of Eythapuram. There, she had developed illicit intimacy with her husband's brother and is stated to have eloped with him. Sometime later, she patched up with her husband and they both then went down to Tadimalla to live there, which was the native village of the deceased. But there also the deceased developed illicit intimacy with the appellant who belonged to Harijan community. Apparently the deceased belonged to a higher caste. It appears that the appellant and the deceased started living together in a portion of the appellant's house in Harijanwada of Tadimalla village. According to the testimony of Osha Tharmaiah (P.W. 14) even ,when the deceased was living with the appellant she was having a liaison with this witness. The deceased met with her death on April 24, 1971 at about 6 a.m. About 20 days prior to this date, the deceased left the appellant's house and started living in a portion of the house of Gapapati Bapanamma (P.W.

13), the maternal grandmother of Osha Thammaiah (P.W. 14). According- to P.W. 14 the deceased did so in order to continue her illicit intimacy with that witness. The appellant apparently felt distressed on account of this conduct on the part of the deceased. On the morning of April 14, 1971, the deceased went to the Panchayat well to take water to her house and while she was standing there on the platform of the well, the appellant went there, caught hold of her pig-tail from behind with his left hand and delivered two blows on the left side,, of her neck and gave two or three blows on her left upper fore-arm. The deceased tried to free herself from the appellant's grip but fell down flat about six yards away from the well. The appellant is said to have delivered another blow with the knife on the left side of her abdomen which resulted in her intestines protruding out. The deceased it appears died soon after the receipt of these injuries.

In the High Court on behalf of the appellant it was argued that the sentence should be reduced to life imprisonment because(1) the appellant is a very young man of about 20 years of age; (2) the incident arose out of sexual jealously and (3) the crime was not pre-meditated. The High Court did not consider these circumstances to be sufficient to merit a lesser sentence, because from the evidence of the doctor and the. postmortem certificate given by him it was evident that the appellant had inflicted as many as ten incised injuries out of which two injuries were fatal and even after inflicting the injuries on the deceased indiscriminately the appellant stabbed her in the abdomen With such violence that the intestines actually came out and this happened after the deceased had fallen down. From the injuries caused by the appellant to the deceased the High Court felt that the accused must have intended to murder her and his intention in attacking the deceased was only to chastise her or to teach her a lesson. Finding no reason to reduce the sentence passed by the trial court the High Court confirmed the capital sentence.

In this Court it was contended on behalf of the appellant that there was grave provocation for the appellant in that the appellant had sacrified everything for the sake of keeping the deceased with him but she had proved unfaithful and had not only started living with someone else but had even ridiculed him. It was also contended that the courts below had completely ignored the effect of the recent amendment of s.357, Cr. P.C. and that they have proceeded as if there must be some mitigating circumstance in order to justify the. imposition of a lesser penalty in case of con- viction under s. 302, I.P.C.

The learned additional Sessions Judge, when dealing with the question of sentence observed that there were "absolutely no extenuating circumstances to justify imposition of lesser sentence". No doubt, according to the trial court, the murder was committed in broad day-light in the presence of many persons in the heart of the Harijanwada and nothing had transpired on the day of the occurrence which could have conceivably given any provocation to the appellant so as to incite him to commit the offence and the murder was committed in cold blood with pre-meditation. But it does appear to us that the learned additional Sessions Judge was perhaps not fully conscious of the amendment and his approach suggests that he was looking for some mitigating circumstance to justify the imposition of lesser penalty. Having found none, the capital sentence was imposed. In the High Court also when the question of sentence was raised it was observed as follows :

> "It is clear that the accused intended to murder the deceased. We do not find any reason to reduce the sentence passed by the lower court. We confirm the sentence."

While confirming the capital sentence the High Court had quite clearly an obligation to itself consider what sentence should 'be imposed and not be content with the trial court's decision on the point unless some reason was shown for reducing that sentence. As observed in Jumman & others v. The State of Punjab(1), in such a case, "it is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials, apart from the view expressed by the Sessions Judge. In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the pro- visions of the law above-mentioned it is for the High Court to come to an independent conclusion of its own." No doubt, as observed by the High Court there were as many as ten incised injuries on the deceased and injuries nos. 1 and 4 were considered by the medical evidence to be fatal. It is also clear that on the day of the incident nothing had happened to cause sudden provocation which should be grave enough to make the appellant lose his balance of mind. But in that case an argument would be open to take the offence out of the purview of ss. 300 and 302, I.P.C. That point does not appear to be open to the appellant because this appeal was not admitted on the merits and we are only required to consider whether on the conclusions of the High Court and on the assumption that the offence (1) A. 1. R. 1957 S. C. 469.

is one of murder, lesser penalty should be imposed in *,he present case. Apart from the question of what sentence should have been imposed by the trial court, in our opinion, it is open to this Court under Art. 136 of the Constitution to see what sentence permissible under the law would meet the ends of justice now when we are called upon to consider that question. The appellant was clearly on terms of improper intimacy with the deceased and was perhaps overcome by a sense of jealousy or indignation of' what he thought was unfaithfulness on the part of the deceased. Assuming the trial

court was justified in imposing the capital sentence, the long lapse of time since the imposition of the capital sentence by the trial court and the consideration of the question of sentence by us, in our opinion, constitutes a relevant ground for reducing the sentence to life imprisonment. In the present case the appellant must have been in the condemned cell ever since October 30, 1971 when the sentence of death was imposed on him by the trial court. The High Court confirmed the sentence as far back is January 24, 1972. Since then the agonising consciousness and feeling of being under the sentence of death must have constantly haunted the appellant. No doubt, this delay has been caused because of the time taken by the High Court in disposing of the application for leave to appeal to this Court and because of the pendency of the application for special leave to appeal in this Court since October, 1972. But that cannot detract from the acute mental agony to which the appellant must have been subjected ever since the imposition of the capital sentence on him. We find that in July, 1972 this Court issued notice to the respondent State to show cause why special leave should not be granted in regard to the sentence. The notice was apparently issued without any delay. But the matter was unfortunately not set down for hearing till March 1, 1973. This delay was perhaps due to the fact that the respondent- State did not put in appearance. Indeed, he State was not represented at the hearing either of the special leave petition or of the appeal before us. Now the importance of speedy disposal of cases involving sentence of death has been recognised by this Court, for, in r. 21(2) of O.XXI,,it is expressly provided that in such cases the printed record shall be made ready and despatched to this Court within a period of 60 days after the receipt of intimation from the registry of this Court of the filing of the petition of appeal or of the order granting special leave to appeal. The same anxiety and concern for speedy disposal of special leave petitions in such cases is equally desirable. It appears that the importance of speedy hearing of the petition for special leave was not realised in this case. In our view, the neglect or unwillingness of the State to enter appearance should not have prevented the posting of the special leave. petition for hearing with the greatest possible dispatch.

On the facts and circumstances of this case we feel that the interests of justice require that the sentence of death should be reduced to that of life imprisonment and we so order. The fact that the State of Andhra Pradesh has not cared to enter appearance in spite of notice suggests that in the opinion of the legal advisors of the State there was no good cause to show against the reduction of sentence. In Piare Dusadh & others v. Emperor(1) the sentence of death was reduced to one of transportation for life when the convict had inter alia been awaiting execution of death sentence for over a year. The Federal Court there observed:---

> "In committing the offence the appellant must have been actuated by jealousy or by indignation either of which would tend further to disturb the balance of his mind. He has besides been awaiting the execution of his death sentence for over a year. We think that in this case a sentence of transportation for life would be more appropriate than the sentence of death."

These observations are equally pertinent to the case in hand.

The appeal is accordingly allowed and the appellant's sentence is reduced to that of imprisonment for life.

S.C. Appeal allowed

(1) A.I.R. 1944 F.C.I.