GURVAIL SINGH @ GALA & ANOTHER

v.

STATE OF PUNJAB

(Criminal Appeal No. 1055 of 2006)

FEBRUARY 07, 2013

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Sentence/Sentencing – Death sentence – Propriety of – Conviction u/s. 302/34 IPC of 3 accused – Death sentence to two of the accused – Confirmed by High Court – On appeal, held: Death sentence is not warranted – But in view of the fact that they caused death of 4 persons and nature of injuries inflicted, they deserve no sympathy – Death sentence is modified to life imprisonment for a minimum period of thirty years without remission – Penal Code, 1860 – s. 302/34.

Death Sentence – Award of – Principles to be followed – Held: To award death sentence, aggravating circumstances (crime test) have to be fully satisfied and there should be no mitigating circumstance (criminal test) favouring the accused – Even thereafter test of rarest of rare case has to be applied.

Death sentence – Rarest of rare case test – Criteria – Held: Test of rarest of rare case depends on the perception of the society and not 'judge-centric'.

Appellants-accused, along with 2 other accused were prosecuted for causing death of 4 people of a family. Trial court convicted the appellants and one other accused u/s. 302/34 IPC. Fourth accused was below 18 years of age and hence was sent to Juvenile Board. Appellants were sentenced to death and the other accused was awarded file imprisonment. High Court confirmed their conviction and sentence. Hence the present appeal by the appellants.

A The accused confined their contention on the question of sentence and stated that death sentence was not justified as in view of their age i.e. 34 and 22 years, there is possibility of their reform and rehabilitation; that antecedents of the appellants were unblemished and that B since they had already undergone number of years in jail they may be set free.

Partly allowing the appeal, the Court

HELD: 1. To award death sentence, the aggravating C circumstances (crime test) have to be fully satisfied and there should be no mitigating circumstance (criminal test) favouring the accused. Even if both the tests are satisfied as against the accused, even then the Court has to finally apply the Rarest of Rare Cases test which depends on D the perception of the society and not 'judge-centric', that is whether the society will approve the awarding of death sentence to certain types of crime or not. While applying this test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy E to certain types of crimes like rape and murder of minor girls, especially intellectually challenged minor girls, minor girls with physical disability, old and infirm women with those disabilities etc. Courts award death sentence, because situation demands, due to constitutional F compulsion, reflected by the will of the people, and not Judge centric. [Para 13] [792-E-H; 793-A]

2. In the instant case, the appellants do not deserve death sentence. Some of the mitigating circumstances, as enunciated in **Machhi Singh* case, come to the rescue G of the appellants. Age definitely is a factor which cannot be ignored, though not determinative factor in all fact situations. The probability that the accused persons could be reformed and rehabilitated is also a factor to be borne in mind. Due to the fact that the appellants are H instrumental for the death of four persons and nature of

injuries they have inflicted, in front of PW1, whose son, daughter-in-law and two grand children were murdered, the appellants deserve no sympathy. Considering the totality of facts and circumstances of the present case, imposition of death sentence on the appellants was not warranted but while awarding life imprisonment to the appellants, it is held that they must serve a minimum of thirty years in jail without remission. The sentence awarded by the trial court and confirmed by the High Court is modified from death to life imprisonment. [Paras 13 and 14] [792-D-E; 793-B-D]

***Machhi Singh v. State of Punjab (1983) 3 SCC 470: 1983 (3) SCR 413; Sangeet and Anr. v. State of Haryana (2012) 11 SCALE 140 – relied on.**

Bachitar Singh and Anr. v. State of Punjab (2002) 8 SCC 125: 2002(2) Suppl. SCR 621; Prakash Dhawal Khairner (Patel) v. State ofMaharashtra (2002) 2 SCC 35: 2001 (5) Suppl. SCR 612; Ramesh and Ors. v. State of Rajasthan (2011) 3 SCC 685: 2011 (4) SCR 585; Sandeep v. State of U.P. (2012) 6 SCC 107; Sangeet and Anr. v. State of Haryana (2012) 11 SCALE 140 – cited.

Bachan Singh v. State of Punjab (1980) 2 SCC 684; Santosh KumarSatishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498:2009 (9) SCR 90; Jagmohan Singh v. State of U.P. (1973) 1 SCC 20; 1973 (2) SCR 541; Swami Shraddananda (2) v. State of Karnataka (2008) 13 SCC767: 2008 (11) SCR 93 – referred to.

Case Law Reference:

(1980) 2 SCC 684	**Referred to**	**Para 9**
2002 (2) Suppl. SCR 621	**Cited**	**Para 9**
2001 (5) Suppl. SCR 612	**Cited**	**Para 9**
2009 (9) SCR 90	**Referred to**	**Para 9**

A	**2011 (4) SCR 585**	**Cited**	**Para 9**
	(2012) 6 SCC 107	**Cited**	**Para 9**
	1983 (3) SCR 413	**Relied on**	**Para 10**
B	**(2012) 11 SCALE 140**	**Relied on**	**Para 11**
	1973 (2) SCR 541	**Referred to**	**Para 11**
	2008 (11) SCR 93	**Referred to**	**Para 11**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal C No. 1055 of 2006.

From the Judgment & Order dated 22.09.2006 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 890-DB of 2005 and M.R. No. 10 of 2005.

D

Rishi Malhotra, Tara Chandra Sharma, Uma Datta, Neelam Sharma for the Appellants.

Jayant K. Sud, AAG, Vishal Dabas, Chirag Khurana and Kuldip Singh for the Respondent.

E

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. This criminal appeal arises out of the judgment dated 22.9.2006 passed by the High Court of Punjab and Haryana in Criminal Appeal No. 890-DB F of 2005 and Murder Reference No. 10 of 2005. The High Court dismissed the appeal of the accused persons and also reference was confirmed.

2. The appellants, along with two others, were tried for an G offence under Section 302 read with Section 34 IPC for murder of one Kulwant Singh, his two sons – Gurwinder Singh and Davinder Singh and his wife – Sarabjit Kaur on 21.8.2000 at about 1.30 am and were convicted for murder and awarded death sentence.

H

3. The prosecution case, briefly stated, is as follows: A

Balwant Singh and Jaswant Singh are two sons of Sharam Singh (PW 1). Both Balwant Singh and Jaswant Singh died prior to the date of the incident on 21.8.2000. Sharam Singh's third son Kulwant Singh had two sons – Gurwinder Singh and Davinder Singh. Sarabjit Kaur was his wife. PW1 (Sharam Singh) had 8 acres of land at Village Bhittewad, District Amritsar, which was mutated in his name. In the family partition, that 8 acres of land was divided into four shares, i.e. PW1 gave 2 acres of land each to his sons and wife and 2 acres of land was retained by him. 2nd appellant Jaj Singh and his brother Satnam Singh – accused and his mother Amarjit Kaur – accused, were pressurising on PW1 to get the land transferred in their names in the Revenue record. PW1 wanted them to spend the money for mutation, which was not done. There were frequent quarrels between PW1, 2nd appellant and Amarjit Kaur on that. They nurtured a feeling that PW1, under the influence of his son Kulwant Singh, would not mutate their shares in their names. About 8 to 9 days prior to the incident, 2nd appellant, Satnam Singh and 1st appellant Gurvail Singh went to the house of PW1and threatened him that in case he did not give their share in the land and mutated in their names, they would kill him and his son Kulwant Singh. On 20.8.2000, the appellants and other accused persons were found sitting on a cot outside the house of PW1, threatening PW1 and Kulwant Singh that they would not be spared, since the properties were not mutated in their names. B C D E F

4. PW1, on the intervening night of 20-21.8.2000, was sleeping in the drawing room of his house and Kulwant Singh, his wife Sarabjir Kaur and two sons Gurwinder Singh and Davinder Singh were sleeping in the courtyard. At about 1-1.30 a.m. on 21.8.2000, PW1 heard somebody knocking at the door of his house and he saw through the window the appellants, Satnam Singh and Amarjit Kaur. 1st appellant was carrying Toka, 2nd appellant was armed with Datar and Amarjit Kaur G H

A was carrying Kirpan. 2nd appellant Jaj Singh opened the attack and gave Datar blow to Kulwant Singh and his brother Satnam Singh and inflicted Kirpan blows on Sarabjit Kaur. 1st appellant Gurvail Singh, who was armed with Toka, starting assaulting Gurwinder Singh and Davinder Singh. PW1 tried to intervene
B and avoid the incident and raised hue and cry, which attracted Dalbag Singh and he opened the door of the Baithak room in which PW1 was kept locked. Due to this incident, Kulwant Singh, his wife Sarabjit Kaur and two sons Gurwinder Singh and Davinder Singh were murdered.

C

5. PW1 gave the first information statement to PW7, SHO, Police at Police Station Raja Sansi. The statement was recorded in the morning at about 8.00 am. The formal FIR was recorded at about 9.00 am under Section 302 read with Section 34 IPC at Police Station Raja Sansi, Amritsar. S.I. Mandip
D Singh, PW7, took up the investigation. The inquest report of all the four dead bodies was prepared and the bodies were sent for post-mortem. The appellants Gurvail Singh and Jaj Singh were arrested on 25.8.2000 and 5.9.2001 respectively. Satnam Singh was arrested on 25.8.2000 and Amarjit Kaur on
E 26.8.2000. All the accused were charged for offence under Section 302 read with Section 34 IPC.

6. Dr. Gurmanjit Rai, PW2 conducted the autopsy on the dead body of Kulwant Singh on 21.8.2000. According to him,
F all the injuries were ante-mortem in nature and the cause of death of Kulwant Singh was severance of neck structure. According to him, injury no. 2 sustained by Kulwant Singh was sufficient for causing death in the ordinary course of nature. Dr. Gurmanjit Rai also conducted the post-mortem on the dead
G body of Sarabjit Singh on the same day and opined that the cause of death was severance of neck structure and injury no. 2 was sufficient for causing death in the ordinary course of nature. Dr. Amarjit Singh PW9 conducted the autopsy on the dead bodies of Gurwinder Singh and Davinder Singh and opined that the death was due to severance of neck structure,
H

which was sufficient to cause death in the ordinary course of nature. On the side of the prosecution, PW1 to PW10 were examined and for the defence DW1 to DW6 were examined.

7. The trial Court, after considering all the oral and documentary evidence, found all the accused guilty under Section 302 read with Section 34 IPC. The trial Court noticed that Satnam Singh was below 18 years of age and was Juvenile and hence he was sent to the Juvenile Justice Board for passing the necessary orders in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. So far as Amarjit Kaur is concerned, the Court on evidence found that she had played a prominent role and hence was awarded life imprisonment and a fine of Rs.2,000/- under Section 302 IPC for each of the murders and, in default of payment of fine, to further undergo one year RI and all the sentences were directed to run concurrently. So far as Gurvail Singh (1st appellant) and Jaj Singh (2nd appellant) are concerned, the trial Court took the view that it is they who had mercilessly murdered Kulwant Singh and also Gurwinder Singh and Davinder Singh. The trial Court found no mitigating factors in their favour and held that the case would fall in the category of "rarest of rare cases". Consequently, they were convicted and awarded death sentence.

8. Both Gurvail Singh and Satnam Singh filed appeals before the High Court of Punjab and Haryana, which were heard along Murder Reference No. 10 of 2005 and the High Court also concurred with the views of the trial Court and took the view that it was a fit case where the death sentence is the adequate punishment, since it falls within the category of "rarest of rare cases", against which this appeal has been preferred.

9. Shri Rishi Malhotra, learned counsel appearing on behalf of 1st appellant and Shri Tara Chandra Sharma, learned counsel appearing on behalf of 2nd appellant, confined their arguments more on the sentence, rather than on the findings recorded by the Courts below on conviction, in our view rightly.

A We have gone through the entire evidence, oral and documentary and we are of the considered opinion, that no grounds have been made out to upset the well considered judgment of the trial court as well as that of the High Court. Learned counsel, at length, placed before us the various B mitigating circumstances which, according to them, were not properly addressed either by the trial Court or the High Court and wrongly awarded the death sentence to both the appellants treating the case as "rarest of rare cases". The appellant was arrested on 25.8.2000 and, since then, he is in jail and he was C about 34 years of age on the date of incident and is married and has four children. 2nd appellant was aged 22 years at the time of incident. Looking to the age of the appellants, learned counsel submitted that the possibility of their reformation and rehabilitation cannot be ruled out. Further, it is also pointed out D that the antecedents of the appellants are unblemished and they had not indulged in any criminal activities and it was property dispute which culminated in the death of few persons. Learned counsels pointed out that since they had already undergone sufficient number of years in jail, they may be set free. Learned counsels also placed reliance on the judgments of this Court E in *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, *Bachitar Singh and Another v. State of Punjab* (2002) 8 SCC 125, *Prakash Dhawal Khairner (Patel) v. State of Maharashtra* (2002) 2 SCC 35, *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498, *Ramesh and Others* F *v. State of Rajasthan* (2011) 3 SCC 685, *Sandeep v. State of U.P.* (2012) 6 SCC 107 etc.

10. Shri Jayant K. Sud, learned Additional Advocate General, State of Punjab, appearing on behalf of the State, on G the other hand, submitted that the appellants deserve no sympathy, since they were instrumental for the death of four persons – Kulwant Singh, his wife Sarabjit Kaur and two scns Gurwinder Singh and Davinder Singh. Shri Sud submitted that the appellants had wiped off the entire family in the presence H of PW1 and, therefore, the appellants deserve no sympathy

and the case clearly calls for extreme penalty of capital punishment. Shri Sud also submitted that the murder was committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indication of the community, and hence appellants deserve no sympathy. Reference was also made to the judgment of this Court in *Machhi Singh v. State of Punjab* (1983) 3 SCC 470 and submitted that none of the mitigating circumstances laid down by the Court would come to the rescue of the appellants so as to escape them from capital punishment.

11. This Court has recently in *Sangeet & Another v. State of Haryana* (2012) 11 SCALE 140 (in which one of us – K. S. Radhakrishnan - was also a member) elaborately discussed the principles which have to be applied in a case when the Court is called upon to determine whether the case will fall under the category of "rarest of rare cases" or not. The issue of aggravating and mitigating circumstances has been elaborately dealt with by this Court in para 27 of that judgment. This Court noticed that the legislative change and *Bachan Singh* discarding proposition (iv)(a) of *Jagmohan Singh v. State of U.P.* (1973) 1 SCC 20, *Machhi Singh* revived the "balancing" of aggravating and mitigating circumstances through a balance sheet theory. In doing so, it sought to compare aggravating circumstances pertaining to a crime with the mitigating circumstances pertaining to a criminal. This Court held that these are completely distinct and different elements and cannot be compared with one another and a balance sheet cannot be drawn up of two distinct and different constituents of an incident. Reference was also made to the judgment of this Court in *Swami Shraddananda (2) v. State of Karnataka* (2008) 13 SCC 767, and this Court opined that not only does the aggravating and mitigating circumstances approach need a fresh look but the necessity of adopting this approach also needs a fresh look in the light of the conclusions in *Bachan Singh*. This Court held that even though *Bachan Singh* intended "principled sentencing", sentencing has now really

A become judge-centric as highlighted in *Swamy Shraddananda* and *Bariyar*. The ratio of crime and criminal has also been elaborately dealt with in *Sangeet*, so also the standardization and categorization of crimes. This Court noticed that despite *Bachan Singh*, the particular crime continues to play any more
B important role than "crime and criminal".

12. This Court in *Sangeet* noticed that the circumstances of criminal referred to in *Bachan Singh* appear to have taken a bit of back seat in the sentencing process and took the view, as already indicated, balancing test is not the correct test in
C deciding whether the capital punishment be awarded or not. We may, in this case, go a little further and decide what will be the test that we can apply in a case where death sentence is proposed.

D 13. We notice that, so far as this case is concerned, appellants do not deserve death sentence. Some of the mitigating circumstances, as enunciated in *Machhi Singh*, come to the rescue of the appellants. Age definitely is a factor which cannot be ignored, though not determinative factor in all
E fact situations. The probability that the accused persons could be reformed and rehabilitated is also a factor to be borne in mind. To award death sentence, the aggravating circumstances (crime test) have to be fully satisfied and there should be no mitigating circumstance (criminal test) favouring the accused.
F Even if both the tests are satisfied as against the accused, even then the Court has to finally apply the Rarest of Rare Cases test (R-R Test), which depends on the perception of the society and not "judge-centric", that is whether the society will approve the awarding of death sentence to certain types of
G crime or not. While applying this test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like rape and murder of minor girls, especially intellectually challenged minor girls, minor girls with physical disability, old and infirm women with those disabilities etc. examples are only illustrative and not
H

exhaustive. Courts award death sentence, because situation demands, due to constitutional compulsion, reflected by the will of the people, and not Judge centric. A

14. We are of the view, so far as this case is concerned, that the extreme sentence of capital punishment is not warranted. Due to the fact that the appellants are instrumental for the death of four persons and nature of injuries they have inflicted, in front of PW1, whose son, daughter-in-law and two grand children were murdered, we are of the view that the appellants deserve no sympathy. Considering the totality of facts and circumstances of this case we hold that imposition of death sentence on the appellants was not warranted but while awarding life imprisonment to the appellants, we hold that they must serve a minimum of thirty years in jail without remission. The sentence awarded by the trial court and confirmed by the High Court is modified as above. Under such circumstance, we modify the sentence from death to life imprisonment. Applying the principle laid down by this Court in *Sandeep* (supra), we are of the view that the minimum sentence of thirty years would be an adequate punishment, so far as the facts of this case are concerned. B C D E

Appeal is partly allowed.

K.K.T. Appeal partly allowed.