

STATE OF PUNJAB

v.

GURMEJ SINGH

AUGUST 2, 2002

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

Penal Code, 1860—Sections 302, 324, 326 and 450—Penalty of death sentence—Award of—On facts, quarrel on account of money transactions between accused and his brother infuriating the accused leading to assault resulting in death of three family members and injuries to other three relations—Trial Court holding it to be a gruesome murder committed by the accused, imposing death sentence—High Court declining to accept the reference for confirmation of death sentence—On appeal held, it does not fall in the category of rarest of rare cases to award extreme penalty of death—Hence order of High Court does not call for interference.

Criminal Law—Pre-mature release of prisoner—It is considered on material facts and circumstances prevailing at the time of release and also on report of officers concerned—There cannot be any presumption about release or non-release of a prisoner.

Code of Criminal Procedure, 1973—Section 357—Compensation—Award of—Question arises when court imposes a sentence of which fine does not form a part.

According to the prosecution, a quarrel took place between the respondent and his brother over money transaction; respondent got infuriated when explanation or excuses given to him by his brother did not convince him. He assaulted his brother and his family members including young children, as a result of which his brother, brother's wife and their son died and brother's daughter, father-in-law and wife's sister's daughter were left injured. Trial Court imposed death sentence on the respondent holding that it was gruesome murder committed by him, who did not even spare young children and assaulted them without any provocation. However, High Court declined to accept the reference for confirmation of death sentence. Hence the present appeal.

Dismissing the appeal, the Court

A HELD: 1.1. A number of factors are to be taken into account while imposing penalty of death, for illustration, the motive of the crime, the manner of the assault, the impact of the crime on the society as a whole, the personality of the accused, circumstances and facts of the case as to whether the crime committed is for satisfying any kind of lust, greed or in pursuance of any organised anti-social activity or by way of organised crime, drug trafficking or the like or the chances of inflicting the society with a similar criminal act that is to say vulnerability of the members of the society at the hands of the accused in future or commission of murder which may be shocking to the conscience. [432-E, F]

C 1.2. In the instant case, the facts and circumstances of the case do not fall in any of such category or the like. It is no doubt true that the incident is ghastly and deserves all condemnation, but looking to the principles laid down in the numerous decisions of this Court the case would not fall in the category of rare of the rarest cases to award extreme penalty to death. [432-G; 433-A, B]

D *Bachan Singh v. State of Punjab*, [1980] 2 SCC 684; *Machi Singh and Ors. v. State of Punjab*, AIR (1983) SC 957; *State through Superintendent of Police, CBI/SIT v. Nalini and Ors.*, [1999] 5 SCC 253; *Lehna v. State of Haryana*, [2002] 1 SCALE 273; *Dharmendra Singh Alias Mansing Ratansing v. State of Gujarat*, [2002] 4 SCC 679 and *Om Prakash v. State of Haryana* [1999] 3 SCC 19, referred to.

E 2. Pre-mature release is considered on the material facts and circumstances prevailing at the relevant time of release. Report of the concerned officers is also called for and it is after consideration of all the material that a decision is taken in the matter. Therefore, the submission that after a few years the case of the respondent-accused is likely to be considered for his pre-mature release and in the event of his coming out it will endanger the life of deceased's daughter cannot be appreciated. Respondent-accused would not lose his right of being considered for pre-mature release, which may be considered at the appropriate time in the light of the facts and circumstances then found prevailing. There cannot be any presumption about release or non-release of a prisoner. It would not be a valid consideration to inflict the extreme penalty. [433-B-D]

G 3. A reading of Section 357 (3) of Cr.P.C. would show that question of award of compensation would arise where the Court imposes a sentence of which fine does not form a part of it. In the instant case, the sentence of fine was imposed hence question of case awarding any compensation to deceased's

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daughter under Section 357(3) Cr.P.C. does not arise but the amount of fine imposed is enhanced from Rs. 5,000 to Rs. 20,000 on each count. Besides the amount payable as directed by the Trial Court, the enhanced amount of fine should also be paid to the deceased's daughter. [433-G, 434-F, G] A

Rachhpal Singh and Anr. v. State of Punjab, [2002] 5 Scale 308, distinguished. B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 318 of 2001.

From the Judgment and Order dated 16.2.2000 of the Punjab and Haryana High Court in Crl. A. No. 502-DB of 1998. C

Bimal Roy Jad, Pankaj Kumar Singh and Ms. Sunita Pandit for the Appellant.

Prem Malhotra for the Respondent.

The Judgment of the Court was delivered by D

BRIJESH KUMAR, J. This appeal has been preferred by the State of Punjab against the judgment and order passed by the Punjab High Court, declining to accept the reference for confirmation of death sentence, as awarded against the respondent-Gurmej Singh by the Court of Sessions. The appeal, preferred by the accused Gurmej Singh against his conviction was however, dismissed upholding his conviction. The sentence, thus was commuted from one of death to imprisonment for life. The question, therefore, is confined to the award of the sentence whether it may be maintained as imprisonment for life or the respondent be sentenced to death as ordered by the Trial Court. E F

Briefly, the facts of the case are that the accused respondent- Gurmej Singh is brother of the deceased Jagjit Singh. It is said that while in Dubai, Gurmej Singh had been sending money to his brother Jagjit Singh. Gurmej Singh had also been running business of dairy farming in the village and used to give his land on contract basis Jagjit Singh has been living in the village. G

The prosecution case about the occurrence is that on November 1, 1993, at about 11.00 p.m. Gurmej Singh assaulted his brother Jagjit Singh at their house in village Manuke, as well as wife of his brother Charanjit Kaur, their son Swaranjit Singh, daughter Gurmeet Kaur and Amarjit Kaur daughter of the sister of Charanjit Kaur. PWS Dalip Singh, who is father-in law of the deceased H

- A** Jagjit Singh and father of Charanjit Kaur, happened to be satyng there on that day at the house of Jagjit Singh. He got up on hearing the commotion and asked Gurmej Singh not to assault, upon which Gurmej Singh assaulted Dalip Singh as well. It is further said that since the handle of the kirpan got broken, Gurmej Singh picked up a dah and continued the assault with the said dah.
- B** The witnesses raised alarm and other people arrived at the spot. As a result of the assault three persons died viz. Jagjit Singh his wife Charanjit Kaur and Swaranjit Singh, their son. Dalip Singh, Gurmeet Kaur-minor daughter of Jagjit Singh and Amarjeet Kaur-daughter of sister of Charanjit Kaur, received injuries. Thereafter, report was lodged any PW-5 Dalip Singh the complainant and after usual investigation, respondent- Gurmej Singh and his wife both were charge-sheeted. After the trial, respondent-Gurmej Singh was convicted under Section 302 IPC on three counts for the three murders and sentenced to death on each count with a fine Rs. 5000 also on each count , in default of payment of fine, to go rigorous imprisonment for one year each. The other sentences which have been awarded, are as follows:
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| D | 1. Under Section 326 of the Indian Penal Code for causing grievous hurt to Gurmeet Kaur | Sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 3000 and in default of payment of fine to undergo rigorous imprisonment for two months. |
| E | 2. Under Section 326 of the Indian Penal Code for causing grievous hurt to Amarjit Kaur | Sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 3000 and in default of payment of fine to undergo rigorous imprisonment for two months. |
| F | 3. Under Section 324 of the Indian Penal Code for causing simple hurt to Gurmeet Kaur | Sentenced to undergo rigorous imprisonment for one year and to pay a fine Rs. 2000. In default of payment of fine, to undergo rigorous imprisonment for two months. |
| G | 4. Under Section 324 of the Indian Penal Code for causing simple hurt to Amarjit Kaur | Sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 2000. In |
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5. Under Section 324 of the Indian Penal Code for causing simple hurt to Dalip Singh default of payment of fine, to undergo rigorous imprisonment for two months. A

6 Under Section 450 of the Indian Penal Code for trespassing in the house of Jagjit Singh Sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 2000 and in default of payment of fine to undergo rigorous imprisonment for two months. B

Sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 3000 and in default of payment of fine to undergo rigorous imprisonment for two months. C

Wife of Gurmej Singh, however, has been acquitted. D

On facts none of the parties raised any dispute before us, since the matter was confined to sentence to be awarded to respondent - Gurmej Singh. In this view of the matter motive of the crime assumes importance. According to the prosecution case the two brothers used to quarrel on account of money transactions. According to P.W.5-Dalip Singh, the father-in-law of the deceased Jagjit Singh, he had gone to village Manuke on November 1, 1993, reaching there at about 5.00 p.m., at that time also the two brothers were quarrelling. P.W.5-Dalip Singh, however, persuaded them not to fight and get the matter settled through panchayat within a day or two. Gurmej Singh is said to be very much annoyed with his brother and had been planning to assault him. On return from Dubai, whenever Gurmej Singh is said to have enquired about money sent from Dubai, it is said that the deceased has been telling that the money was spent on the house. It infuriated Guurmej Singh, which ultimately became the cause of the assault, as a result of which three persons died and another three got injuries as indicated above. E
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The Trial Court while considering the question of sentence held that it was a gruesome murder committed by the respondent, who did not even spare the young children and assaulted them without any provocation and it needed a deterrent punishment. According to the Trial Court, it was one of those rare of rarest cases in which sentence of death would only meet the ends of justice. The High Court, however, observed that in view of the decisions of G
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- A the Supreme Court in the cases of *Bachan Singh v. State of Punjab*, [1980] 2 SCC 684, *Machi Singh's Ors. v. State of Punjab*, AIR (1983) SC 957 and *State through Superintendent of Police, CBI/ SIT v. Nalini and Ors.*, [1999] 5 SCC 253, it could not be said to be rare of rarest cases, so as to call for penalty of death.
- B We have given our an anxious consideration to the submissions made on behalf of the parties. We have also taken note of the decisions referred to by the High Court in its judgment, as also relied upon by the counsel for the respondent. Learned counsel for the respondent has drawn our attention to a decision reported in (2002) 1 SCALE 273 *Lehna v. State of Haryana* also.
- C Yet another case on the point is reported in [2002] 4 SCC 679 *Dharmendra Singh Alias Mansingh Ratansing v. State of Gujarat*. The principles laid down in the cases of *Bachan Singh* and *Machi Singh* (Supra) have also been discussed and considered in the above noted decision of this Court and it has been held that sentence of imprisonment for life is normally to be awarded in murder cases. Penalty of death sentence is awarded only in exceptional
- D cases. In the case of *Machi Singh* (Supra), this Court observed that extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. In the case of *Om Prakash v. State of Haryana*, [1999] 3 SCC 19, where the accused a member of paramilitary force had killed seven members of a family, was not awarded extreme penalty for the reason that he had been labouring under the strain that the accused and the members of his family had been suffering due to injustice being meted out to them by the family of the deceased. It was considered to be a mitigating circumstance in that case. A number of factors, which are to be taken in to account while imposing penalty of death, for illustration are the motive of the crime, the manner of the assault, the impact of the crime on the society as a whole, the personality of the
- E accused, circumstances and facts of the case as to whether the crime committed its, for satisfying any kind of lust, greed or in pursuance of any organised anti-social activity or by way or organised crime, drug trafficking or the like or the chances of inflicting the society with a similar criminal act that is to say vulnerability of the members of the society at the hands of the accused in future or commission of murder which may be shocking to the conscience.
- F We feel that the facts and circumstances of this case, do not fall in any of such category or the like as indicated above. The accused-respondent had been demanding and asking about the money from the deceased Jagjit Singh, which was sent to him by the respondent from Dubai. It appears that the explanation or excuses which were being given by the deceased did not
- G convince him and the dispute *inter-se* and mistrust between the two brothers
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has been widening leading to the heinous crime in which three lives were lost and three other persons were left injured. It is no doubt true that the incident is ghastly and deserves all condemnation, but looking to the principle laid down in numerous decisions of this Court referred to above the case would not fall in the category of rare of the rarest cases to award extreme penalty of death. The view taken by the High Court does not call for any interference in this appeal.

Learned counsel for the appellant then submitted that after a few years the case of the respondent is likely to be considered for his pre-mature release, as he has been in jail for a period of eight years and in the event of the respondent coming out, it will endanger the life of Gurmeet Kaur, the daughter of Jagjit Singh. Who was injured in the incident. We fail to appreciate the argument. Pre-mature release is considered on the material facts and circumstances prevailing at the relevant time of release. Report of the concerned officers is also called for and is after consideration of all the material that necessary decision is taken in the matter, therefore in our view this ground advanced by the learned counsel of the appellant has no force and respondent would not lose his right of being considered for premature release, which matter indeed may have to be considered at the appropriate time in the light of the facts and circumstances then found prevailing. There cannot be any presumption about release or non-release of a prisoner. It would not be a valid consideration to inflict the extreme penalty.

The next contention raised by the learned counsel for the appellant is that the surviving victim namely the daughter of Jagjit Singh may be awarded some compensation under Section 357 (3) of the Code of Criminal Procedure. In support of his submission he has also referred to a decision of this Court in [Criminal Appeal Nos. 767-769 of 2001] *Rachpal Singh's Anr. v. State of Punjab*, decided on July 23, 2002. In the said case this Court allowed compensation under Sub-section (3) of Section 357 Cr. P.C. to the victims but it would not applicable in the present case since a sentence of fine has also been imposed. A reading of Sub-section (3) of Section 357 would show that question of award of compensation would arise where the Court imposes a sentence of which fine does not form apart of it. The decision in *Rachhpal Singh* (Supra) does not take any contrary view nor holds that compensation may be awarded over and above the sentence office. A perusal of Sub-section (3) of Section 357 Cr. P.C. would make the position clear.

The provision reads as under:

“357. Order to pay compensation-(3) when a Court imposes a sentence,

A of which fine does not form a part, Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.”

B In the present case sentence of fine has also been imposed, as indicated in the earlier part of this judgment .Out of the fine, a sum of Rs. 1000 each had been ordered to be given to the three injured persons namely Dalip Singh, Amarjit Kaur and Gurmeet Kaur. The balance amount is to go to the legal heirs of Jagjit Singh. We had heard the learned counsels for both parties on this aspect. Learned counsel for the appellant submitted that Gurmeet Kaur lost both her parents as well as her brother in the incident and now she is alone and would have become of marriageable age or may have to start some work of her own. She would need some money. In case she cannot be compensated, the amount of fine may be enhanced to some extent. Learned counsel for the respondent has, however, submitted that out of seven acres of land belonging to his father, same has been divided into three equal shares and some of it is also under mortgage and he has got two daughters and a son and his wife. He has also submitted that whenever respondent was released on parole he met Gurmeet kaur and his wife also keeps on going to meet her. Their relations are normal and cordial. If that is so, nothing better can be thought of in the prevailing circumstances. However, we are not considering for awarding any compensation to Gurmeet Kaur under Section 357 (3) Cr. P.C. but the amount of fine imposed, can in any case be reasonably enhanced.

F Therefore, while declining to impose penalty of death in place of imprisonment of life on respondent-Gurmej Singh as prayed on behalf of the appellant-the State of Punjab and dismissing their appeal and upholding sentence of life imprisonment on all three counts under Section 302 IPC, enhance the amount of fine from Rs. 5000 to Rs.20000 on each count. Besides the amount payable as per the directions of the Trial Court, the enhanced amount of fine shall also be paid to Gurmeet Kaur, daughter of Jagjit Singh. We also modify sentence of imprisonment in default of payment of fine and enhance it to two years rigorous imprisonment in default of payment of fine on each count.

Subject to the modifications indicated in the preceding paragraph, the appeal fails and it is accordingly dismissed.

H N.J.

Appeal dismissed.