REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 786-789 OF 2003

State of Punjab .... Appellant

Versus

Manjit Singh & Ors. .... Respondents

JUDGMENT

Dr. Mukundakam Sharma, J.

1. In these criminal appeals the issue that arises for our consideration is whether in the facts and circumstances of the present case, the maximum penalty of death sentence is called for or life sentence which is awarded to the respondents by the High Court would meet the ends of justice.

2. One Sewa Singh, the deceased, was the Municipal Commissioner of Municipal Committee, Sirhind City. He also used to recite Kirtan in the Gurdwara Sahib whereas his son Rachhpal Singh alias Happy, Inderjit Singh and Kuldeep Singh, were also working as Sewadars in Gurdwara Bara Sirhind, which was quite near the house of Sewa Singh. Kamaljit Singh and Manjit Singh were previously working as Sewadar in the Gurdwara. While working as such they had developed illicit relations with

Bhinder Kaur, the wife of Sewa Singh, the deceased. The said illicit relation became known to Sewa Singh, the deceased, and his son Rachhpal Singh alias Happy and they did not appreciate the said illicit relationship and sometimes used to beat Bhinder Kaur and told her in specific terms not to indulge in such activities. They also restrained accused Kamaljit Singh and Manjit Singh to come to their house. Bhinder Kaur did not like the aforesaid attitude of her family and was also fed up with the harassment caused to her and told about such mal-treatment and harassment caused, to the accused Kamaljit Singh and Manjit Singh. Having known about the attitude and mal-treatment being meted out to Bhinder Kaur, they came on the fateful day of 26.6.1994 to the house of Sewa Singh when he was sleeping in his house whereas his son Rachhpal Singh alias Happy was sleeping in the Gurdwara Bara Sirhind. Having reached the house of Sewa Singh, the accused Kamaljit Singh armed with Kirpan and accused Manjit Singh armed with Khanda, killed Sewa Singh in his house whereas the remaining three persons namely Rachhpal Singh alias Happy, Inderjit Singh and Kuldip Singh were killed in the Gurdwara by them.

3. Consequent to the aforesaid murders, a First Information Report (for short 'the FIR') was registered bearing FIR No. 46, on 26.06.1994 at about 2.30

a.m. on the statement of Joginder Singh who approached the Police Station, Sirhind and got recorded the FIR to the effect that he was working as an electrician and had been living near Gurdwara Bara Sirhind and that on the intervening night of 26.06.1994, when he was sleeping in his house, at about 1.30 a.m. he heard a noise from the house of Sewa Singh, the deceased which was located quite near his house, he went outside and saw that the light in front of the house of Inderjit Singh was on and two Sikh youths armed with Kirpans stained with blood were shouting that they had finished Sewa Singh, the deceased, his son Rachhpal Singh alias Happy and their supporters and they would not spare anybody who comes to their help. It was also stated in the FIR that he along with other neighbours went to the house of Sewa Singh and found him dead. They left Bhinder Kaur near the dead body and went to the Gurdwara Sahib where they found other three persons murdered namely Rachhpal Singh alias Happy, Inderjit Singh and Kuldip Singh. While Rachhpal Singh alias Happy and Inderjit Singh were lying murdered in the room of the Gurdwara Sahib, Kuldip Singh was found killed in the Varandah of the Gurdwara.

4. After registering the FIR the police started investigation during the course of which they arrested Kamaljit Singh, Manjit Singh. Bhinder Kaur was also arrested. After completion of the investigation, the police submitted

charge-sheet against the aforesaid accused persons. The court framed charges against the accused persons under Sections 302/34 IPC read with Section 120-B IPC, for causing death of Sewa Singh, Rachhpal Singh alias Happy, Inderjit Singh and Kuldeep Singh.

5. During the course of trial, the prosecution examined its witnesses whereas the defence did not produce any witness. The trial court, after conclusion of the trial and on appreciation of the evidence on record, passed a judgment and order finding both the accused persons namely, Kamaljit Singh and Manjit Singh guilty of the offences under Section 302 read with Section 120-B IPC and sentenced both of them to death with direction that they be hanged by the neck till death subject to, however, the confirmation by the High Court. As regards Bhinder Kaur, it was held by the trial court that she was one of the co-conspirator for killing Sewa Singh and his son Rachhpal Singh @ Happy. The trial court, after taking into consideration that now she is left all alone in the family and that she never intended that Inderjit Singh and Kuldeep Singh be done to death, sentenced her to undergo imprisonment for life under Section 120-B IPC read with Section 302 IPC.

6. Since in respect of two of the accused persons death sentence was awarded, reference was made to the High Court for confirmation of the

death sentence. On the other hand, all the three accused persons filed separate criminal appeals before the High Court.

7. All the aforesaid three criminal appeals and the reference were taken up together for consideration and after appreciation of the evidence on record, the High Court upheld the order of conviction passed against all the three accused persons. The High Court, however, after considering the facts and circumstances of the case held that the case in hand cannot be called as rarest of the rare cases. It was held by the High Court that both the appellants (respondents herein) who have been sentenced to death do not deserve capital punishment. Consequently, their sentence of death was converted into a sentence of imprisonment for life and to pay a fine of Rs. 10,000/- each.

8. The State of Punjab being aggrieved by the aforesaid order of alteration of the sentence of the two accused persons namely Kamaljit Singh and Manjit Singh filed the present appeals on which the notice was issued. The appeals were listed for hearing and we heard the appeals with the assistance of Public Prosecutor appearing for the State of Punjab.

9. It was submitted before us by the counsel appearing for the appellant-State that it was a brutal murder of four persons by the two accused and,

therefore, the High Court was not justified in converting the death sentence awarded by the trial court into the imprisonment for life. He also submitted before us that reliance of the High Court on the decision of this Court in **Om Prakash v. State of Haryana** [(1999) 3 SCC 19] is misplaced. It was submitted by him that death of four persons in the present case was one of the aggravating causes. There being other factors such as the nature of offence, manner, motive and other aggravating factors surrounding the case which when considered together would definitely make out a case of rarest of rare case.

10. In the light of the submission made by the learned counsel appearing for the appellant-State, we have examined the records and relevant case laws.

11. The Supreme Court has held succinctly in several decisions that for a case to be regarded in the rarest of rare category, fact situation has to be exceptional, like after committing one offence another offence is committed so as to cover up the first offence. In **Bachan Singh v. State of Punjab** [(1980) 2 SCC 684] this Court for the first time used this category (rarest of rare) for awarding death penalty. However, the **Bachan Singh (supra)** decision did not elaborate the criteria for identifying "rarest of rare" cases. In **Machhi Singh v. State of Punjab** [(1983) 3 SCC 470] this Court laid down the guidelines for the application of the "rarest of rare"

rule to specific cases. The guidelines were couched in fairly broad terms that relate to several considerations such as: “Manner of commission of murder”, “Motive for the commission of murder”, “Anti-social or socially abhorrent nature of the crime”, “Magnitude of crime” and “Personality of victim of murder”.

12. With regard to the quantum of punishment to be awarded to persons found guilty of offences dealt with in the IPC, the Code confers a wide discretion on the court in the matter of awarding appropriate punishment by prescribing the maximum punishment and in some cases both the maximum as well as the minimum punishment for the offence. Though no general guidelines are laid down in the Code for the purpose of awarding punishment, generally the judicial discretion of the court is guided by the principle that the punishment should be commensurate with the gravity of the offence having regard to the aggravating and mitigating circumstances vis-à-vis an accused in each case. In such situation, the obligation of the court in making the choice of death sentence for the person who is found guilty of murder becomes more onerous indeed.

13. On the question of awarding the sentence for the offences for which life imprisonment as well as the death sentence is prescribed, sub-section (3) of Section 354 CrPC enjoins that in the case of sentence of death, special

reasons for such sentence shall be stated. As already noted, the provision was elaborately discussed by this Court in **Bachan Singh** (supra). The Court pointed out the change in the policy of sentencing in following manner: (SCC p. 734, para 151)

> "*151*. Section 354(3) of the Code of Criminal Procedure, 1973 marks a significant shift in the legislative policy underlying the Code of 1898, as in force immediately before 1-4-1974, according to which both the alternative sentences of death or imprisonment for life provided for murder and for certain other capital offences under the Penal Code were normal sentences. Now, according to the changed legislative policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception."

14. For ascertaining the existence or absence of special reasons in the context, it was observed that though, in a sense, to kill is to be cruel and, therefore, all murders are cruel, yet such cruelty may vary in its degree of culpability and it is only when culpability assumes the proportion of extreme depravity that special reasons can legitimately be said to exist. It was emphasized that life imprisonment was the rule and death sentence was an exception and that death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstance of the crime and provided that the option to sentence of imprisonment for life cannot be conscientiously

exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

15. In **Machhi Singh** (supra) a three-Judge Bench of this Court having considered the guidelines laid down in the above-noted case added that the following two questions might be asked and answered as a test to determine the rarest of rare case in which death sentence could be inflicted: (SCC p. 489, para 39)

> "(*a*) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?
>
> (*b*) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender."

16. Further, in **Allauddin Mian v. State of Bihar** [(1989) 3 SCC 5] it was laid down that unless the nature of the crime and the circumstances of the offender reveal that the criminal was a menace to the society and the sentence of life imprisonment would be altogether inadequate, the court should ordinarily impose a lesser punishment and not the extreme punishment of death which should be reserved for exceptional cases only.

17. The above discussed legal principles have been followed consistently in numerous judgments of this Court. Whether the case is one of the rarest of

the rare cases is a question which has to be determined on the facts of each case. It needs to be reiterated that the choice of the death sentence has to be made only in the rarest of the rare cases and that where culpability of the accused has assumed depravity or where the accused is found to be an ardent criminal and menace to the society and; where the crime is committed in an organized manner and is gruesome, cold-blooded, heinous and atrocious; where innocent and unarmed persons are attacked and murdered without any provocation.

18. Reverting back to the present case, it is no doubt true that both the respondents behaved in a most cruel manner, killed four persons while they were asleep. Three, out of the four deceased persons, were murdered within the precincts of a Gurdwara. But, there are certain mitigating circumstances in the case which cannot be lost sight of. Both the respondents, as is disclosed from the records, had illicit relationship with the third accused namely Bhinder Kaur and when she narrated her woes and the harassment, both the accused persons, as it appears from the record, lost their balance and acted in a cruel manner by entering into the house of Sewa Singh-deceased in the dead night and killing Sewa Singh in the house and other three sons in the Gurdwara. Thereafter, they also gave threat to everybody outside the house by stating that they have killed those

persons and, therefore, no one should dare to come near them. This behaviour on the part of the accused-respondents would show that they acted in the manner being driven more by infatuation and also being devoid of their sense on coming to know about the ill treatment meted out to Bhinder Kaur. Though the act of the accused is a gruesome one but it was a result of human mind going astray. No doubt, they acted in a ghastly manner for which, in our considered view, they have been adequately punished. The High Court has given its reasons for not awarding the death sentence and also relied upon a Supreme Court decision for the purpose.

19. In view of the aforesaid discussion, keeping in view entire facts and circumstances of the case, the reasons given by the High Court for altering and converting capital sentence to a sentence of life are found to be cogent and reasonable. We do not intend to interfere with the said judgment and order passed by the High Court. Therefore, the life sentence awarded to all the three accused persons by the High Court stands upheld.

20. In the result, the appeals stand dismissed.

……J.
[Dr. Mukundakam Sharma]

……...J.
[Dr. B.S. Chauhan]

New Delhi,
May 28, 2009