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ASHARFI LAL & SONS

v.

STATE OF U.P.

MARCH 30, 1987

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[A.P. SEN AND V. BALAKRISHNA ERADI JJ.]

Indian Penal Code:

Section 302—Murder—Cold-Blooded—Extremely brutal—Shocks judicial conscience—Sentence of death confirmed—As measure C *of social necessity and deterrence to other potential offenders.*

Criminal Trial:

Sentence—Duty of Court—Impose proper punishment—Depend- D *ing upon degree of criminality and desirability to impose such punishment.*

The prosecution alleged that in order to wreak their vengeance on account of long drawn litigation in respect of certain agricultural property between P.W. 1 and the appellants—two real brothers and their E **three sons, the appellants effected entry on the night of 13/14-8-1984 into the courtyard of the adjoining house where P.W. 1 and her two daughters were sleeping and brutally attacked them with gandasas and a banka. The younger daughter was repeatedly struck with a gandasa and her neck was severed, as a result of which she died instantaneously, while the other daughter was struck on the neck and face with a banka** F **and her right hand was chopped off with the gandasa, and she died later in the hospital. P.W. 1 was struck on the face and upper part of the body with the gandasa. She ran from the house through the village abadi and narrated the incident to P.W. 2 who, in turn, informed P.W. 5, the Village Pradhan. After visiting the scene of offence, P.W. 3 filed a First Information Report.**

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The appellants were tried and the two brothers were convicted under Section 302 of the Indian Penal Code on two counts of murder and were awarded capital punishment while the other three appellants were convicted under Section 302 read with Section 149 of Indian Penal Code and sentenced to life imprisonment. All the appellants were also H **convicted under Section 148 of the Indian Penal Code.**

The High Court, affirming the conviction and sentences awarded to the two brothers, observed that it was satisfied that this was one of the 'rarest of the rare cases' where death penalty was the only appropriate sentence which ought to be imposed on them. A

Dismissing the appeal, this Court B

HELD: 1.1 It is the duty of the Court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment. [726B]

1.2 The punishment must fit the crime. The present cases were cold-blooded brutal murders in which two innocent girls lost their lives. The extreme brutality with which the appellants acted shocks the judicial conscience. The only punishment which the appellants deserve for having committed the reprehensible and gruesome murders of two innocent girls to wreak their personal vengeance over the dispute they had with regard to property with their mother is nothing but death. [725H; 726B-C] C D

1.3 Failure to impose death sentence in such grave cases where it is a crime against the society—particularly in cases of murders committed with extreme brutality, will bring to naught the sentence of death provided by Section 302 of the Indian Penal Code. [726A-B] E

1.4 As a measure of social necessity and also as a means of deterring other potential offenders the sentence of death on the two appellants is confirmed. [726C]

1.5 The two appellants were guilty of a heinous crime out of greed and personal vengeance and deserve the extreme penalty. This case falls within the test—'rarest of the rare cases'—as laid down by this Court. [725G-H] F

Bachan Singh v. *State of Punjab*, [1980] SCC 684 and *Machhi Singh* v. *State of Punjab*, [1983] SCC 470 referred to. G

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 169 of 1987.

From the Judgment and Order dated 11.8.1986 of the Allahabad High Court in Criminal Appeals No. 583, 892-896 of 1985 and Capital Reference No. 2 of 1985. H

A Shakeel Ahmad for the Appellants.

The Judgment of the Court was delivered by

SEN, J. Appellants Asharfi Lal and Babu who are real brothers, B are under sentence of death on their conviction under s. 302 read with s. 149 of the Indian Penal Code, 1860 for having committed the brutal murders of their two nieces Kumari Sumati, aged 14 years and Kumari Kalkanta, aged 20 years, daughters of their pre-deceased paternal cousin, and under s. 307 read with s. 149 of the Indian Penal Code for having attempted to commit the murder of Smt. Bulakan, widow of Devi, and sentenced to undergo rigorous imprisonment for 7 years. C The remaining appellants Ganga Prasad and Hemraj, two sons of Asharfi Lal, and Mata Badal, son of Babu, have been convicted under s. 302 read with s. 149 of the Indian Penal Code for having committed the two murders in furtherance of the common object of their unlawful assembly and each of them sentenced to life imprisonment. They have D also been convicted under s. 148 for the attempted murder of Smt. Bulakan. There was long drawn litigation between the Smt. Bulakan on the one hand and the appellants on the other in respect of certain agricultural property. The last of the series of the litigation was a proceeding initiated under s. 145 of the Code of Criminal Procedure, 1973 on a report made by Smt. Bulakan, P.W. 1. To wreak their ven- E geance, the appellants effected an entry on the night between August 13/14, 1984 into the courtyard of the adjoining house where the three ladies were sleeping on three different cots. The testimony of Smt. Bulakan, P.W. 1 shows that she woke up hearing the shrieks of her younger daughter Kumari Sumati and found that appellant Mata Badal was perched over the lower part of the body of Kumari Sumati F pressing down her legs while appellant Babu repeatedly struck her with a gandasa and severed her neck. The girl died almost instantaneously; her head hung down the cot partially attached to the neck. Smt. Bulakan further deposes that appellant Asharfi Lal struck her other daughter Kumari Kalkanta on the neck and face with a banka while appellant Hemra chopped off the right hand of the girl with a gandasa. G She also shrieked and appellant Ganga Prasad struck her on the face and upper part of the body with a gandasa. She ran from her house through the village abadi and fell down near the house of Kandhai, P.W. 2, which was some 30-40 paces away. She narrated the incident to Kandhai who immediately ran and informed Bhagwati Prasad Pandey, P.W. 3 who resided some 200 paces away. The Village H Pradhan Bhagwati Prasad Pandey, P.W. 3 accompanied by some of the villagers arrived at the house of Smt. Bulakan and saw the

deceased Kumari Sumati lying dead on the cot and Kumari Kalkanta lying unconscious in a pool of blood on another cot. She subsequently died in the hospital.

Learned counsel for the appellants made no endeavour to challenge the conviction of the appellants for having committed various offences with which they were charged, and rightly so. The conviction of the appellants rests on the unimpeachable and truthful evidence of Smt. Bulakan who was herself the victim of the murderous assault, as corroborated by P.W. 2 Kandhai and P.W. 3 Bhagwati Prasad Pandey. She is a natural witness and has given a vivid description of the entire incident resulting in the gruesome deaths of her daughters Kumari Sumati and Kumari Kalkanta. It is established in evidence that immediately after the occurrence she named all the assailants. The first information report (Exh. Ka 1) lodged by Bhagwati Prasad Pandey P.W. 3, the Village Pradhan, contains the names of the assailants. The Ist Additional Sessions Judge, Barabanki by his judgment and sentence dated August 23, 1985 convicted the two appellants Asharfi Lal and Babu under s. 302 of the Indian Penal Code on two counts of murder and awarded them capital punishment. He also convicted Ganga Prasad and Hemraj, two sons of Asharfi Lal, and Mata Badal, son of Babu, under s. 302 read with s. 149 and sentenced each of them to undergo life imprisonment. All the appellants have also been convicted under s. 148 of the Indian Penal Code. The High Court by its judgment dated August 11, 1986 on a careful consideration of the evidence has agreed with the learned Additional Sessions Judge and confirmed the conviction and sentences awarded to the appellants. In affirming the sentence of death imposed on the two appellants Asharfi Lal and Babu, the High Court observed that on a careful consideration of the entire material, the facts and circumstances and the applicable law, it was satisfied that this was one of the rarest of the rare cases where death penalty is the only appropriate sentence which ought to be imposed on them.

We have heard learned counsel for the appellants mainly on the question of sentence but we are not impressed with his submission. The two appellants Asharfi Lal and Babu were guilty of a heinous crime out of greed and personal vengeance and deserve the extreme penalty. This case falls within the test 'rarest of the rare cases' as laid down by this Court in *Bachan Singh* v. *State of Punjab,* [1980] SCC 648 as elaborated in the later case of *Machhi Singh* v. *State of Punjab*, [1983] 3 SCC 470. The punishment must fit the crime. These were cold-blooded brutal murders in which two innocent girls lost their

A lives. The extreme brutality with which the appellants acted shocks the judicial conscience. Failure to impose a death sentence in such grave cases where it is a crime against the society—particularly in cases of murders committed with extreme brutality—will bring to naught the sentence of death provided by s. 302 of the Indian Penal Code. It is the duty of the Court to impose a proper punishment depending upon the B degree of criminality and desirability to impose such punishment. The only punishment which the appellants deserve for having committed the reprehensible and gruesome murders of the two innocent girls to wreak their personal vengeance over the dispute they had with regard to property with their mother Smt. Bulakan is nothing but death. As a measure of social necessity and also as a means of deterring other C potential offenders the sentence of death on the two appellants Asharfi Lal and Babu is confirmed.

The appeal is dismissed accordingly.

N.P.V. Appeal dismissed.