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KISHORI

v.

STATE (NCT) OF DELHI

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DECEMBER 17, 1999

[K.T. THOMAS AND D.P. MOHAPATRA, JJ.]

Penal Code, 1872 :

C *Sections 302 & 149—Death in mob violence—Deceased persons dragged from their house and hacked to death—Eye witness deposing accused involved in hacking—Accused awarded death sentence—Challenged —Held, member of group loses one's self and normal standard or sense of judgement and reality in crowd instinct—Diminished individual responsibility—Act committed under the influence of collective fury and not the outcome of* D *systematic or organised activity—Temporary frenzy—Cannot be classified as "rarest of rare cases"—Death sentence reduced to life imprisonment.*

Prosecution charged and tried six persons including appellant for mercilessly killing three Sikh brothers in riots that took place following the E **assassination of Mrs. Indira Gandhi, the then Prime Minister Trial Court convicted appellant and two other accused persons under Sections 148, 149, 188, 397, 302 IPC and sentenced them to death. In appeal filed by the convicted persons, High Court acquitted the two persons but confirmed the order of conviction and sentence passed against appellant. Against the order of High Court, appellant has appealed to this court.**

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The appellant contended that High Court had erred in recording a finding of guilt against him; and alternatively, that the case could not be said to be 'rarest of the rare cases' as the incident was an outcome of mob frenzy when normal human behaviour had taken a back seat and animal instinct in man ran high with members of the frenzied mob and therefore, the appellant G **deserved lesser punishment of life imprisonment in place of sentence of death.**

The respondent-State contended that the brutal and merciless manner in which the deceased persons were dragged out of their house and hacked to death in the presence of their family members did not make out a case

for lesser punishment. A

Dismissing the appeal but reducing the sentence, the Court

HELD : 1. PW. 3 who was an eye witness to the incident has stated that appellant, who was known to him earlier, was member of the unlawful assembly that killed his three sons and has attributed a specific overtact of killing his B sons with big knife by the appellant. Thus, there is no good ground to interfere with the judgement of the High Court finding the appellant guilty of the said charges. [498-F; 499-D]

2. It is common experience that when people congregate in crowds, normal defences are lowered so that the crowd instinct assaults on the sense C of individuality or transcends one's individual boundaries by offering a release from inhibitions from personal doubts and anxiety. In such a situation, it can well be imagined that a member of such a group loses one's self and the normal standard or sense of judgement and reality. When there is a collective action, as in the case of a mob, there is a diminished individual responsibility unless there are special circumstances to indicate that a particular individual D had acted with any predetermination such as by use of weapon not normally found. If, however, a member of such a crowd picks up an article or a weapon which is close by and joins the mob, either on his own volition or at the instigation of the mob responding to the exhortation of the mob, playing no role of leadership, it can very well be said that such a person did not intend E to commit all the acts which a mob would commit left to himself, but did so under the influence of collective fury. When an amorphous group of persons come together, it cannot be said that they indulge in any systematic or organized activity. Such group may indulge inactivities and may remain cohesive only for a temporary period and thereafter would disintegrate. The acts of the mob of which the appellant was a member cannot be stated to be the result of an F organisation or any group indulging in violent activities formed with any purpose or scheme so as to call an organised activity but was only the result of a temporary frenzy. [503-D, E, F-G; 504-G-H; 505-B]

Bachan Singh. v. *State of Punjab,* [1980] 2 SCC 684 and *Jagmohan Singh* v. *State of U.P.,* [1973] 1 SCC 20, followed. G

Kishori v. *State of Delhi,* [1999] 1 SCC 148, relied on.

3. On the totality of the circumstances, it is not a case which can be called 'a rarest of rare cases' which warrants imposition of maximum punishment of capital punishment. Therefore, the sentence is reduced from H

A **capital punishment to life imprisonment. [505-D]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1376 of 1999

From the Judgment and Order dated 16.10.1998 of the High Court of
B Delhi, New Delhi in Murder Reference No. 6/97, Criminal Appeal No. 213 of 1998.

M. Qamaruddin (AC), A.D.N. Rao and Ms. Sushma Suri for the appearing parties.

C The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. Having been sentenced to death and ordered to be hanged by neck till death by the trial court and confirmed by the High Court of Delhi, the appellant Kishori filed the Special Leave Petition seeking leave of this Court to challenge the judgment of the High Court. By order
D dated 27.9.1999 this Court issued notice to the respondents and stayed execution of the death penalty until the disposal of the case.

Leave granted.

The fact situation of the case leading to the present proceeding may be shortly stated thus:
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Immediately following the assassination of Mrs. Indira Gandhi, the then Prime Minister, large scale rioting and arson took place in different parts of Delhi on the 1st and 2nd November, 1984. Many persons, young, old and children belonging to Sikh community were mercilessly killed. The incident in the present case took place in Block No. 30, 32 and 34 of Trilok Puri on
F 1.11.1984. Amongst the large number of persons killed during the riots were Darshan Sing aged 24 years, Aman Singh aged 22 years and Nirmal Singh aged 18 years, related as brothers and one Kirpal Singh brother of Mansa Singh. Many houses were gutted and many persons were burnt alive in the area. Subsequently on the intervention of the Police and other authorities
G surviving members of the families affected by the riots were removed to relief camps.

On 17.11.84 the statement of Mansa Singh was recorded in the relief camp on the basis of which FIR No. 426/84 relating to the incident in the present case was registered. On the basis of the FIR and the materials placed
H by the police, Sessions case No. 53/95 was instituted and charges were

framed under sections 148, 183, 302 and 397 read with section 149 IPC against four accused persons namely Kishori (appellant) Ram Pal, Saroj and Shabnam. A

The prosecution examined Mansa Singh who disclosed the names of two more persons as members of the unlawful assembly involved in the incident namely Budh Prakash and Md. Abbas. They were joined as accused under section 319 (1) of the Code of Criminal procedure and were summoned to face B trial along with other accused persons. On completion of the trial the Additional Sessions Judge, Delhi on appreciation of the evidence found Kishori, Dr. Budh Prakash and Mohammad Abbas guilty of the offences charged and convicted each of them and sentenced each of them under section 148 IPC to undergo Rigorous imprisonment (RI) for 2 years, under section 188 IPC to RI for 6 months, C under section 397 read with section 149 IPC to RI for 10 years and a fine of Rs. 20,000 in default to undergo RI for another two years, and under section 302 read with section 149 IPC to the sentence of death and a fine of Rs. 30,000 in default to RI for 2 years more. All the three convicts were ordered to be hanged by neck till their death. All the substantive sentences were made to run concurrently. All the convicts filed appeals before the High Court challenging D the judgment of the trial court.

The High Court on perusal of the records and on consideration of the contentions raised on behalf of the parties allowed the appeals filed by Dr. B.P. Kashyap alias Dr. Lamboo and Mohammed Abbas, set aside the order of conviction and sentence and acquitted them of the charges. The High Court E confirmed the order of conviction and sentence passed against the appellant Kishori. The operative portion of the judgment reads as follows:

> "The crime in the present case qua appellant Kishori falls in the category of rarest of rare cases and the sentence has to be commensurate with the degree/gravity of the offence so that a required F message is sent.
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> In the above view of the matter, having regard to the evidence as above, in our view the conviction and death sentence imposed by the Trial Court on Kishori son of Hoshiar Singh (appellant in Crl. A. No. 313/98) deserves to be confirmed under Section 366 of the Code G whereas the conviction and sentence of appellants Dr. Budh Prakash Kashyap @ Dr. Lamboo son of Jayanti Prashad (appellant in Crl. A. No. 455/97) and Mohammed Abbas son of Munsif Ali (appellant in Crl. A.No.421/97) deserves to set aside.
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> In the result, Criminal Appeal No. 313/98 being devoid of merits H

A is dismissed. The murder reference No. 6/97 under Section 366 of the Code is partly accepted to the extent that the death sentence imposed on Kishori son of Hoshiar Singh only is confirmed. Criminal Appeals No.421/97 and 455/97 are allowed. The conviction and sentence imposed on appellants Dr. Budh Prakash Kashyap @ Dr. Lamboo son of Jayanti Prashad and Mohammad Abbas son of Munsif Ali are set aside."

B

From the discussion in the judgment it appears, that there were two eye-witnesses to the occurrence, i.e. PW3 Mansa Singh and PW7 Devi Kaur wife of Mansa Singh. The High Court placed reliance on the ocular testimony of PW3 but did not place reliance on the statement of PW7. Referring to the C evidence of PW3 the Court observed:

"The evidence of PW3 suggests that Kishori was one of the members of the unlawful assembly which pulled out Darshan Singh, Nirmal Singh and Amar Singh from House No. 32/7, Trilok Puri on 1.11.1984 around 10 AM. It is clearly stated that the members of this unlawful D assembly killed aforesaid three sons of PW3. A categorical statement has been made by PW3 that Kishori present in court was having a big pig cutting knife and was one of the members of the mob and that he cut the sons of PW3. It is pertinent to note that there is no cross-examination challenging the statement of PW3 to the effect that Kishori E was living in block No. 31 and was having shop near Gurudwara on the main road of block no. 32. On the contrary, the suggestion denied by the witness is that he used to play cards at the shop of Kishori. It has been categorically stated that witness knew Kishori 2/3 years before the riots and had opened a meat shop opposite Gurudwara in Khokha. This would suggest that Kishori was known to the witness F much prior to the incident and was having a meat shop opposite Gurudwara. Even in the statement dated 17.11.1984 under section 161 of the Code the witness has attributed a specific overt act of killing his sons with big knife by Kishori as one of the members of the unlawful assembly. Thus, Kishori has been attributed the act of killing sons of PW3 with big knife as the member of unlawful assembly. G There is no omission or contradiction proved on record as regards the role of Kishori in the incident. As far as PW3 is concerned his statement u/s 161 of the code, first in point of time was recorded on 17.11.1984 wherein Kishori has been not only specifically named but an overt act, as pointed out above, has been attributed to him as the H member of the unlawful assembly.

PW3 has in categorical terms stated that when the incident took place he was in his house No. 32/7, Trilok Puri along with his family members and that the mob of rioters pulled out his sons Darshan Singh, Amar Singh and Nirmal Singh from the house and killed them. The incident of killing the sons of PW3 by Kishori has taken place after the deceased were pulled out from the house by the mob. In our opinion the principle laid down in the case of *State of Rajasthan* v. *Mahaveer Singh & Others* will not be applicable to the present case, in view of the specific overt act on the part of Kishori, though no specific overt act would be necessary when Section 149 IPC is taken aid of.

Thus, it will be seen that Kishori has been named as one of the members of the unlawful assembly carrying big knife and is stated to have cut the sons of the witness, that Kishori is identified as he was having a meat shop in the area and known to the witness much prior to the occurrence whereas Budh Prakash and Mohd. Abbas known to PW3 since 1976, are implicated in the crime as the members of the unlawful assembly, identified by the witness only during his testimony and not earlier."

Though the learned counsel for the appellant made an attempt to assail the finding of guilt concurrently recorded by the trial Court and the High Court, we find no good ground to interfere with the judgment of the High Court, finding the appellant guilty of the charges particularly charge under section 302 IPC.

On the question of sentence the learned counsel for the appellant strenuously urged that the present case cannot be said to be a 'rarest of rare cases' which calls for imposition of capital sentence imposed on the appellant. Elucidating his contention the learned counsel submitted that the incident took place during a time when anger and passion of the public at large had been aroused against members of the Sikh community giving rise to widespread riots in which people gave vent to their anger against members of the said community. According to the learned counsel the incident was an outcome of mob frenzy when normal human behaviour had taken a back-seat and the animal instinct in man ran high with the members of the frenzied mob. In such circumstances, submitted the learned counsel, the appellant deserves to be served with the lesser punishment of life imprisonment in place of sentence of death.

A The learned counsel for the State, on the other hand urged that taking into account the brutal and merciless manner in which the three young persons were dragged out of their house and hacked to death in presence of their family members, no leniency should be shown to the appellant and this Court should confirm the order imposing capital sentence on the appellant.

B Some of the observations made by this Court in this connection are quoted hereunder:

Jagmohan Singh v. *State of U.P.*, [1973] 1 SCC 20

"24 The policy of the law is giving a very wide discretion in the matter C of punishment to the Judge has its origin in the impossibility of laying down standards. Take, for example, the offence of Criminal Breach of Trust punishable under Sec.409, Indian Penal Code. The maximum punishment prescribed for the offence is imprisonment for life. The minimum could be as low as one day's imprisonment and fine. It is obvious that if any standards were to be laid down with regard to D several kinds of breaches of trust by the persons referred in that section, that would be an impossible task. All that could be reasonably done by the Legislature is to tell the Judges that between the maximum and minimum prescribed for an offence, they should, on balancing the aggravating and mitigating circumstances as disclosed in the case, E judicially, decide, what would be the appropriate sentence. Take the other case of the offence of causing hurt. Broadly, that offence is divided into two categories-simple hurt and grievous hurt. Simple hurt is again sub-divided-simple hurt caused by a lethal Weapon is made punishable by a higher maximum sentence-Section 324. Where grievous hurt is caused by a lethal weapon, it is punishable under Section 326 F and is a more aggravating form of causing grievous hurt than the one punishable under Section 325. Under Section 326 the maximum punishment is imprisonment for life and the minimum can be one day's imprisonment and fine. Where a person by a lethal weapon causes a slight fracture of one of the un-important bones of the human body, G he would be as much punishable under Section 326, Indian Penal Code as a person who with a knife scoops out the eyes of his victim. It will be absurd to say that both of them, because they are liable under the same section should be given the same punishment. Hence too, any attempt to lay down standards why in one case there should be more punishment and in the other less punishment would be an H impossible task. What is thus true with regard to punishment imposed

for other offences of the Code is equally true in the case of murder punishable under Section 302, Indian Penal Code. Two alternate sentences are provided one of which could be described as the maximum and the other minimum. The choice is between these two punishments and as in other cases the discretion is left to the Judge to decide upon the punishment in the same manner as it does in the case of other offences, namely, balancing the aggravating-and mitigating circumstances. The framers of the Code attempted to confine the offence of murder within as narrow limits as it was possible for them to do in the circumstances. All culpable homicides were not made punishable under Section 302, Indian Penal Code. Culpable homicides were divided broadly into two classes : (1) culpable homicide amounting to murder and (2) culpable homicide not amounting to murder. Culpable homicide which fell in the one or the other of the four strictly limited categories described in Section 300, Indian Penal Code amounted to murder unless it fell in one of the five exceptions mentioned in that section, in which case the offence of murder was reduced to culpable homocide not amounting to murder. Any further refinement in the definition of murder was not practicable and therefore, not attempted. The recent experience of the Royal Commission referred to above only emphasizes the extreme difficulty. The Commission frankly admitted that it was not possible to prescribe the lesser punishment of imprisonment for life by redefinition of murder or by dividing murder into degrees. It conceded that no formula was possible that would provide a reasonable criterion for the infinite variety of circumstances that may affect the gravity of the crime of murder. That conclusion forced the Commission to the view that discretionary judgment on the facts of each case is the only way in which they can be equitably distinguished. See para 595 of the Commission's Report.

26. In India this onerous duty is cast upon Judges and for more than a century the judges are carrying out this duty under the Indian Penal Code. The impossibility of laying down standards is at the very core of the Criminal law as administered in India which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment. The discretion in the matter of sentence is, as already pointed out, liable to be corrected by superior courts. Laying down of standards to the limited extent possible as was done in the Model Judicial Code would not serve the purpose. The exercise of judicial discretion on well-recognised principles is, in the final analysis, the

A safest possible safeguards for the accused.

Bachan Singh v. *State of Punjab,* [1989] 2 SCC 684

"209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all B such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in C Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency-a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion D in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, E life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

F During hearing of this case it was stated at the bar that the appellant Kishori was allegedly involved in several incidents which gave rise to seven cases, four of which ended in his acquittal and in the remaining 3 cases he was convicted and sentenced to death. One such case was decided by this Court by the Judgment rendered on 1.12.98 in Crl. Appeal No. 147/98 with Crl. G Appeal No.148/98 *Kishori* v. *State of Delhi,* [1999]1 SCC 148. In that case a Bench of two learned Judges of this Court took the view that on totality of circumstances that was not a case where the courts below should have imposed capital punishment; this Court reduced the sentence from capital punishment to life imprisonment. Considering the question as to the circumstances in which capital punishment can be imposed this Court took H note of the decisions in-*Macchi Singh* v. *State of Punjab,* [1983] 3 SCC 470;

Ajmer Singh v. *State of Punjab,* [1977] 1 SCC 659; *State of U.P.* v. *Bhoora,* [1998] 1 SCC 128; *Hardayal* v. *State of U.P.,* [1976] 2 SCC 812; *Balraj* v. *State of U.P.,* [1994] 4 SCC 29; *Kesar Singh* v. *State of Punjab;* [1974] 4 SCC 278; *Ediga Anamma* v. *State of A.P.,* [1974] 4 SCC 443; *Shivaji Genu Mohite* v. *State of Maharashtra,* [1973] 3 SCC 219; *Sarwan Singh* v. *State of Punjab,* [1978] 4 SCC 111 and *Shankar* v. *State of T.N.,* [1994] 4 SCC 478. This Court made the following observations:

> "The law is well settled by reason of the decisions of this Court as to the circumstances in which capital punishment can be imposed. It is held therein that capital punishment can be imposed in the rarest of the rare cases and if there are any aggravating circumstances such as the accused having any criminal record in the past, the manner of committing the crime, delay in imposing the sentence and so on. In the present case, the prosecution case, as unfolded before the Court, indicates that the riot in Delhi broke out as a result of the death of Smt. Gandhi and her death appears to be the symbol or web around which the violent emotions were released. The death of Smt. Gandhi became a powerful symbolic image as a result of which the crowds were perpetrating violence in the height of frenzy. It is common experience that when people congregate in crowds, normal defences are lowered so that the crowd instinct assaults on the sense of individuality or transcends one's individual boundaries by offering a release from inhibitions from personal doubts and anxiety. In such a situation, one can well imagine that a member of such a group loses one's self and the normal standard or sense of judgment and reality. The primary motivational factor in the assembly of a violent mob may result in the murder of several persons. Experts in criminology often express that when there is a collective action, as in the case of a mob, there is a diminished individual responsibility unless there are special circumstances to indicate that a particular individual had acted with any predetermination such as by use of a weapon not normally found. If, however, a member of such a crowd picks up an article or a weapon which is close by and joints the mob, either on his own volition or at the instigation of the mob responding to the exhortation of the mob, playing no role of leadership, we may very well say that such a person did not intent to commit all the acts which a mob would commit left to himself, but did so under the influence of collective fury. All the witnesses in this case speak that there was a mob attack resulting in the death of the three persons. Though the appellant is

stated to be responsible for inflicting certain knife injuries, yet it is not clear whether those injuries themselves would have been sufficient to result in the death of the deceased. In the absence of any medical evidence in these cases, it has become very difficult to draw any inference as to the injuries inflicted by the appellant. We are conscious of the fact that when an accused person is charged with and offence not only under Section 302 IPC but also read with Section 34 IPC or Section 149 IPC, the culpability of such an accused resulting in the death of the person will not be less that of homocide amounting to murder. But what we are weighing now is whether such culpability is of such a nature which should result in capital punishment to the accused.

It is no doubt true that the high ideals of the Constitution have to be borne in mind, but when normal life breaks down and groups of people go berserk losing balance of mind, the rationale that the ideals of the Constitution should be upheld or followed, may not appeal to them in such circumstances, nor can we expect such loose heterogeneous group of persons like a mob to be alive to such high ideals. Therefore, to import the ideas of idealism to a mob in such a situation may not be realistic. It is no doubt true that courts must be alive and in tune with the notions prevalent in the society and punishment imposed upon an accused must be commensurate with the heinousness of the crime. We have elaborated earlier in the course of our judgment as to how mob psychology works and it is very difficult to gauge or assess what the notions of society are in a given situation. There may be one section of society which may cry for a very deterrent sentence while another section of society may exhort upon the court to be lenient in the matter. To gauge such notions is to rely upon highly slippery imponderables and, in this case, we cannot be definite about the views of society.

We may notice that the acts attributed to the mob of which the appellant was a member at the relevant time cannot be stated to be a result of an organized systematic activity leading to genocide. Perhaps, we can visualise that to the extent there was unlawful assembly and to the extent that the mob wanted to teach a stern lesson to the Sikhs, there was some organisation; but in that design, that they did not consider that women and children should be annihilated which is a redeeming feature. When an amorphous group of persons come

together, it cannot be said that they indulge in any systematic or organized activity. Such group may indulge in activities and may remain cohesive only for a temporary period and thereafter would disintegrate. The acts of the mob of which the appellant was a member cannot be stated to be the result of an organisation or any group indulging in violent activities formed with any purpose or scheme so as to call an organised activity. In that sense, we may say that the acts of the mob of which the appellant was a member was only the result of a temporary frenzy which we have discussed earlier. He did not play the role of a leader of the mob as noticed earlier."

On perusal of the judgment of the trial court and the High Court and the evidence of the eye witnesses we find that the incident giving rise to the present case took place in the circumstances similar to those in *Kishori* v. *State of Delhi* (supra). We are also satisfied that the discussion and the observations made by this Court in that case apply with equal force in the present case. We are in respectful agreement with the principles discussed therein.

On the totality of the circumstances, we are of the opinion that this is not a case which can be called 'a rarest of rare cases' which warrants imposition of maximum punishment of capital sentence. Therefore, while confirming the conviction of the appellant on the charges framed against him we reduce the sentence from capital punishment to the life imprisonment. With this modification the appeal stands dismissed.

A.K.T. Appeal dismissed