

Death Reference No.4 of 2023
With
Criminal Appeal (D.B.) No. 588 of 2023

[Arising out of judgment of conviction dated 13.03.2023 and order of sentence dated 16.03.2023 passed by learned District & Additional Sessions Judge-I, Ramgarh in Sessions Trial No. 13 of 2020]

Death Reference No.4 of 2023

The State of Jharkhand **Appellant**

--Versus--

Pawan Kumar Singh aged about 26 years, son of Binod Singh, R.P.F. Police, Posted R.P.F. Post, Barkakana, P.S. Railway Barkakana, P.O. Barkakana, District Ramgarh, Jharkhand and resident of Village Krath (Karath), P.S. Tarari, P.O. Karath, District Bhojpur, Aara, Bihar

..... **Respondent**

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..... **Appellant**

--Versus--

The State of Jharkhand **Respondent**

For the Appellant : Mr. B.M. Tripathi, Sr. Advocate
Mr. Naveen Kumar Jaiswal, Advocate
For the State : Mr. Satish Prasad, A.P.P.
For the Informant : Mr. Prabhat Kumar Sinha, Advocate

PRESENT: SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on: 11.09.2024

Pronounced On: 19.09.2024

Per Gautam Kumar Choudhary, J. Death Reference on behalf of the State and the Criminal Appeal preferred on behalf of the appellant arise out of the judgment and sentence passed in Sessions Trial No.13 of 2020, whereby and whereunder the appellant has been convicted and sentenced to death under Sections 302 and 307 of the IPC and Section 27 of the Arms Act.

2. Learned Senior Counsel Mr. B.M. Tripathy appearing on behalf of the appellant has confined his argument on the point of sentence and has not assailed the judgment of conviction.

3. It is argued by the learned Counsel on behalf of the appellant that learned trial court has failed to observe the guidelines laid down by Hon'ble Supreme Court for awarding death sentence. There has been a penalogical shift in sentencing criteria, particularly in exercising judicial discretion while making a choice between sentence of death and imprisonment for life. Mandate of law which has been codified since 1973 Cr.P.C. is that special reasons are to be assigned in case of sentence of death. In *State of M.P. Versus Udham & Others, 2019 SCC OnLine SC 1378*, it has been held that sentencing for crime is to be analyzed on the touch stone of: Crime Test, Criminal Test and Comparative Proportionality Test. It is not only the gravity and nature of crime that is to be considered while sentencing, but also the 'criminal' to be taken into account to see whether there was any prospect of reform or not. These aspects have not been considered and discussed by the learned trial Court.

4. In the present case, it is urged that appellant was aged 26 years with a good service record. The incidence took place on spur of moment when he was peeved by the demand for due amount for milk supplied to him. There was no past enmity, no premeditation in committing the offence and it was result of sudden spurt of passion. Learned trial Court has not accepted that the offence had a caste angle and therefore, he has been acquitted of the charges under the provision of SC/ST Act. No complaint has been received against the conduct of the appellant during the period of his incarceration. Learned trial Court has failed to draw the aggravating and mitigating circumstances as per the ratio laid down by the Hon'ble Supreme Court, to justify awarding capital punishment.

5. Learned counsel on behalf of State has defended the death sentence. It is submitted that the appellant has acted in a most cruel manner, when he opened fire on the unarmed family with his service pistol, resulting in death of three including two ladies and injured two who received gunshot injury. Suman Devi had received a bullet injury which is still lodged in her back. It is also argued that age of accused cannot be a factor to dilute the severity of

offence committed.

6. Before entering into the issue of death sentence, on the face of it, finding and sentence under Section 27 of the Arms Act is an error apparent on record. Section 27 of the Arms Act does not apply in all cases of firing, but is limited to only such cases where it is in violation of Section 5 and 7 of the Arms Act, 1959. Thus, where it is a firing by one having no license, or by a prohibited arms, then it will invite conviction under Section 27 of the Arms Act. In the present case, firing was resorted to by a service pistol by the accused to whom it was issued, therefore, it is not a case of either firing by an unlicensed or prohibited arm and, so conviction under Section 27 of the Arms Act is not sustainable.

7. In order to appreciate the rival submissions advanced on behalf of both sides, and resolve the 'sentencing dilemma', it will be desirable to briefly refer to the admitted prosecution case which has not been assailed during the course of argument. Appellant was serving as a constable in Railway Protection Force. He was a neighbor of the informant family and used to take milk from them. When informant saw the appellant entering into his house, at 8 p.m. on 17.08.2019, he was in the adjacent room, and thought that he had come to take milk. He suddenly heard shots being fired and rushed to the room where he saw the appellant- Pawan Kumar Singh was indiscriminately firing with his pistol on his family members. In the barrage of firing, informant, his mother, father and two sisters sustained gunshot injuries. Informant and his sister- Suman Devi survived, while his father, mother and one sister died of bullet injuries.

8. Suman Kumari (P.W. 3) has deposed that during her surgery 102 stiches were given. She sustained four bullet injuries, two in each of her hand and third over her abdomen and fourth was still lodged in her back. Informant has deposed that her elder sister who died in the firing, was pregnant and the child in the womb was snuffed out before breathing and seeing the world.

9. Appellant went on the killing spree when due for milk supplied was asked for.

10. Death sentence has been consciously retained as a penal option by the legislature, and its constitutionality has been upheld by Hon'ble the Supreme Court. It can be awarded only in rarest of rare case, for special reasons to be

recorded and as per the guidelines laid down by the Apex Court. Broad guidelines have been laid down in *Bachan Singh Versus State of Punjab*, (1980) 2 SCC 684, *Machhi Singh & Others Versus State of Punjab*, (1983) 3 SCC 470 and subsequent authorities. The ratio of the authorities on this seminal issue 'death or life' has been summed up in *Madan Vs. State of U.P.*, 2023 SCC On Line SC 1473 as under,

76. This Court, in the case of Machhi Singh (supra), after referring to the Constitution Bench judgment in the case of Bachan Singh (supra), observed thus:

“38. In this background the guidelines indicated in Bachan Singh case [(1980) 2 SCC 684: 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636] will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case [(1980) 2 SCC 684: 1980 SCC (Cri) 580 : AIR 1980 SC 898 : 1980 Cri LJ 636]:

“(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

39. In order to apply these guidelines inter alia the following questions may be asked and answered:

(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?

40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.”

11. In the present case, the aggravating and mitigating circumstance can be summed up as under:

Aggravating circumstance:

- a. Appellant attempted to eliminate the entire family, causing death of three and critically injured two of them.
- b. Among the deceased were two women, out of whom one was pregnant at the time of the incidence. One of the victim woman sustained four bullet injuries and underwent prolonged treatment and multiple surgeries. One of the bullet is still lodged in her back.
- c. The victims were unarmed persons, whereas the appellant was a Constable in RPF who resorted to indiscriminate firing by service pistol.
- d. There was no past enmity and appellant flew into a rage when he was asked to pay for the milk supplied to him.

Mitigating circumstance:

- I.** Incidence was unpremeditated, without any past enmity.
 - II.** There is no criminal antecedent and the incidence appears to have taken place on the spur of moment.
- 12.** Considering the above factors like absence of past enmity, absence of preplanning in execution, and offence being the outcome of momentary emotional disturbance, we are of the view that this is a case where the alternative to death sentence is not foreclosed, so as to make it the only available option of sentencing.
- 13.** In the result,
- a. Death sentence is accordingly commuted to rigorous imprisonment for a period not less than 25 years without remission, and a fine of Rs. 10,000/- for offence under Section 302 of the IPC. In the event of default of payment of fine, SI for one month. He is also sentenced to undergo RI of 10 years and a fine of Rs.10,000/- under Section 307 of the IPC. In the event of default of payment of fine, SI of one month. Substantive sentences to run concurrently.
 - b. Death Reference No.4 of 2023 is answered in the negative and death sentence is not confirmed.
 - c. Conviction under Section 27 of the Arms Act, is set aside.

d. With modification in finding and sentence, Criminal appeal (D.B.) No. 588 of 2023 stands dismissed.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Gautam Kumar Choudhary, J.)

Per Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 19th September, 2024

AFR/Anit