

A
BALWANT SINGH
v.
STATE OF PUNJAB
November 11, 1975

B [P. K. GOSWAMI AND N. L. UNTWALIA, JJ.]

Code of Criminal Procedure (Act II) 1973—Section 354(3) Scope of.

The appellant, 'B' aged 60 years, on 13-4-1974 was convicted u/s 302 I.P.C. for the murder of 'M' by poisoning on that date. On appeal by special leave on the limited question of sentence under the new Criminal Procedure Code of 1973, the Court

C **HELD** : (i) In India the Legislature in its wisdom has not thought it fit and proper to abolish the death penalty altogether, but there has been a gradual swing against the imposition of such penalty. [685-F]

D (ii) Under section 354(3) of the Criminal Procedure Code, 1973, the Court is required to state the reasons for the sentence awarded and in the case of sentence of death special reasons are required to be stated. Awarding of the sentence other than the sentence of death is the general rule now and only special reasons or special facts and circumstances in a given case will warrant the passing of a death sentence like (i) the crime having been committed by professional or a hardened criminal (ii) crime committed in a very brutal manner or on a helpless child or woman. [686, C, D]

E (iii) In the instant case (a) even after noticing the provisions of the section 354(3) of the new Criminal Procedure Code, the High Court wrongly relied on the principle of absence of extenuating circumstance and (b). There was no special reason nor any has been recorded by the High Court for confirming the death sentence. [686 F, G]

Mangal Singh v. State of U.P., A.I.R. 1975 S.C. 76 and *Perumal v. The State of Kerala*, A.I.R. 1975 S.C. 95 not applicable.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 301 of 1975.

F Appeal by Special Leave from the Judgment and Order dated the 25th April, 1975 of the Punjab & Haryana High Court at Chandigarh in Criminal Appeal No. 1325 of 1974 and Murder Reference No. 59 of 1974.

S. K. Mehta, M. Qamaruddin and K. R. Nagaraja for the Appellant.

G O. P. Sharma for the Respondent.

The Judgment of the Court was delivered by

H UNTWALIA, J.—Balwant Singh, the sole appellant in this appeal, was convicted under section 302 of the Penal Code and sentenced to death by the Trial Court. His conviction and sentence have been confirmed by the High Court of Punjab and Haryana. Special leave to appeal was granted by this Court limited to the question of sentence only. We have, therefore, to see whether on the facts of this

case the High Court was right in confirming the death sentence imposed upon the appellant or was it a case where the lesser sentence of life imprisonment ought to have been awarded.

The appellant was aged about 60 years at the time of the occurrence. He was working as a Granthi of a Gurudwara in village Salihna District Faridkot. Mohan Singh the deceased was a member of the Managing Committee of the Gurudwara. He made certain complaints against the appellant to the President of the Managing Committee and asked for his removal from the post of the Granthi. The appellant, therefore, bore a grudge against the deceased. In the early hours of April 13, 1974 the appellant gave Karah Parshad of Granth Sahib to Mohan Singh mixing opium in it. As soon as Mohan Singh took the Parshad he felt sick and his heart began to sink. In spite of the medical aid he could not survive and died about 4 hours after the administering of the poison to him by the appellant. On the facts found by the learned Sessions Judge and as affirmed by the High Court, the appellant was convicted under section 302 of the Penal Code. The question for consideration is whether the sentence of death was rightly passed. It may be noticed that the occurrence took place on April 13, 1974 after coming into force of the Criminal Procedure Code, 1973 on and from April 1, 1974. Provisions of Section 354(3) of the new Code, as noticed by the High Court, governed this case. Yet the High Court confirmed the sentence of death relying upon two decisions of this Court which were not concerned with the application of law engrafted in section 354(3) of the Code of Criminal Procedure, 1973 but were given with reference to the Code of Criminal Procedure Code, 1898 as it stood at the relevant time.

It is well-known that in many parts of the world an agitation has been going on against the imposition of death penalty even in murder cases. And in many countries or States death penalty has been abolished. In India the Legislature in its wisdom has not thought it fit and proper to abolish the death penalty altogether but there has been a gradual swing against the imposition of such penalty. Under the Code of Criminal Procedure, 1898 as it stood before its amendment by Act 26 of 1955, sub-section (5) of Section 367 required :

“If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed :”

Under the provision aforesaid if an accused was convicted for an offence punishable with death then imposition of death sentence was the rule and awarding of a lesser sentence was an exception and the Court had to state the reasons for not passing the sentence of death. By the Amending Act 26 of 1955 the said provision was deleted. Thereafter it was left to the discretion of the Court, on the facts of

A each case, to pass the sentence of death or to award the lesser sentence. In the context of the changed law if in a given case the passing of the death sentence was not called for or there were extenuating circumstances to justify the passing of the lesser sentence then the lesser sentence was awarded and not the death sentence.

Section 354(3) of the new Criminal Procedure Code says :

B "When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence."

C Under this provision the Court is required to state the reasons for the sentence awarded and in the case of sentence of death, special reasons are required to be stated. It would thus be noticed that awarding of the sentence other than the sentence of death is the general rule now and only special reasons, that is to say, special facts and circumstances in a given case, will warrant the passing of the death sentence. It is unnecessary nor is it possible to make a catalogue of the special reasons which may justify the passing of the death sentence in a case. But we may indicate just a few, such as, the crime has been committed by a professional or a hardened criminal, or it has been committed in a very brutal manner or on a helpless child or a woman or the like. On the facts of this case, it is true that the appellant had a motive to commit the murder and he did it with an intention to kill the deceased. His conviction under section 302 of the Penal Code was justified but the facts found were not such as to enable the Court to say that there were special reasons for passing the sentence of death in this case.

E The High Court has referred to the two decisions of this Court namely in *Mangal Singh v. State of U.P.*⁽¹⁾ and in *Perumal v. The State of Kerala*⁽²⁾ and has then said "There are no extenuating circumstances in this case and the death sentence awarded to Balwant Singh appellant by the Sessions Judge is confirmed.....". As we have said above, even after noticing the provisions of section 354(3) of the new Criminal Procedure Code the High Court committed an error in relying upon the two decisions of this Court in which the trials were held under the old Code. It wrongly relied upon the principle of absence of extenuating circumstances—a principle which was applicable after the amendment of the old Code from January 1, 1956 until the coming into force of the new Code from April 1, 1974. In our judgment there is no special reason nor any has been recorded by the High Court for confirming the death sentence in this case. We accordingly allow the appeal on the question of sentence and commute the death sentence imposed upon the appellant to one for imprisonment for life.

H S.R. *Appeal allowed, sentence modified.*

(1) A.I.R. 1975 S.C. 76.

(2) A.I.R. 1975 S.C. 95.