

STATE NCT OF DELHI

v.

AJIT SETH @ AJJI

(Criminal appeal No. 1059 of 2004)

AUGUST 17, 2010

**[HARJIT SINGH BEDI AND CHANDRAMAULI
KR.PRASAD, JJ.]**

Penal Code, 1860:

ss. 302 and 364 – Two children aged 3 and 7, burnt to death by friend of their mother – Conviction by trial court with death sentence – High Court commuted the sentence and directed that accused should not be released unless he had served at least 20 years of imprisonment – Appeal by State – HELD: The Court endorses the finding of the trial court that crime committed by the accused was indeed barbaric and called for no mercy – But in view of the facts that pending appeal the accused has already completed his sentence of 20 years and has been released, it would be a complete travesty of justice to allow the appeal and to award a capital sentence at this stage – This is indeed a sorry case and indicates the hardship and inequity that can ensue to an accused, the prosecution and the victims in the case of a delayed trial or delay in disposal of an appeal – Administration of Criminal Justice – Delay in trial/appeal.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1059 of 2004.

From the Judgment and order dated 01.10.2001 of the High Court of Delhi at New Delhi in Criminal Appeal No. 89 of 1999 and Murder Reference No. 1 of 99.

Mohan Jain, ASG J.S. Attri and Brijender Chahar, SWA

A Qadri, Saina Bakshi, Niraj Jha, Anil Katiyar and D.S. Mahra for the Appellant.

R.S. Hegde, Chandra Prakash, Amit Wadhwa and P.P. Singh for the Respondent.

B The following Order of the Court was delivered

OR D E R

C This is indeed a sorry case and indicates the hardship and inequity that can ensue to an accused, the prosecution and the victims in the case of a delayed trial or the delay in the disposal of an appeal.

D Two young children, Sunny Arora aged about seven years and his sister Shikha Arora, aged about three and half years, were burnt to death by the respondent Ajit Seth as he was under the impression that they were carrying tales of his illicit connection with their mother Indu, co-accused, to their father.

E The Trial Court, relying on the dying declarations made by the deceased children, convicted the respondent for offences punishable under Sections 302 and 364 of the IPC but acquitted Indu, and on the question of sentence observed as under:

F "25. To sum up, the special reasons for imposing the death sentence are that the murders were pre-meditated; the manner of commission of murders was brutal and diabolical and shocks the judicial conscience as the two innocent children were roasted alive; accused was in a position of domination and trust vis.-a-vis. the two deceased children the accused killed the two children for the selfish motive of possessing his women which exhibits his depraved mentality and meanness.

G 26. In view of my discussion above the accused Ajit Seth is sentenced as below:

H

(a) U/s. 302 IPC the accused is sentenced to death. However, the sentence shall not be executed till its confirmation by the Hon'ble High Court u/s 366 Cr.P.C. A

(b) U/s. 364 IPC the accused is sentenced to R.I. for 10 years. He is also fined Rs.1000/- In default of payment of fine he shall further undergo R.I. for one month. The period of detention undergone by the accused during the investigation of trial of this case shall be set off against the sentence awarded to him u/s. 364 IPC. B
C

The proceedings are hereby submitted to the Hon'ble High Court of Delhi for confirmation of the death sentence passed u/s. 302 IPC and the accused is committed to the jail custody under a separate warrant." D

The matter was therefore remitted to the High Court under Section 366 of the Cr.P.C. for the confirmation of the death sentence and an appeal was also filed by the accused respondent in the High Court. E

The High Court by its judgment dated 1st October 2001 held that though the crime committed by the respondent was indeed heinous and barbaric but it still did not fall in the category of the "rarest of rare cases". The death reference was accordingly disallowed and the appeal of the respondent was dismissed with the following observations: F

"We convert the death sentence of the appellant into life imprisonment with a direction that the appellant shall undergo the sentence of imprisonment for life and he shall not be released from the prison unless he has served at least 20 years of imprisonment including the period already undergone by him. Rest of the sentence will remain the same." G

It is the conceded position that the appellant has, of now, H

- A undergone more than 20 years of the sentence and has also been released in April 2010. We see that the SLP had been filed in the year 2002 and leave was granted two years later. In the light of the fact that the appellant has already completed his sentence of 20 years and has been released it would be a
- B complete travesty of justice to allow this Appeal and to award a capital sentence at this stage. We endorse the finding of the Trial Court that the crime committed by the respondent was indeed barbaric and called for no mercy but in the face of the facts given above, to send the respondent to the gallows at this
- C stage too would be completely unjustified.

The appeal is accordingly dismissed.

R.P.

Appeal dismissed.