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STATE OF U.P.

v.

NARENDRA & ORS.

(Criminal Appeal Nos. 1551-1554 of 2008)

B

SEPTEMBER 22, 2014

**[M. Y. EQBAL AND PINAKI CHANDRA GHOSE, JJ.]**

C

*Penal Code, 1860: ss.302/149 – Dispute over land – Murder – Conviction and death sentence by trial court – High Court converted death sentence to life imprisonment on the ground that the case did not fall under rarest of rare case – Held: In the facts and circumstances of the case and evidence adduced by the prosecution side, there is no reason to interfere with the view of the High Court – Sentence –*

D

*Commutation of sentence.*

**Dismissing the appeals, the Court**

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**HELD:** The High Court opined that considering the overall circumstances of the case, this case does not fall within the category of rarest of rare case and it cannot be said that imprisonment for lesser sentence of life term altogether foreclosed. The High Court observed that compassion in sentence is also a key factor and it allows the scars to heal. Longevity of incarceration may make them see reason. Passage of time may make them ponder over the crime they had committed. This might arise in them a feeling of remorse and repentance. Dismissing the Criminal Reference and partly allowing accused persons' appeals, the High Court converted the

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death sentence awarded to the accused into imprisonment for life. There is no reason to disagree with the view by the High Court in reducing the death sentence into life imprisonment. [Paras 5, 7][1357-C-E, G-H]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No(s). 1551-1554 of 2008 A

From the Judgment and Order dated 27-05-2005 of the High Court of Judicature at Allahabad in Criminal Appeal Nos. 2181, 1997, 2027, 2129, 2936, 2903 of 2004 and Criminal Reference No. 7 of 2004. B

Ratnakar Dash, Sr. Adv., Ms. Pragati Neekhara, Abhishth Kumar, Som Raj Choudhury, Advs. for the Appellant.

Mukesh K. Giri, Ms. Sandhya Goswami, Saryaya Krishna, Mahender P.S. Tomar, Jabar Singh, Advs. for the Respondents. C

The Judgment of the Court was delivered by

**M. Y. EQBAL, J.** 1. These appeals by special leave by the State are directed against the common judgment and order dated 27<sup>th</sup> May, 2005 passed by the High Court of Judicature at Allahabad in Criminal Appeal Nos. 2181, 1997, 2027, 2129, 2936 and 2903 of 2004 and Criminal Reference No. 7 of 2004 (for confirmation of death sentence of accused Manoj, Sonu, Umesh, Tej Pal and Narendra), whereby appeals of accused Dinesh and Sheo Pal was allowed acquitting them of the charges and appeals of accused Manoj, Sonu, Umesh, Tej Pal and Narendra were partly allowed converting their death sentence to life imprisonment. D E

2. The facts in brief leading to the filing of the present case are that one Pushplata alias Guddy (PW-1) lodged a report at Police station Deoband, Saharanpur that there was a dispute and enmity between her husband Dr. Rajveer Singh and brother-in-law Rajpal Singh with regard to a land and litigation which was pending in the Court. Due to said enmity, on 3.6.2001 at about 7.00 AM Manoj, Sonu alias Ajay, Umesh and Sunil armed with country made pistols and Tej Pal, brother in-law of Sonu, Narendra, son-in-law of Rajpal Singh armed with knives came to her house and killed her husband, sons Manish and Ashish and her brother Vinod with fire arms and H

A knives. She stated that she along with her mother, brother Amit  
and several other persons witnessed the occurrence. Inspector  
Amrit Lal (PW-5) reached at the place of occurrence and  
instructed S.I. Azad Singh Chauhan (PW-6) to prepare the  
B inquest memos. He prepared the site plan and recorded the  
statement of informant Pushplata, witnesses Amit Kumar, Anar  
Devi and Ram Singh (PW-2). He also collected the blood  
stained earth, plain earth, bed sheet, plain cement, empty  
cartridges and prepared the recovery memos. After conducting  
C the postmortem of the deceased Rajbir, Manish, Ashish and  
Vinod on 3.6.2001, Dr. R.R. Gahlot (PW-3), Medical Officer,  
S.B.D. Government Hospital, Saharanpur opined that the death  
was caused by shock and haemorrhage as a result of ante  
mortem injuries. The investigating Officer after obtaining  
D permission from District Magistrate, Saharanpur filed charge-  
sheet in the court under Section 25 of Arms Act against the  
accused Manoj, Sonu@Ajay and Umesh.

3. The trial court framed charges under Sections 148,  
452, 302/149 and 302/120-B against Manoj, Sonu, Umesh,  
Tejpal, Narendra, Rajpal, Dinesh and Shiv Pal. Accused  
E Manoj, Sonu alias Ajay and Umesh were further charged under  
Section 25 of the Arms Act. The prosecution, in order to prove  
its case, examined ten witnesses out of which PW1 and PW-  
2 are the eye witnesses of the occurrence. Whereas the  
defence examined five witnesses.

F 4. During the course of trial accused Rajpal expired,  
hence the case was dropped against him and trial of remaining  
accused continued. The trial court by its order dated 31.3.2004  
passed in S.T. Case No.885 of 2001 convicted the accused  
G Manoj, Sonu, Umesh, Tej Pal and Narendra under Section 302/  
149 IPC and sentenced to death, under Section 148 IPC  
sentencing them to undergo rigorous imprisonment (R.I. for  
short) for three years and under Section 452 IPC sentencing  
them to undergo RI for five years and a fine of Rs. 3000/-, in  
H default of payment of fine.R.I. for three months. Accused Manoj,

Sonu and Umesh were further convicted under Section 25 of the Arms Act and sentenced to undergo imprisonment for two years. Accused Dinesh and Shiv Pal were convicted under Section 302/120-B, IPC and sentenced to undergo imprisonment for life and a fine of Rs. 10,000/- each, in default of payment of fine R.I. for one year.\*

5. Aggrieved by the decision of the trial court, the accused preferred appeals before the High Court of judicature at Allahabad. After hearing the learned counsel for the parties and analyzing the evidence, the High Court opined that considering the overall circumstances of the case, this case does not fall within the category of rarest of rare case and it cannot be said that imprisonment for lesser sentence of life term altogether foreclosed. The High Court observed that compassion in sentence is also a key factor and it allows the scars to heal. Longevity of incarceration may make them see reason. Passage of time may make them ponder over the crime they had committed. This might arise in them a feeling of remorse and repentance. Dismissing the Criminal Reference and partly allowing accused persons' appeals, the High Court converted the death sentence awarded to the accused Manoj, Sonu, Umesh, Tej Pal and Narendra into imprisonment for life. Appeals of accused Dinesh and Sheo Pal were allowed and they were acquitted of all the charges.

6. Hence, the present Appeals by Special Leave preferred by the State.

7. We have heard Mr. Ratnakar Dash, learned senior counsel appearing for the State and Ms. Sandhya Goswami, learned counsel appearing for the respondents. We have given our final consideration in the matter and have gone through all the facts and circumstances of the case and evidence adduced by the prosecution side. We do not find any reason to disagree with the view taken by the High Court in reducing the death sentence into life imprisonment.

A 8. For the reasons above stated, we don't find any merit in these appeals and the same are dismissed.

Devika Gujral

Appeals dismissed.