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State Vs. Bharat Singh

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Court : Delhi

Decided On : Oct-31-2014

Judge : S. Muralidhar

Appellant : State

Respondent : Bharat Singh

Advocate for Pet/Ap. : Mr. Varun Goswami, Mr. Sumeet Verma, Mr. Amit Kala

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI DEATH SENTENCE REF. No.1 of 2013 STATE ... Petitioner Through: Mr. Varun Goswami, Advocate. versus BHARAT SINGH ..... Respondent Through: Mr. Sumeet Verma, Amicus Curiae with Mr. Amit Kala, Advocate. AND CRIMINAL APPEAL No.509 of 2013 BHARAT SINGH ..... Appellant Through: Mr. Sumeet Verma, Amicus Curiae with Mr. Amit Kala, Advocate. versus STATE (NCT OF DELHI) ... Respondent Through: Mr. Varun Goswami, Advocate. CORAM: HONBLE DR. JUSTICE S. MURALIDHAR HONBLE Ms. JUSTICE MUKTA GUPTA %

ORDER
3110.2014 1. By the judgement dated 17th April 2014, this Court had confirmed the conviction and sentence awarded to the Appellant Bharat Singh for the offence under Section 376 (2) (f) Indian Penal Code ('IPC') i.e. life imprisonment together with fine of Rs.50,000 and in default to undergo rigorous imprisonment (RI) for a

period of one year. The Court also confirmed his conviction for the offence under Section 302 IPC. By this further order, which should be read in continuation of the above judgment, the Court pronounces on the question of sentence for the offence under Section 302 IPC.

2. On the question whether the Appellant should be awarded the death penalty as recommended by the trial Court, for the offence under Section 302 IPC, the Court in the aforementioned judgment dated 17th April 2014 discussed in some detail the decisions of the Supreme Court from Bachan Singh v. State of Punjab (1980) 2 SCC684onwards. After noting that in the present case, where the Appellant has been convicted for the rape and murder of a three year old child, there was little difficulty as regards the existence of the 'aggravating circumstances' i.e. the satisfaction of the 'crime test', the Court noted that "no materials have been placed by the State to show whether the accused is capable of being reformed and rehabilitated."

This was in the context of two of the mitigating circumstances suggested by Dr. Y.V. Chitaley, Senior Advocate, and noted in para 206 (3) and (4) of the decision in Bachan Singh viz., the probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society" and "the probability that the accused can be reformed and rehabilitated.

The Supreme Court in Anil @ Anthony Arokiaswamy Joseph v. State of Maharashtra 2014 (2) SCALE554directed that the criminal courts, while dealing with offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated...

In Birju v. State of MP2014(2) SCALE293 the Supreme Court suggested that in appropriate cases the Court can also call for a report from the PO while applying the Crime Test Guideline No.3 as laid down in Shankar Kisanrao Khade v. State of Maharashtra (2013) 5 SCC546 It was further observed in the said decision that Court can then examine whether the accused is likely to indulge in commission of any crime or there is any probability of the accused being reformed or rehabilitated.

3. This led the Court, in its judgment dated 17th April 2014, to call for a report of the Probation Officer (PO) on the following two aspects: (i) Is there a probability that, in the future, the accused would commit criminal acts of violence as would constitute a continuing threat to society?. (ii) Is there a probability that the accused can be reformed and rehabilitated?.

4. The Court had in paras 69 and 70 of the aforementioned judgment issued certain specific directions for the PO to follow in preparing the report. Pursuant to the above directions, Ms. Priyanka Yadav, the PO, has submitted a detailed Social Investigation Report (SIR) dated 28th October 2014 based on a personal interview with the Appellant in Tihar Jail, Delhi, interviews with his family members and neighbours in his native place in Siwan, Bihar, the report of the local panchayat and a report from the Police Station (PS) Basatpur. The SIR also incorporates inputs of the Clinical Psychologist, Psychiatric Social Worker and Superintendent of Jail, Tihar as well as the assessment by the Medical Board of the Institute of Human Behaviour and Allied Sciences (IHBAS).

5. The main points that can be gathered from the SIR are that the Appellant is 64 years, hails from village Khera Bansoi, Post Office Basatpur, District Siwan in Bihar; he belongs to a poor agricultural family; is the eldest in his family has never married; has a good rapport with his village people and family members; is illiterate and "his main priority was to earn and support his family"; he has worked as a labourer throughout for several years in Shillong, Patna, Jalandhar and finally as a security guard in a farm house in Delhi; he has a twin brother who is married and the Appellant has special affection for his twin brother's son who got married recently; according to his family the Appellant has "never looked in any disrespectful way to any lady"; the villagers gave the PO "a favourable report about his behaviour, character and conduct"; the female folk specially mentioned that "he never teased or intimidated any girl or lady here". The PO noted that the village panchayat wish that the Appellant's death sentence should be converted to life sentence. There was no report of any case against the Appellant at PS Basatpur. The SIR notes that he never took care of his appearance; developed a drinking habit which became worse when he shifted to Delhi. From her interactions the PO has "inferred" that the Appellant used to frequent sex workers. According

to the PO "the influence of independent city life and availability of liquor and women has played a role in the commitment of the offence to some extent."

6. The PO in her interactions with the Appellant did not note any sense of repentance. At the same time, she notes in the SIR that jail inmates reported that the Appellant "keeps to himself and is not aggressive but occasionally gets irritated; "he has a helping nature and renders services to his old and ailing inmates and is very hard working person" and for the last three years he has been working eight hours a day and "does not have leisure time". The PO notes that the feeling of repentance "needs to be developed through reformative and corrective services and it will take a long process for reformation and reintegration into the society."

The PO has in the SIR, inter alia, made the following recommendation: "As also recommended by the clinical psychological assessment by medical board of IHBAS that he may be reformed with the intervention of social correctional measures (Report Annexed as Annexure VI). But these services are still not available in Jail premises. After imparting the said social and correctional measures for some years there should be a second review even before giving the parole as he may cause threat to the society and there are chances of recidivism and it is too early to reintegrate him in the society.

7. The report of the Medical Board of IHBAS enclosed with the SIR is dated 15th October 2014. The seven-member Medical Board comprised its Chairman, Dr. N.G. Desai, one Additional Professor of Clinical Psychology, two Associate Professors of Psychiatry, one Assistant Professor of Psychiatry, one Clinical Psychologist and one Psychiatric Social Worker. The said report reads as under:

The index case Mr. Bharat Singh was examined by Standing Medical Board on 15.10.2014 of IHBAS comprising of Psychiatrists, Clinical Psychologists and Psychiatric Social Worker with clinical experience of more than 10 years and Medical Board opined that- 1. Medical Board did not find any evidence of major psychiatric illness, no maladaptive personality traits or disorder especially anti social personality.

2. As per the available information, there is no prior history of any alcoholism or any psychoactive substance abuse except Nicotine use.

3. In view of above, there is nothing to suggest that the index client cannot be reformed and reintegrated and reformative process through social correctional measures.

(emphasis supplied) 8. The report of the Medical Board of IHBAS, which has been referred to in the SIR of the PO gives a definitive unanimous conclusion that there is nothing to suggest that the Appellant cannot be reformed and reintegrated, and put on to the reformative process through "social correctional measures.

The PO has mentioned in the SIR that a second review should be undertaken "after imparting the said social and correctional measures.

In this regard the Court would like to draw the attention of the prison authorities to the 'Introductory Handbook on Prevention of Recidivism and Social Integration of Offenders' brought out in December 2012 by the United Nations Office on Drugs and Crimes. Chapter IX of the said document has a section focussing on social reintegration of elderly prisoners. Relevant to the present case, the Court notes the positive feedback received by the PO from the jail authorities as regards the Appellant's conduct in jail and his preparedness to render services "to his old and ailing inmates."

9. In light of the above reports, the Court is persuaded to conclude that there exists a probability that the Appellant can be reformed and rehabilitated. The Appellant has been in custody only since April 2011. In the course of his serving imprisonment for life, there would be sufficient opportunity to evaluate the positive effects of the correctional measures. His continued incarceration would ensure that he would not commit criminal acts as would constitute a continuous threat to the society.

10. Consequently, the Court declines to confirm the death sentence recommended to be awarded to the Appellant by the trial Court and instead sentences the Appellant to imprisonment for life for the offence under Section 302 IPC. The

sentence would run concurrently with the sentence awarded under Section 376 (2) (f) IPC. The fine amount of Rs. 50,000 for the offence under Section 302 IPC is left unaltered and it is directed that in default of payment of fine the Appellant shall undergo RI for one year.

11. The death reference is answered accordingly. The criminal appeal is disposed of in the above terms.

12. A certified copy of this order be forthwith delivered to the Superintendent, Tihar Jail, New Delhi who will without delay give it to the Appellant. S. MURALIDHAR, J.

MUKTA GUPTA, J.

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