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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

SANJAY KISHAN KAUL; J., ABHAY S. OKA; J., VIKRAM NATH; J.

SEPTEMBER 08, 2022

CRIMINAL APPEAL Nos. 1797-1798/2010 WITH CRIMINAL APPEAL Nos. 1781-1782/2010

THE STATE OF HARYANA *versus* ANAND KINDO & ANR. ETC.

Indian Penal Code, 1860; Section 302 - Brutal Murder - Sentencing - In appropriate cases, imposing a fixed term sentence creates a possibility for the convict to 8 re-integrate into society after serving his/her sentence. It strikes a delicate balance between the victims' plea for justice - This fixed term sentence can only be by the High Court or this Court and not by the trial Court - If there is any circumstance favouring the accused such as lack of intention to commit the crime, possibility of reformation, young age of the accused, accused not being a menace to the society, no previous criminal record etc., the accused may avoid capital punishment - The crime is important but so is the criminal and hence the Supreme Court in recent past has substituted death penalty with fixed term sentences exceeding 14 years - The approach cannot be the vindictive but lack of appropriate sentence leaves the cry of justice of the society un-addressed apart from the fact that other persons who may have the propensity to carry out the crime feel they will get away with the lighter sentence, in case they are caught.

For Appellant(s) Mr. Sudarshan Singh Rawat, AOR For Appellant(s) / Respondent(s) Mr. Anil Grover, Sr. AAG Mr. Satish Kuamr, adv. Dr. Monika Gusain, AOR For Respondent(s) Mr. Kamal Mohan Gupta, AOR Mr. Rajesh Srivastava, AOR Mr. Gaurav Verma, Adv. Mr. Neeraj Datt Gaur, Adv

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. The heinous and brutal crime was committed where the trusted employees of an aged couple for the greed of money murdered them. The brutality is reflected by the fact that the couple was sleeping, there was no occasion to resist any force and yet using hammer and Tava, their faces were so disfigured that they were almost unrecognized. No doubt, the circumstantial evidence gave rise to the conviction but if the circumstantial evidence was of such a nature that it practically leaves no doubt, the natural consequence of conviction under Section 302, IPC must follow.

2. It is not necessary for us to go beyond the aforesaid facts since the accused have not filed any appeal before us against the concurrent findings of the trial Court and the High Court but the trial Court having thought it fit to give death sentence, the High Court interfered with that aspect of the matter by imposing life sentence. The appeals are preferred by the State and by the complainant.

3. On the issue of sentence to be imposed, once the conviction is under Section 302, IPC, the option is limited. It has to be death or life. The third option is also available where at times the court looking to the scenario does not impose the death sentence but gives conviction whereby the accused has to serve at least for a fixed term. This fixed term conviction can only be by the High Court or this Court and not by the trial Court [Union of India vs. Sriharan, (2016) 7 SCC 1.]

4. We now turn to the reasons why the death sentence was awarded by looking to the judgment of the trial Court dated 12.06.2008. The two accused who were convicted (the wife of one the accused charged under Section 201, IPC, was convicted by the trial Court but the High Court overturned the conviction and one other accused who remained untraced) intentionally killed Major General Kailash Chand Dhingra (K.C. Dhingra) and his wife Smt. Sangeeta Dhingra in a gruesome and brutal manner. The victims never obstructed the robbery but were actually sleeping when they were battered. The accused were stated to have planned their action with precision and attacked the victims simultaneously and the death was immediate as declared by the medical officers who conducted the autopsy. The order of sentence discusses elaborately the aspect of imposition of an appropriate punishment in the manner in which the Court's response to the society's cry for justice against the criminals and yet balances this aspect with any mitigating circumstance. The crime is understood in the context of not only the individual victims but the society as a whole. In this behalf the Court referred to the judgment in the case of Desraj vs. State of Punjab, (2007) 12 SCC 494 specifying special reasons for attracting death penalty as: manner of commission of murder, motive of murder, the abhorrent nature of crime and magnitude of crime or even the personality of the victim. The crime having been committed without any provocation, with the sole greed for money and against two aged people, one of whom was a decorated Major General of the Army, it was opined that the death sentence would be the appropriate sentence and on the gruesomeness, it was further opined that the faces were battered beyond recognition.

5. The High Court in its judgment on the aspect of sentence while discussing the confirmation of death sentence has referred to the various judicial pronouncements and the plea of the convicts that it was not a rarest of the rare case. All that was opined is that it was not a fit case under rarest of rare case in which the sentence should have been imposed on the convicts. Thus life sentence was granted under Section 302, IPC.

6. We may also note another aggravating circumstance pointed out by learned counsel for the complainant who had preferred an appeal. He submits that after the conviction, the convicts endeavoured to escape out of the prison by digging a tunnel on 18.10.2008 but were caught and on trial were convicted by order dated 18.12.2013 under provisions of Sections 224 and 120-B, IPC.

7. We must note the fair submission of the learned counsel for the complainant who really did not press for restoration of the death sentence but submitted that the brutality of the crime and the aforesaid aggravating circumstances require this Court to exercise jurisdiction to impose a fixed term sentence before which the convicts are not liable to be considered for grant of remission. His initial plea of course was that 'life' should mean 'life' in this Case but as an alternative plea, it was submitted that there should be at least a fixed term sentence.

8. We have considered the rival submissions. Learned counsel for the accused who has been engaged by the Supreme Court Legal services Committee seeks to strenuously contend that two accused were aged 22 and 24 years at the time of commission of the crime and were young people. They have already served fifteen years. They have a chance to be rehabilitated in the society. This Court should not interfere with the aspect of sentence and the present crime should be treated as one which receives the normal life sentence under Section 302, IPC.

9. On hearing learned counsel for the parties, we are in agreement with the submission of the learned counsel for the complainant as well as the State on the aspect of the brutality of the crime. The aspects which weighed with us are that it was a pre-planned murder for gain and greed by somebody who was in a position of trust with the family. The two victims were aged people who engaged one of the convicts to look after them and were being paid appropriate emoluments. It is nobody's case that Anand Kindo was mal-treated or ill-treated by them and was not looked after in the house. At an advanced stage in such health respect, there is always an element of trust and faith in the person by a person who employs them as well as the family members. Work takes other family members elsewhere and with the joint family system having broken down, the role of such trusted help becomes even more significant. It is also the significance of the society where a wrong signal goes if a trusted person breaches that trust to kill the person who had employed them in such a gruesome manner. As stated by the trial Court, the society itself demands justice, apart from an utter element on deterrence which is in any aspect of conviction. The approach cannot be the vindictive but lack of appropriate sentence leaves the cry of justice of the society un-addressed apart from the fact that other persons who may have the propensity to carry out the crime feel they will get away with the lighter sentence, in case they are caught. Battering two sleeping people beyond recognition who imposed trust in their employee certainly calls for something more than merely a life sentence under Section 302, IPC, even if death sentence is not to be imposed.

10. The subsequent conduct of the accused in the endeavour to escape also put a question mark on their conduct but for the fact that they were apprehended they would have escaped.

11. If we turn to the redeeming factors, the only redeeming factor which we find is the age at which the accused committed the offence but simultaneously to unleash such people back in the society has its own ramifications.

12. On consideration of the matter, we consider appropriate to impose a fixed term sentence of 30 years. Even at that age, the convicts would be in their 50s and we hope and pray that they would have learned their lesson and joined the society as responsible members at that stage.

13. In ***Shankar Kishanrao khade vs. State of Maharashtra (2013) 5 SCC 546***, it was held that if there is any circumstance favouring the accused such as lack of intention to commit the crime, possibility of reformation, young age of the accused, accused not being a menace to the society, no previous criminal record etc., the accused may avoid capital punishment. The Court opined that the crime is important but so is the criminal and hence the Supreme Court in recent past has substituted death penalty with fixed term sentences exceeding 14 years. In appropriate cases such as the present case, imposing a fixed term sentence creates a possibility for the convict to re-integrate into society after serving his/her sentence. It strikes a delicate balance between the victims' plea for justice and rehabilitative justice for the convicts.

14. The appeals are allowed to the limited extent, leaving the parties to bear their own costs.