CHAWLA AND ANOTHER

v.

STATE OF HARYANA

February 12, 1974

[V. R. KRISHNA IYER AND R. S. SARKARIA, JJ.]

Criminal law—Practice and Procedure—Sentence of life imprisonment for murder, when may be granted.

Six accused were charged with the murder of three persons. Two of the accused—the appellants—were convicted of murder of two of the deceased, respectively and were sentenced to death by the High Court in appeal. The other four accused were sentenced to life imprisonment.

In appeal to this Court, regarding the sentence of death passed on the two appellants,

HELD : The death sentence should be commuted to imprisonment for life. for the following reasons :—

(a) It was probable that the tragedy was provoked or precipitated by the blame-worthy and intransigent conduct of the deceased in regard to the retaining or taking possession of the land that had been finally allotted to the accused by the Consolidation authorities, and over which land, there were disputes between the accused and the deceased.

(b) The first appellant was responsible for causing only one out of the 3 fatal injuries received by the deceased for whose murder he was convicted. Probably, that was the only blow given by him to the deceased, while the remaining 6 punctured wounds were all caused by the other accused who were awarded the lesser sentence.

(c) The appellants are immature youths who appear to have acted at the instigation of their elder.

(d) The appellants must have suffered prolonged mental torture on account of their being constantly haunted by the spectre of death for one year and 10 months ever since they were sentenced to death by the trail court.

Moreover the Court has now a discretion to award either of the two penalties prescribed under s. 302, Penal Code, and death sentence is now exacted only where the murder was perpetrated with marked brutality. [346 E—347 C]

Vivian Rodrick v. *The State of West Bengal*, A.I.R. 1971 S.C. 1584; *Gurdip Singh* v. *State of Punjab*, A.I.R. 1971 S.C. 2240, *State of Maharashtra* v. *Manglye Dhavu Kongil*, A.I.R. 1972 S.C. 1797, *State of Bihar* v. *Pashupati Singh and another*, A.I.R. 1973 S.C. *Gajanand and ors.* v. *State of U.P.* A.I.R. 1954 S.C. 695, and *Ediga Anamma* v. *State of Andhra Pradesh*, Cr. A. 67/73 decided on 11-2-74, followed.

Brij Bhukhan and ors. v. *State of U.P.* A.I.R. 1957 S.C. 474, *Mizali and anr. etc.* v. *State of U.P.* A.I.R. 1959, S.C. 572 and *Jagmohan Singh* v. *State of U.P.* Cr. L.J. 370 (S.C.), referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 109 of 1973.

Appeal by Special leave from the judgment and order dated the 13th November, 1972 of the Punjab and Haryana High Court at Chandigarh in Criminal Appeal No. 493 of 72 and Murder Reference No. 21 of 1972.

N. S. Das Bahl, for the appellants.

A *V. C. Mahajan* and *R. N. Sachthey,* for the respondent.

The Judgment of the Court was delivered by

SARKARIA J. The facts giving rise to this appeal by special leave are as under :

Jagga had three sons; Bishna, Ram Lal and Har Lal. Ram Dia, Dal Singh and Ran Singh deceased were the sons of Bishna. Ram Lal and his sons, Chawla and Dhanna, Har Lal, his son, Puran, and Har Lal's grandson, Mukhtiara, are the accused in this case.

B

During consolidation operations in their village, Deora, dispute arose between Ram Lal and Har Lal on one side and Bishna on the other, over the allotment of a plot, measuring 4¼ acres. This plot was allotted by the Consolidation Officer to Bishna; but in revision, the C Additional Director, Consolidation on May 4, 1968, set aside the Order of the Consolidation Officer and allotted it to Ram Lal and Har Lal, accused. Bishna died and the deceased succeeded him. Aggrieved, the deceased persons moved the High Court under Art. 226 of the Constitution for bringing up and quashing the order of the Director. The High Court dismissed this petition on July 14, 1971 and upheld the order of the Director. On October 4, 1971, the Assistant D Collector made an order that, in implementation of the order of the Director of Consolidation, the land be demarcated at the spot and possession delivered to the allottees. It was further directed that the land be mutated in favour of the allottees. On October 5, 1971, the Kanungo, in compliance with the Assistant Collector's order, demarcated the land at the spot and delivered symbolical possession E of Kila Nos. $\frac{129}{7}$, $\frac{129}{17/1}$, $\frac{129}{14}$, $\frac{129}{16}$ as those fields were under crop. He delivered actual possession of the other fields, comprised in the allotment, which were not under crops, including Khasra No. $\frac{129}{6/2}$ to the accused, Ram Lal and Har Lal. The deceased persons, however, did not submit to this symbolical and actual delivery of possession. They instituted a suit in the Civil Court at Kaithal and obtained an ex parte interim injunction restraining the accused from taking F possession of the land. This injunction was served on Ram Lal accused on November 5, 1971.

On November 11, 1971, Ram Dia, Dal Singh and Ran Singh deceased went to the fields with their ploughs. Dal Singh started reaping *chari* crop, Ran Singh started ploughing the field, while Ram Dia went on a round of the field. At about 11 a.m., all the six accused, in a G body reached the field. Puran and Ram Lal were armed with Suas (iron-spiked sticks), Dhanna with a Gandasa, and Har Lal, Mukhtiara and Chawla with lathis. On reaching the spot, Har Lal exhorted his companions to kill the deceased. Thereupon, Chawla, Puran and Ram Lal gave blows with their respective weapons to Ram Dia, Ran Singh came to the rescue of his brother. Thereupon, Dhanna and Mukhtiara assaulted him with their respective weapons. Dal Singh interceded but H all the six accused belaboured him. The occurrence was witnessed by Smt. Mali, Nasib Singh and Shadi who had run to a safe distance and stood there. After the assault, the accused ran away taking their weapons with them. Ram Dia died at the spot. Dal Singh succumbed to

his injuries after his admission in the Civil Hospital Kaithal, while Ran Singh expired in Medical College/Hospital, Rohtak on November 13, 1971. A

The Sessions Judge convicted and sentenced Chawla, Puran and Mukhtiara accused to death under s.302/34, Penal Code. He further convicted them under s.302/149 on three counts and sentenced them each to imprisonment for life. A conviction under s.148, Penal Code with a sentence of one year's imprisonment each was also recorded. The remaining accused were also convicted under ss. 302/149 and 34 and 148, Penal Code and on the capital charge sentenced to imprisonment for life, each. B

On appeal, the High Court commuted the death sentence of Puran to one of imprisonment for life on the ground that it was not known as to which of the three fatal injuries to Ram Dia had been caused by Puran. It confirmed the death sentences of Chawla and Mukhtiara, for committing the murders of Ram Dia, and Ran Singh, respectively. The conviction of Ram Lal, Har Lal and Dhanna under ss.302/149 was also maintained. C

Special Leave in this case was granted only with regard to the capital sentence inflicted on Chawla and Mukhtiara, appellants. D

Mr. Behal, learned *amicus curiae* has urged that the death sentences were not justified because of these alleviating circumstances :—

(a) The cause of the tragedy can be traced to the unreasonable, stubborn, and blame-worthy conduct of the deceased in retaking or retaining possession of the land that after a protracted litigation, had been finally allotted and made over to the accused party by the Director of Consolidation. The violence seems to have erupted because of the wrongful act of the deceased in ploughing Kila No. 6/2 etc., actual possession of which had been duly delivered by the Consolidation Authorities, earlier to the accused party. Ram Dia armed with a stick was on guard duty while the other deceased were ploughing or sowing in the disputed land. Ram Dia provoked the assault by dealing blows with a stick to Har Lal accused. E F

(b) In the case of Chawla appellant, it was not clear whether any fatal injury to Ram Dia was caused by him. In any case, it was unreasonable to mark him out for capital punishment for inflicting only one of the three fatal injuries with a lathi, when the co-accused to whom the punctured, fatal wounds were attributed, have been awarded the lesser penalty. G

(c) That Chawla and Mukhtiara appellants are raw youths, aged 25 and 24 years, respectively, who probably acted under the instigation of their father; and that the death sentence has been hovering over their heads for an agonisingly long period of about 1 year H

A and 10 months.

The above circumstances, according to Mr. Behal, taken separately as well as collectively, furnish sufficient ground for mitigation of the capital sentence. Reference has been made to the decisions of this Court in *Vivian Rodrick* v. *The State of West Bengal;*(1) *Gurdip Singh* v. *State of Punjab;*(2) *State of Maharashtra* v. *Naglya Dhavu*
B *Kongil;*(3) *State of Bihar* v. *Pashupati Singh and another*(4) and *Gajanand and ors.* v. *State of U.P.*(5)

On the other hand, Mr. Vikram Mahajan, learned Counsel for the State vehemently contends that none of the circumstances pointed out by Mr. Behal is a good extenuating factor. It is emphasised that the accused went armed with a determination to kill the deceased
C persons and they succeeded in their nefarious design. This was a case of cold-blooded triple murder and no leniency in the matter of sentence was called for. It is argued that the mere fact that the murders were committed at the exhortation of the eldest accused Har Lal, was no ground in law for not inflicting the capital sentence on the appellants. He has further pointed out that the mere fact that a period of about 1 year and 10 months has elapsed since the award of the capital
D sentence, which is mainly due to the protracted proceedings, is no ground for reducing the capital sentence.

In support of his arguments, learned Counsel has relied on *Brij Bhukhan and ors.* v. *State of U. P.;*(6) *Mizaji and anr. etc.* v. *State of U. P.*(7); *Jagmohan Singh* v. *State of U.P.*(8).

E True, according to the finding of the courts below, the occurrence took place actually in Kila No. 6/1, and not in Kila No. 6/2, which was in dispute. The very numbering of these fields by the Settlement authorities shows that they are sub divisions or parts of the same Kila No 6. The disputed land was thus intermingled with the plot of occurrence. The deceased were feeling aggrieved by the partition and allotment of this land including Kila 6. Indeed, despite the conclusion of the dispute by the consolidation authorities, the deceased were keeping it alive. The Kanungo's Report (Ex.PJJ), dated Octo-
F ber 5, 1971, whereby possession of the disputed land was delivered to the accused party, shows that Kila No. 6/2 in Rectangle No. 129 was one of those disputed plots, the *actual* possession of which had been delivered to the accused party. It was the prosecution case, itself, that shortly before the assault, Ram Singh was ploughing to sow
G wheat, while Dal Singh was cutting *chari* from the field adjacent to the disputed land and Ram Dia was having a round of the fields, possibly to keep a watch against the accused. Chawla in his examination under s 342, Cr. P. C. gave this version of the incident—

(1) A. I. R. 1971 S. C. 1584;
(2) A. I. R. 1971 S. C. 2240;
(3) A. I. R. 1972 S. C. 1797;
H (4) A. I. R. S. C. 2699
(5) A.I.R. 1954 S.C. 695.
(6) A. I. R. 1957 S. C. 474
(7) A. I. R. 1959 S. C. 572
(8) Cr. L. J. 370 (S. C.).

> .....Ram Dia asked us to give up the possession of the land and hand over the same to him. We told him that he could take back the possession in the same way as the possession had been delivered to us by the Tehsildar, Girdawar and Patwari. At this, Ram Dia said that he would take the possession forcibly. We told him that we would not hand over the possession by force. On the day of occurrence, Ram Dia and his brothers started ploughing the land and uprooting the crops sown by us, with the help of two ploughs. At sun-rise, Har Lal armed with a lathi, I armed with a two-pronged *jailv* and Ram Lal armed with a lathi were going on the road from Deora to Ujana to go to our field.....Har Lal told us that it seemed to him that the land in dispute was being ploughed by the deceased. Har Lal went and stood in front of the bullocks and told Ram Dia that he should have been satisfied after cultivating the land since the consolidation and that he should desist from ploughing the land and destroying the crop. At this Ram Dia gave a lathi blow which hit Har Lal on the right hand. At this, Har Lal, Ram Lal and myself gave injuries with our respective weapons..... We got Har Lal medically examined...."

Though this version of the accused was not sufficient to make out a case of private defence, yet, coupled with the Kanungo's report, Ex.PJJ, and the surrounding circumstances, it strongly points to the conclusion that the tragedy was probably precipitated by the deceased's insistence on cultivation and possession of the disputed land including those fields of which actual possession had been duly delivered by the consolidation authorities to the accused. The appellants had the order of Additional Director of Consolidation in their favour in respect of the land in dispute. The deceased challenged that order by a writ petition under Article 226 in the High Court which dismissed the same and upheld the order of the Director. Thereafter, on October 5, 1971, in implementation of the Director's order, symbolical possession of that part of the land which was under crops, and actual possession of the fields which were vacant, was delivered, to the accused. It seems that the deceased under the cloak of an ex-parte interim injunction obtained by them on November 4, 1971, were determined to retain or retake possession even of those fields of which actual possession had been delivered to the accused party by the consolidation authorities.

This takes us to the next circumstance stressed by Mr. Behal.

Chawla has been awarded the capital sentence for the murder of Ram Dia. The part ascribed to the appellant by the witnesses, who admittedly had run away to some distance at the commencement of the assault, was that he had inflicted a fatal blow with a lathi on the deceased. Dr. Raj Gupta who conducted the autopsy, testified that there were eight injuries in all on the dead-body of Ram Dia, out of which, six were punctured wounds. Injury No. 6

A was an abrasion on the left fore-arm. Injury No. 8 was a depression of the frontal and parietal bones. All the injuries, collectively, in the opinion of the Doctor, were sufficient to cause death in the ordinary course of nature. It is injury 8 which was attributed by the witnesses to Chawla, appellant. In the examination-in-chief, the Doctor did not say that this injury was by itself, fatal. In cross-examination in the Committal Court, she said that injuries 1, 2
B and 4, individually, as well as collectively, could cause death. At the trial, Dr. Raj Gupta changed this version and said that injuries 1, 4 and 8 were individually sufficient in the ordinary course of nature to cause death. She excluded injury No. 2 from the category of fatal injuries, and, in its place, substituted injury No. 8. If the Doctor's former statement made in the Committal Court was correct, then injury 8 was not a fatal injury and the three fatal injuries (1, 2
C and 4) were punctured wounds which could have been caused by Ram Lal and Puran only, who were armed with sharp-pointed weapons. Further, in the Committal Court, Dr. Gupta had clearly testified that none of the 8 injuries found on the body of Ram Dia had been caused with a blunt weapon. On this point, also, she took up a different position at the trial and said that injury 8 might have been caused with a lathi. In any case, apart from a
D minor abrasion on the left fore-arm which could have been the result of a fall, there was only one injury on the body of Ram Dia, caused with a lathi. It could not be said that Chawla played the dominant role in the assault. His part, if not less, was in no way greater than that of Har Lal and Ram Lal who had caused the fatal punctured wounds.

E We have referred to the contradictory positions taken by the medical officer, not to show that Chawla could not be convicted under s 302, Penal Code, but to appreciate his precise role in the assault on Ram Dia, for the purpose of sentence, only. From Dr. Gupta's evidence it is clear that he had caused only one injury, with a lathi, to Ram Dia and his part in the assault, if not less, was in no way greater than that of Har Lal and Ram Lal who had caused no
F less than six injuries, including two fatal, to the deceased.

Further circumstance which deserves consideration is that these raw youths, Chawla and Mukhtiara, appear to have acted under the instigation of their elder, Har Lal.

G Still another factor to be taken into account in prescribing the punishment is that death penalty has been brooding over the heads of these youngmen for an agonisingly long period. They were committed for trial two years in February 1972, and were condemned to death by the trial court in April 1972. By cold logic, this circumstance, as a mitigating factor, more often than not, being the unwarranted result of Law's delays, is vulnerable. But humane considerations of administering justice tempered with mercy have impelled the
H courts to recognise it as an ameliorating circumstance. In the last half a century, the science of criminology has taken great strides. There has been rethinking about crime and punishment. The process is con-

tinuing. Winds of compassion for the criminal blowing the world over, are affecting law and logic, the Judge and the Legislator, alike. Draconion notions and retributive relics of *lex elionis* are yielding to "Mankind's concern for Charity". In every creature, "born but to die", it is "blindness to the future, kindly given" that keeps life going. But in a condemned man, the Book of Fate open before him constantly telling of the doom prescribed, the life-stream of hopes and aspirations rapidly starts drying under the excruciating heat of the mental desert. With passage of time, the prisoner painfully awaiting execution, becomes no better than a "life-less" mummy. It was in this perspective that this Court in *State of Bihar* v. *Pashupati Singh and anr.* (supra), ruled that if there has been a long interval between the date of the offence and the consideration of appeal by the Supreme Court, the capital sentence for the commission of an offence under s. 302, Penal Code for which the accused has undergone a long period of mental agony, the sentence of death may not be exacted. A similar note was struck by a Bench of this Court, constituted by both of us, in *Ediga Anamma* v. *State of Andhra Pradesh*(1).

Parliament also has taken note of the current penological thought. Before Criminal Amendment Act 26 of 1955, for the offence of murder, death sentence was the rule and transportation for life an exception, and if the lesser penalty was to be awarded, then sub-section (5) of s. 367, Code of Criminal Procedure required reasons to be given. By Act 26 of 1955, this sub-s. (5) was recast and the requirement of giving reasons for the lesser punishment, was done away with. The former rule is thus no longer operative. The Court has now a discretion to award either of the two penalties prescribed under s. 302, Penal Code. Death sentence is now exacted only where the murder was perpetrated with marked brutality.

Parliament has passed the Criminal Procedure Code, 1973, which is coming into force shortly. In it, the position is reverse of what it was before the Amendment of 1955. After this Bill becomes law, it will be obligatory for the court to give reasons if the death sentence is to be inflicted. The Penal Code Bill, 1955, which is on the anvil, reserves capital punishment for only a few types of murders.

We have referred to the modern penological thought and current legislative trends not with a view to decide this case on the basis of what is yet in embryo, but to have a proper perspective for appreciating of the circumstances which have been urged in this case in mitigation of the sentence. To sum up, these are :

(a) There was some probability of the tragedy having been provoked or precipitated by the blame-worthy and intransigent conduct of the deceased in regard to the retaining or retaking possession of the land

(1) C. A. 67/73 decided on 11-2-74.

A that had been finally allotted to the accused by the consolidation authorities.

(b) Chawla appellant was responsible for causing only one out of the three fatal injuries received by Ram Dia, deceased. Probably, that was the only blow given by him to the deceased, while the remaining six
B punctured wounds were all caused by the other accused who have been awarded the lesser sentence.

(c) Chawla and Mukhtiara, appellants are immature youths who appear to have acted at the instigation of their elder, Har Lal.

(d) Prolonged mental torture suffered by Chawla and
C Mukhtiara on account of their being constantly haunted by the spectre of death for the last one year and 10 months.

Perhaps, none of the above circumstances, taken singly and judged rigidly by the old Draconian standards, would be sufficient to justify the imposition of the lesser penalty; nor are these circumstances ade-
D quate enough to palliate the offence of murder. But in their totality, they tilt the judicial scales in favour of life rather then putting it out.

The circumstances considered above have long been recognised by courts as valid grounds for mitigating the sentence. They are not innovations. Formerly what was in the penumbra of extenuation, "dim-described", now, in the twilight of compassion, has become clear-
E ly discernible.

Before we part with this judgment, we may in fairness to the learned Counsel for the State, note it here that the rulings cited by him turn on their own facts. In *Mizaji's case* and *Jagmohan Singh's case* (supra), the accused were awarded capital sentences as they were found guilty of having fired the fatal shots with fire-arms. In *Brij Bhukhan's case* (supra), the victim had been dragged out of his own
F house and mercilessly beaten. Such is not the case here.

For the foregoing reasons, while maintaining the convictions of the appellants, we would allow the appeal and commute the death sentences of the appellants to that of imprisonment for life on each count. The sentences shall run concurrently.

V.P.S. *Appeal allowed.*