A MANOHAR LAL @ MUNNA AND ANR.

v.

THE STATE (N.C.T. OF DELHI)

DECEMBER 17, 1999

B [K.T. THOMAS AND D.P. MOHAPATRA, JJ.]

Penal Code, 1860 :

Sections 302, 396 and 149—Death Sentence—Persons set ablaze in C *mob fury—Temporary frenzy—No systematic or organised activity—No special or personal animosity of accused persons towards deceased individually—Held, under the facts and circumstances death sentence altered to life imprisonment.*

Criminal Trial—Eye witness—Details of occurrence not divulged in D *statement to police by mother—Horrendous episode—sons were set ablaze before mother in mob fury—Mother not having retained mental equanimity—Held, cryptic statement of mother cannot be used to discredit the testimony of the most natural eye-witness.*

Appellants-accused were tried and convicted for offence under Sections E **302 and 396 read with Section 149 of the Indian Penal Code by the Trial Court for murdering four Sikh brothers by setting them ablaze in the riots that took place following the assassination of the then Prime minister Smt. Indira Gandhi. Trial Court accepted the testimony of mother, PW-1 and her daughter-in-law, PW-2 who were eye-witnesses to the incident and finding** F **the case to be one of the "rarest of rare cases", imposed death penalty on the appellants which was confirmed by a Division Bench of the High Court. Against the judgement of the Division Bench, appellants have filed the present appeals.**

The appellants contended that PW-1 was not a reliable witness and G **alternatively, that it was not a 'rarest of the rare' case to warrant death sentence.**

Partly allowing the appeals, the Court

HELD: 1. PW-1 had stated in the affidavit signed by her and marked as exhibit in the trial court that the marauders killed even S, her daughter- H

in-law by burning her. In fact S was not attacked by the killers. She is alive even now. Evidently that part of the affidavit is wrong. It is also stated in the affidavit that she recognised the appellants among the killers who dragged her sons out and set them ablaze. She did not know what all was written therein. Neither the person who drafted the affidavit nor the typist who typed it has been examined as witness. The testimony of PW-1 mother cannot be rejected merely on the strength of the aforesaid wrong information having crept in the affidavit. On the other hand the affidavit gives an assurance that appellants were involved in the killing of her sons. [509-H; 510-A, B, C, D]

2. A reading of the statement of PW-1 to the police makes the position clear that the police officer was not then inclined to elicit from the bereaved mother any details of the horrendous episode. He felt that she was then not in a mood to speak out the details as the interval of time was not sufficient enough for a mother like her to regain mental equanimity. It would be unfair and uncharitable to her if that cryptic statement is used to discredit the valuable testimony of the most natural eye witness of this horrendous crime. [510-E, F]

3. The normal sentence for murder is life imprisonment and death penalty is now reserved to be given in "rarest of the rare cases" in which the other sentence is unquestionably foreclosed. Thus death penalty is now sequestered to the narrowest margin. What the appellants have done were no doubt acts of the most gruesome nature. But it is to be borne in mind that they were on a rampage, and they ran berserk unguided by sense or reason and triggered only by a demented psyche. They had no special or personal animosity towards anyone of the deceased individually. The assassination of the then Prime Minister Smt. Indira Gandhi had blind folded those youths and unfortunately there was no leadership to bridle the mob frenzy unleashed with all cruelty. Hence, the death sentence is altered to imprisonment for life. [510-G, H; 511-A-E]

Bachan Singh v. *State of Punjab,* [1980] 2 SCC 684, followed.

Kishori Lal v. *State of Delhi,* [1999] 1 SCC 148, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 630-631 of 1999.

From the Judgment and Order dated 16.10.1998 of the High Court of Delhi in Criminal Appeal No. 34 of 1998, Criminal Appeal No.12 of 1998 with

A Murder Reference No. 1/98.

M. Qamaruddin, Amber Qamaruddin, Mrs. M. Qamaruddin and Mrs. Niranjana Singh for Arvind Kumar Sharma for the appearing parties.

The Judgment of the Court was delivered by

B

THOMAS, J. The carnage fuelled by the assassination of Indira Gandhi scored a heavy toll on the Sikh Community in Delhi and this case relates to a macabre which took place during then. Four sons of harbai were roasted to death in front of her eyes on 2.11.1984 at Trilokpuri in Delhi. The present appellants Jaggu and Mannu were tried before a Sessions Court for offences C under Sections 302 and 396 read with Section 149 of the Indian Penal Code. The trial court convicted them of those offences and sentenced them to death on the first count and to life imprisonment on the next. A Division Bench of the High Court of Delhi confirmed the conviction and sentence. The appellants filed this criminal appeal by special leave.

D PW-1 Harbai was the wife of Hooda Singh. They were living in an apartment situated at Trilokpuri. They had 4 sons—Darshan Singh, Laxman Singh, Chaman Singh and Hoshiar Singh. Among them Darshan Singh was living with his wife Shantibai in a house situated adjacent to the residence of PW-1. The other three sons were living with their parents in the same E house. Among them Laxman Singh was a married man, his wife being Nankibai (PW-2).

Following the assassination of Indira Gandhi riots took place in different parts of Delhi and its impact reached Trilokpuri on 1-11-1984. Fearing that such riots may destroy the members of the Sikh community PW-1 and the F members of her family who belonged to that community kept themselves within the four walls of their house. It was on the morning of 2.11.1984 that the rioters broke into her house, armed with various substances such as iron rods, tyres, petrol containers etc. they looted the house first and then turned towards the male members of the family. All the sons of PW-1 were attacked with iron rods by the assailants. Later, they were dragged out, and were G doused with petrol and then were set ablaze. Their father Hooda Singh-a blind old man-was spared. So it was the fate of the unfortunate mother to see ever one of her four sons transforming into a life struggling inferno. As that sight was beyond the stamina of her nerves to withstand she fell in to a fit. Hooda Singh also fell unconscious presumably because he could perceive the gory H scene with the help of his remaining senses of perception. All the sons of

those ill-fated parents were ultimately charred to death. A

Hooda Singh did not live long to tell the court what he perceived. But Harbai (PW-1) and her daughter-in-law Nankibai (PW-2) narrated in the trial court the full details of the incident. That court accepted their testimony as true and the learned Sessions Judge found the case to be one of the "rarest of the rare cases" for visiting with the capital sentence and consequently he B imposed death penalty on the appellants. The Division Bench of the High Court scrutinised the evidence afresh and concurred with the trial court regarding reliability of their testimony. Even on the question of sentence learned Judges of the High Court did not find sufficient ground to dissent. The following are the reasons advanced by the Division Bench in that regard: C

> "As seen above, during the early days of November, 1984, the Delhi witnessed worst of the carnage, following the assassination of Mrs. Indira Gandhi, preceded by large scale riots which had broken out, then resulting into the killings of innocent persons irrespective of their age, middle aged or teenager of a particular community. The acts D cannot be regarded but barbarism. For no fault of theirs innocent persons were done to death in a most cruel manner, namely pouring petrol and burning them alive. This can not be regarded as an ordinary routine case of murder, looting or burning. Members of the particular community were targeted, their properties looted and burnt and people E done to death. The law and order machinery had completely broken down. Unprecedented lawlessness prevailed during those days and the miscreants had absolute free hand for indulging in criminal acts. The situation created by the anti-communal forces cannot be viewed lightly and needs to be dealt with sternly. The after-effects of the incidents would be felt by the people left behind for years. Though F the time is the best healer certain situation can not be retrieved or healed when a young lady of 27 years (PW-2) and an old lady (PW-1) losing their husband and four sons respectively and depriving the small children of PW-1 of their father and a child to be born posthumously to PW-2. Let's think of the agony and the sufferings G of the family members who are left behind. The mob caused nothing short of havoc. There can be no place for leniency, mercy or sympathy in such cases."

Learned counsel for the appellants made an unsuccessful endeavour to create a dent on the concurrent findings regarding culpability of the appellants. H

A He mainly relied on an affidavit signed by PW-1. It was marked in the trial court as Ext. PW-1/A. The endeavour was to show that PW-1 had gone to the extent of saying that the marauders killed even Shantibai, her daughter-in-law (wife of Darshan Singh) by burning her. True such a version is found in the affidavit prepared in English. It is also stated in the affidavit that she B recognised Manu and Jagga among the killers who dragged her sons out and set them ablaze. In fact Shantibai was not attacked by the killers. She is alive even now. Evidently that part of the affidavit is wrong.

Incorporation of such a wrong information in the affidavit is hardly sufficient to throw the testimony of PW-1 overboard. It might be that she had C unwittingly formed such a wrong impression earlier at the first instance or that she herself is innocent of that part of the affidavit. Even in the court she was not able to vouchsafe to the truth of what all things inscribed in the affidavit because apart from the fact that she affixed her signature in the affidavit she did not know what all were written therein. Neither the person who drafted the affidavit nor the typist who typed it has been examined as witness. We D are therefore not persuaded to reject the testimony of PW-1 mother merely on the strength of the aforesaid wrong information crept in the affidavit.

On the other hand that affidavit gives us an assurance that appellants were involved in the killing of her sons as their names were particularly mentioned among the murderers. Another criticism is that she did not divulge E all the details of the occurrence when she gave a statement to the police on 17.11.1984. We perused the said statement attributed to her. A reading of it makes the position clear that the police officer was not then inclined to elicit from the bereaved mother any details of the horrendous episode. He felt that she was then not in a mood to speak out the details as the interval of time F was not sufficient enough for a mother like her to regain mental equanimity. He should have postponed questioning her to a future date. In the said statement he recorded just two sentences. It would be unfair and we may say uncharitable to her if we use that cryptic statement dated 17.11.1984 to discredit the valuable testimony of the most natural eyewitness of this horrendous crime. Hence we are not persuaded to interfere with the finding G that the appellants have committed the acts alleged against them.

Regarding the sentence, both sides addressed detailed arguments. The normal sentence for murder is life imprisonment and death penalty is now reserved to be given in "rarest of the rare cases" in which the other sentence is unquestionably foreclosed vide *Bachan Singh* v. *State of Punjab,* [1980] H 2 SCC 684. This death penalty is now sequestered to the narrowest region.

What the appellants have done were no doubt acts of the most gruesome nature. But we bear in mind that they were on a rampage, and they ran berserk unguided by sense or reasons and triggered only by a demented psyche. They had no special or personal animosity towards anyone of the deceased individually. The assassination of Prime Minister Indira Gandhi had blind folded those youths and unfortunately there was no leadership to bridle the mob frenzy unleashed with all cruelty.

In the context the decision of this Court in *Kishori* v. *State of Delhi,* [1999] 1 SCC 148 can be cited as a precedent because that also was a case relating to another incident which took place during the same mob frenzy which flowed in Delhi during the days close to the assassination of Indira Gandhi. The following observations in the said decision are apposite in providing some guidelines as for the sentencing sphere in this case also:

> "When an amorphous group of persons come together, it cannot be said that they indulge in any systematic or organized activity. Such group may indulge in activities and may remain cohesive only for temporary period and thereafter would disintegrate. The acts of the mob of which the appellant was a member cannot be stated to be the result of any organisation or any group indulging in violent activities formed with any purpose or scheme so as to call an organised activity. In that sense, we may say that the acts of the mob of which the appellant was a member was only the result of a temporary frenzy."

We do not propose to take a different stand in the present case. Hence the sentence for the offence under Section 302 read with Section 149 of IPC is altered to imprisonment for life.

A.K.T. Appeals partly allowed.