

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

SRI JUSTICE S.K. MISHRA, A.C.J.

AND

SRI JUSTICE N.S. DHANIK, J.

CRIMINAL REFERENCE NO. 05 OF 2021

BETWEEN:

In The Matter of Capital Punishment Awarded Digar Singh
.....Appellant.

And

State of UttarakhandRespondent.

With

CRIMINAL APPEAL NO. 08 OF 2022

BETWEEN:

Digar SinghAppellant.

And

State of UttarakhandRespondent.

Counsel for the Appellant : Mr. Arvind Vashisth, learned
Amicus Curiae assisted by Ms.
Sheetal Selwal, learned counsel.

Counsel for the Respondent : Mr. J.S. Virk, learned Deputy
Advocate General assisted by Mr.
R.K. Joshi, learned Brief Holder.

Reserved On: 24.02.2022
Delivered On: 19.05.2022

Upon hearing the learned Counsel, the Court made the following

JUDGMENT :(per Sri S.K. Mishra, A.C.J.)

In this Criminal Reference, under Section 366 of
the Code of Criminal Procedure, 1973 (*hereinafter referred to*

as "*the Code*" for brevity), the correctness of the judgment and sentence of death recorded by the learned Ist Additional District & Sessions Judge, Nainital, in Sessions Trial No.11 of 2020, as per the judgment dated 24.11.2021, is considered along with the Criminal Appeal preferred by the condemned prisoner, who has been sentenced to death having been convicted under Sections 302 and 307 of the Indian Penal Code (*hereinafter referred to as "the Penal Code" for brevity*).

2. As per the judgment passed by the Hon'ble Supreme Court in the case of ***Anokhilal vs. State of M.P., (2019) 20 SCC 196***, we have appointed Mr. Arvind Vashisth, the designated Senior Counsel as an *Amicus Curiae* to argue the case on behalf of the condemned prisoner-appellant.

3. Shown of unnecessary details, the case of the prosecution is that on 07.10.2019, one Mr. Baljeet Singh gave information to the Station House Officer, Chorgaliya, through former village pradhan that the condemned prisoner Digar Singh Koranga has committed the murder of his mother by severing her head from the rest of the body by means of sharp cutting weapon. On receiving such information, Mr. Sanjay Joshi, the then S.H.O. Chorgaliya, along with police team reached the village in question, and found the deceased Jomati Devi, mother of the condemned prisoner, lying dead with her head severed from the body. Thereafter, father of

the condemned prisoner described the entire matter before the S.H.O., and stated that the incident took place on 07.10.2019 at about 09:00 AM. The S.H.O., after receiving the report from the said informant, started investigating the case. In the course of investigation, he registered the criminal case bearing FIR No.62 of 2019, prepared the inquest report, examined the witnesses, sent the dead body for post-mortem examination, seized material objects and relevant documents, and after receipt of the post-mortem report and other reports, he submitted the charge-sheet against the condemned prisoner-appellant under Sections 302 and 307 of the Penal Code. At the stage of charge, the appellant denied to have committed the offence. Hence, the charges were framed for the aforesaid provisions of the Penal Code.

4. In order to prove its case, the prosecution examined twelve witnesses. P.W.1 Soban Singh Koranga is the informant in this case. He happens to be the father of the condemned prisoners, and husband of the deceased. P.W.2 Bina Bisht, P.W.3 Devika Devi, and P.W.4 Naina Koranga (the daughter-in-law of the deceased) are the eye-witnesses to the occurrence. All the other witnesses are official witnesses. P.W.5 Dr. Sinto Devsi has conducted the post-mortem examination on the dead-body of the deceased, P.W.6 S.I. Bhuwan Singh Rana, P.W.7 S.I. Deepa Joshi, are two police officers who were part of the investigation, and have also

participated in different aspects of investigation, like preparation of *panchnama* etc. P.W.8 Indrajeet Singh is the independent witness, and is also an injured. P.W.9 Dr. Anshuman Joshi has examined the P.W.8 Indrajeet Singh. P.W.10 S.O Sanjay Joshi, P.W.11 Subhash Singh, and P.W.12 Trilok Ram Bagreth are the Investigating Officers in this case. In addition to the examination of witnesses, the prosecution also relied upon 35 different documents as exhibits, and 12 material objects. Neither any witness has been examined, nor any document has been proved on behalf of the defence.

5. Taking into consideration the statement of eye-witnesses together with the medical evidence, and also the confession of the condemned prisoner under Section 313 of the Code, the learned Ist Additional District and Sessions Judge came to the conclusion that the prosecution has established its case under Sections 302 and 307 of the Penal Code against the condemned prisoner.

6. On the question of sentence, the learned Ist Additional District and Sessions Judge took into consideration different aggravating and mitigating circumstances, and relying upon the case of ***Vasanta Sampat Dupare vs. State of Maharashtra, Review Petition (Crl.) Nos.637-638 of 2015 in Criminal Appeal Nos.2486-2487 of 2014***, and in the case of ***Ramnaresh & others vs. State of Chhattisgarh, (2012) 4 SCC 257***, came to the conclusion

that mother occupies a place equivalent to God who has brought up her son, and there can be no alternate for the rearing of a child by his/her mother. Therefore, killing of mother will definitely have adverse effect on the society. Hence, she considered that this is the rarest of the rare case in which the condemned prisoner should be awarded death penalty along with the fine. She further held that under Section 307 of the Penal Code, the condemned prisoner should undergo rigorous imprisonment for life, and should be liable to pay the fine.

7. Mr. Arvind Vashisth, the learned *Amicus Curiae*, in the course of argument, would submit that in view of the fact that the condemned prisoner has admitted in his statement recorded under Section 313 of the Code that he has committed the murder of his mother, he does not want to argue on the findings of facts recorded by the learned Ist Additional District and Sessions Judge regarding the commission of crime. However, he would further argue that this is not a fit case for awarding death sentence to the appellant, as the case does not come within the four corners of the criteria in which the case can be said to be rarest of the rare case where all other options except the death penalty are unquestionably foreclosed. He would argue that imprisonment for life, and also fine, should have been

awarded. Hence, he would argue that the death reference be, accordingly, answered and the criminal appeal be disposed of.

8. Mr. J.S. Virk, the learned Deputy Advocate General appearing for the State, would argue that sub-section (4) of Section 313 of the Code provides that any statement made by the accused before the Court can be used as evidence, or material against him, and in this case, since the condemned prisoner has admitted that he has committed the offence, there is no reason to go into the fact of question. He, in fact, appreciated the fact that the learned *Amicus Curiae* arguing in this case, has conceded this question of fact. However, on the question of death penalty, though Mr. J.S. Virk, made a valiant attempt in defending the death sentence, we are of the opinion that he could not really support the infliction of death sentence in this case.

9. After analyzing the materials on record, we are of the opinion that it is not necessary to go into the detailed discussion of evidences on record. Suffice it to say that the prosecution witnesses and evidences led have supported the case of the prosecution, and the defence has failed to bring out any substantial and material contradictions in their evidences.

10. We have carefully examined the statement of the condemned prisoner recorded under Section 313 of the Code.

Question Nos.8, 9 and 10 were put to him regarding the statement of P.W.2 Bina Bisht. We find it appropriate to quote the exact words used in the questions and answers given by the condemned prisoner, which read as under:-

“प्रश्न- 8 अभियोजन साक्षी पी.डब्लू 2 बीना बिष्ट के साक्ष्य में आया है कि साक्षी आप अभियुक्त की पडोशी है। दिनांक 07.10.2019 को प्रातः 8:30 -9 :00 बजे पी.डब्लू 1 सोबन सिंह के घर में गुजर रही थी तो उसने देखा कि आप अपने घर के आँगन में हाथ में दराती लेकर अपनी माता जोमती देवी को अपने हाथ में लिए दराती से गर्दन में वार कर रहे थे और आप अभियुक्त एक हाथ से अपनी माता के सिर के बाल पकड़े थे, एक हाथ से दराती से गर्दन में वार कर रहे थे। इस सम्बन्ध में आपको क्या कहना है ?
उत्तर- मैंने अपनी माँ के बाल नहीं पकड़े थे।

प्रश्न- 9 अभियोजन साक्षी पी डब्लू-2 बीना बिष्ट के साक्ष्य में यह भी आया है कि साक्षी के चिल्लाने पर साक्षी की सास देवकी देवी व मृतका की बहु पी डब्लू-4 नैना कोरंगा भी मौके पर आ गए, तब भी आप डिगर सिंह अपनी माता के ऊपर वार कर रहे थे और वार करते-करते आपने अपनी माता का सिर धड़ से अलग कर दिया था, उसके उपरांत भी आप अपनी माता पर वार करते रहे। इस सम्बन्ध में आपको क्या कहना है ?

उत्तर- हाँ-हाँ, मैंने मारा। इन गवाहों ने ठीक कहा।

प्रश्न- 10 अभियोजन साक्षी पी डब्लू-2 बीना बिष्ट के साक्ष्य के दौरान आप अभियुक्त डिगर सिंह को न्यायालय में भी पंचना है और बताया कि आप उसके पडोशी है और आप अभियुक्त द्वारा ही साक्षी के सामने अपनी माता की हत्या कारित की। इस सम्बन्ध में आपको क्या कहना है ?

उत्तर- ठीक कहा।”

11. In Question Nos.11, 12 and 13, the condemned prisoner was asked about the assault made by him on the deceased, as deposed by P.W.3 Devika Devi, and P.W.4 Naina Koranga and he admitted to have done so. As it is repetition of the earlier questions, we are of the opinion that there is no

need to quote the same. Thus, there are evidences in the shape of eye-witnesses, which is duly supported by the attending circumstances, like verification of the sport, medical report, and SFSL reports. There is an admission on the part of the condemned prisoner that the witnesses are telling the truth. In fact, he has admitted in response to Question No.9 that he has committed the murder of his mother.

12. Sub-Section (4) of Section 313 of the Code reads as under:-

"(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed".

13. In this connection, the Hon'ble Supreme Court, in the case of ***Dharnidhar vs. State of Uttar Pradesh & others*** along with other appeal, **(2010) 7 SCC 759**, has held that the statement made by the condemned prisoner under Section 313 of the Code can be made the sole basis of conviction in a criminal case. We find it appropriate to take note of the exact words used by the Hon'ble Supreme Court, which read as under:-

*"32. Following the law laid down in **Narain Singh vs. State of Punjab, (1963) 3 SCR 678**, the Apex Court in **State of Maharashtra vs. Sukhdev Singh, (1992) 3 SCC 700**, further dealt with the question whether a statement recorded under Section 313 CrPC*

can constitute the sole basis for conviction and recorded a finding that the answers given by the accused in response to his examination under Section 313 CrPC of 1973 can be taken into consideration in such an inquiry or trial though such a statement strictly is not evidence and observed in Para 52 thus: [**Sukhdev Singh (supra)**]

"52. Even on first principle we see no reason why the court could not act on the admission or confession made by the accused in the course of the trial or in his statement recorded under Section 313 of the Code."

It is thus well established in law that admission or confession of the accused in the statement under Section 313 CrPC recorded in the course of trial can be acted upon and the court can rely on these confessions to proceed to convict him".

14. Thus, it is clear that the concession made by the learned *Amicus Curiae* is of substance, and we are satisfied from the evidence recorded, both oral and supporting evidence, and the confession made by the appellant in the course of his examination under Section 313 of the Code, that the learned Ist Additional District & Sessions Judge has not committed any error on record in convicting the appellant under Section 302 of the Penal Code.

15. As far as the evidence on record in the convicting the appellant under Section 307 of the Penal Code is concerned that he has admitted that in response to Question No.14 that he assaulted the villagers, but did not assault any of the police officials. So, this Court is of the opinion that the

conviction of the condemned prisoner under Sections 302 and 307 of the Penal Code requires interference.

16. Then, we have to consider the alternate submission of the learned *Amicus Curiae*, who has stated that this is not a fit case to award death sentence.

17. This issue has extensively been dealt by a three Judge Bench of the Hon'ble Supreme Court in the case of ***Machhi Singh & others vs. State of Punjab, (1983) 3 SCC 470***. At Paragraph Nos.38 and 39, the Hon'ble Supreme Court, by following the Constitution Bench Judge of the Hon'ble Supreme Court in the case of ***Bachan Singh vs. State of Punjab, (1980) 2 SCC 684***, have observed as follows:-

*"38. In this background the guidelines indicated in **Bachan Singh's** case will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentences arises. The following propositions emerge from **Bachan Singh's** case:*

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

18. At Paragraph No.39, the Hon'ble Supreme Court has further held that in applying the guidelines stated above, the Court must put to itself the question whether there is something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence; and, whether in the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender.

19. While deciding whether the crime is uncommon, the Court has to keep in mind that such a crime has generally not taken place in the area, or that the crime that has been committed has shaken the basic fabric of the society. It should also adversely affect the conscience of the Court so that it has no other option, but to award the death sentence.

20. In this case, though the learned Ist Additional District & Sessions Judge has taken into consideration the enumerated mitigating and aggravating circumstances, she has not actually dealt with two questions that have to be put to itself and answered as described at Paragraph No.39 in the case of ***Machhi Singh*** (*supra*).

21. We are also taking into consideration the case of ***Absar Alam @Afsar Alam vs. State of Bihar, (2012) 2 SCC 728***, wherein the Hon'ble Supreme Court has considered whether the appellant beheading of his own mother is not a rarest of the rare case in which death penalty should be imposed because offence has been committed by the appellant in a fit of passion and not after pre-meditation.

22. In this case, we find that the FIR itself shows that there is some quarrel between the condemned prisoner and the deceased. So it cannot be said that the condemned prisoner had deliberately, with pre-meditation, committed the crime. Hence, the ratio decided by the Hon'ble Supreme

Court in the case of **Afsar Alam** (*supra*), is quite squarely covered the case in hand.

23. Furthermore, we see from the records that there is no criminal antecedent against the condemned prisoner. There is no report from the Jail Superintendent that he mis-conducted himself while being incarcerated. It is also seen that he has fairly confessed before the Court in his statement recorded under Section 313 of the Code that he has committed the murder of his mother. So, in our opinion, the penalty of death is not appropriate for this case, and it cannot be held to be rarest of the rare case, in which all other options are unquestionably foreclosed. Moreover, death penalty is awarded only when the Court comes to the conclusion that the condemned prisoner cannot be let back into the society because of the apprehension that his further living will be a danger of the society, and that his re-assimilation in the society would be dangerous to all the people, who come in contact with him. In this case, there is no such finding of the learned Ist Additional District & Sessions Judge.

24. Hence, we are of the opinion that the appeal should succeed in-part. In that view of the matter, the criminal appeal is, hereby, allowed in-part. The conviction of the condemned prisoner under Sections 302 and 307 is, hereby, confirmed. But, we are inclined to modify the sentence for the

offence under Sections 302 and 307 of the Penal Code. The appellant is directed to undergo imprisonment for life under Section 302 of the Penal Code and to pay a fine of Rs.25,000/- and in default of payment of fine, to undergo rigorous imprisonment for one year. For the offence under Section 307 of the Penal Code, the appellant is directed undergo rigorous imprisonment for a period of ten years, and to pay a fine of Rs.10,000/-, and in default of payment of fine, to undergo six months' additional imprisonment.

25. The Criminal Appeal is, accordingly, allowed in-part, and the Criminal Reference is, answered, accordingly.

26. We express our appreciation for the efforts put in by Mr. Arvind Vashisth, learned Senior Advocate in this case appearing as *Amicus Curiae* for the condemned prisoner, as he has rendered valuable assistance, *pro bono*, to us in disposing of the criminal appeal and criminal reference.

27. Let a copy of this judgment along with TCRs be sent back to the trial court for forthwith.

(S.K. MISHRA, A.C.J.)

(N.S. DHANIK, J.)

Dated: 19TH May, 2022

NISHANT