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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS.2452-2453 OF 2010

Om Nath

.....Appellant

Versus

State of U.P.

.....Respondent

With

CRIMINAL APPEAL NOS.2383-2384 OF 2010

O R D E R

CRIMINAL APPEAL NOS.2452-2453 OF 2010

The appellant being aggrieved by his conviction for offence under sections 302 and 307 of the Indian Penal Code (for short the 'IPC') and sentence of death under section 302 IPC, is before us with the leave of the Court.

The appellant and PW-1 Lokesh happen to be brothers and according to the prosecution, they had some disputes in relation to the payment for use of tubewell. It has been alleged that on 09.04.2006 at about 07.30 hours, the appellant killed his brother's wife Pravesh and their two sons Sonu and Akshay alias Monu. Rakesh who happens to be the brother of the deceased Pravesh lodged the Report and on that basis, the appellant, his wife and their two daughters were ultimately chargesheeted and put on trial. The trial court acquitted the appellant's wife and his daughters but held the appellant guilty of offence under section 302 IPC and inflicted the sentence of death. The appellant was also found guilty of offence under section 307 IPC. However, all other accused were acquitted of the charges.

The trial court made reference to the High Court for confirmation of the death sentence whereas the appellant aggrieved by his conviction preferred appeal. The State of Uttar Pradesh aggrieved by the acquittal of other accused persons also preferred appeal. The informant Rakesh preferred revision application aggrieved by the acquittal of the other accused persons. All the appeals, reference and the revision were heard together and have been disposed of by the

common judgment. The High Court had confirmed the death sentence and dismissed the appeal preferred by the appellant whereas the appeal and revision against the acquittal have been dismissed.

The trial court and the appellate court had relied on the evidence of PW-1 Lokesh and PW-2 Rakesh primarily to hold the appellant guilty. PW-1 Lokesh has sustained injuries in the incident and the claim of PW-2 Rakesh also to be the eyewitness of the occurrence, have been accepted by both the courts below.

Mr. A.T.M. Ranga Ramanujam, learned Senior Counsel appears on behalf of the appellant and has not pointed out any error so far as the conviction of the appellant under sections 302 and 307 IPC is concerned, but he submits that in the facts and circumstances of the case, the appellant ought not to have been visited with extreme penalty of death. He submits that the case in hand does not come in the category of the 'rarest of rare cases'.

Mr. Pramod Swarup, learned Senior Counsel appearing on behalf of the respondent submits that the very fact that the appellant has killed his brother's wife Pravesh and their two sons itself justified the penalty of death. The trial court while inflicting the death sentence has observed as follows :

"I have perused the file and heard the Ld. counsel for the parties. I have reached to the conclusion that the accused Om Nath seriously injured his younger brother Lokesh by way of firing on him and shot dead his wife Parvesh Kumari and his son Akshya @ Monu, aged 19 years and his son Sonu age 12 years. In this way the accused Om Nath due to enmity brutally attempted to wipe out the family of his brother but somehow the injured Lokesh survived. In my opinion there is no special circumstances in the crime committed by accused Om Nath that it is not termed as the rarest of rare cases and the accused Om Nath be given the serious sentence and there is no reason to have a lenient approach."

The High Court has answered this question in the following words

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"We have already held that the appellant is guilty of 302 PC. We have no reason to doubt that shots fired by the appellant also hit the deceased. He was also responsible for their deaths. Even if it is taken that shots fired by the appellant did not result into death of the deceased; it does not matter; the facts are such.

The appellant was head of the family. He was the elder brother. It was his duty to see fair share was given to the younger brother. He instead of holding the family together, spread hatred. He instead of paying Rs.35,000/- that he was supposed to pay, tried to eliminate the family of the younger brother.

The entire family of younger brother has been killed and the younger brother was lucky to survive but is left to live a lonely and crippled life.

In our opinion, the reference should be accepted."

It is well settled that brutality of the crime and its heinousness do not bring the case in the category of the 'rarest of rare cases'. While inflicting the death sentence the court has to believe that the accused cannot be reformed or rehabilitated, that he is likely to continue with the criminal acts of violence and would continue to be a threat to the society. We have extracted reasons given by the trial court as well as the High Court and we find that they have lost sight of these important considerations. We are of the opinion that the case in hand does not come within the category of the 'rarest of rare cases' and as such the death penalty inflicted on the appellant is fit to be set aside.

Accordingly, while we maintain the conviction of the appellant under section 302 IPC, we commute the sentence of death to imprisonment for life. We make it clear that the life sentence would mean entire life subject to any remission granted by the appropriate Government in accordance with law.

Further, we also maintain the appellant's conviction and sentence under section 307 IPC.

In the result, these appeals are partly allowed with the aforesaid modification in the sentence.

CRIMINAL APPEAL NOS.2383-2384 OF 2010

Since these appeals have been preferred by the same appellant (Om Nath), the order passed in Criminal Appeal Nos.2452-2453/2010 shall govern these appeals as well.

Accordingly, the appeals are partly allowed with the modification as indicated in Criminal Appeal Nos.2452-2453/2010.

.....J
[Chandramauli Kr. Prasad]

.....J
[Fakkir Mohamed Ibrahim Kalifulla]

New Delhi;
February 13, 2013.

ITEM NO.101

COURT NO.12

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NOS.2452-2453 OF 2010

OM NATH Appellant (s)

VERSUS

SATE OF U.P. Respondent(s)

(With appln(s) for exemption from filing O.T. and office report)

WITH CRIMINAL APPEAL NOS.2383-2384 of 2010

(With Appn.(s) for stay of execution of sentence of death)

Date: 13/02/2013 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Appellant(s) Mr. A.T.M. Ranga Ramanujum, Sr. Adv.
Mr. K. Vijay, Adv.
Mr. K. Rajeev, Adv.

Mr. Brij Bhushan, (A.C.)
Mr. Fazal Ahmad, Adv.
Ms. Neelam Saini, Adv.

For Respondent(s) Mr. Pramod Swarup, Sr. Adv.
Mr. Atif, Adv.
Ms. Pareena Swarup, Adv.
Mr. Ameet Singh, Adv.
Mr. Kamlendra Mishra, Adv.

UPON hearing counsel the Court made the following
O R D E R

These appeals are partly allowed in terms of the signed order.

| (Sanjay Kumar) Court Master | (Indu Satija) |
| | Court Master | |

(Signed Order is placed on the file)