

(2016) 03 SC CK 0034

In the Supreme Court Of India

Case No : Review Petition (Crl.) Nos. 201 of 2016 (D. No. 14086 of 2011) in Criminal Appeal No. 127-130 of 2008

C. Muniappan and others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 354, 366, 368
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) ALLMRCri 2685 : (2016) 2 CriCC 732 : (2017) CriLJ 1100 : (2016) 3 LawHerald 2091 : (2016) 2 LawHeraldSC 1567 : (2016) 2 RCRCriminal 823 : (2016) 3 RecentApexJudgments(RAJ) 52 : (2016) 3 Scale 406 : (2016) 12 SCC 325

Hon'ble Judges : Ranjan Gogoi;Arun Mishra;Prafulla C. Pant, JJ.

Bench : Full Bench

Advocate : M. Yogesh Kanna and Jayant Patel, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. This open court hearing of the present review petitions is pursuant to the order of the Constitution Bench of this Court in the case of Mohd. Arif alias Ashfaq v. Registrar, Supreme Court of India and others reported in (2014) 9 SCC 737.

2. We have heard Shri L. Nageswara Rao and Shri Sushil Kumar, learned Senior Counsels appearing for the accused review petitioners who have been sentenced to death following their conviction under Section 302 IPC. We have also heard Shri M. Yogesh Kanna, learned counsel for the State of Tamil Nadu.

3. The arguments on behalf of the review petitioners have been confined to the question of sentence only. It has been submitted that having regard to the facts and circumstances borne out by the evidence on record, the judgment under review overlooks certain vital facts and circumstances that ought to have been considered while deciding on the sentence awarded. It is therefore submitted

that the sentence imposed on the accused - review petitioners be modified and the sentence of death awarded be commuted to one of life imprisonment.

4. To determine the question at issue a brief narration of the relevant facts would be required.

On 22nd January, 2000, students of the Horticulture College and Research Centre, Periakulam, affiliated to the Tamil Nadu Agricultural University, Coimbatore had set out on an educational tour in two buses carrying male and female students separately. The students apparently had an outing on 1st February, 2000 and on the next day i.e. 2nd February, 2000 at about 12.30 p.m. their buses had been parked in front of the Saravanabhavan Hotel where they had their meals. At about this point of time there appears to have been some kind of a mob fury by the party workers of the AIADMK Party who armed with sticks and stones were causing damage to public property. The mob fury was on account of the conviction and sentence awarded to Ms. J. Jayalalitha, who was then the Chief Minister of the Tamil Nadu, in a criminal case. Fearing for safety, the bus driver carrying the girl students parked the bus at a vacant place near an old petrol bunk. The review petitioners i.e. Nedu @ Nedunchezian (Accused No.2), Madhu @ Ravindran (Accused No.3) and C. Muniappan (Accused No.4) who were a part of the mob went to the motor workshop of one B. Kamal (P.W.86), namely, "Majestic Auto Garage" and procured petrol in two plastic canes. It appears that while Nedu @ Nedunchezian (Accused No.2) and Madhu @ Ravindran (Accused No.3) sprinkled petrol inside the bus through the first two shutters on the left side, Nedu @ Nedunchezian (Accused No.2) lit a matchstick and threw it inside the bus. Both Nedu @ Nedunchezian (Accused No.2) and Madhu @ Ravindran (Accused No.3) thereafter went towards a motor bike which was kept ready for running by C. Muniappan (Accused No.4) and together the three of them fled from the scene. The aforesaid facts have been found to be conclusively proved by the evidence and materials on record by the learned trial court as well as by the High Court. Affirming the said findings, a two Judge Bench of this Court, by the judgment dated 30th August, 2010, had thought it proper to award the death sentence on the review petitioners for causing death to three young girl students who were inside the bus. It may be mentioned, at this stage, that in the incident that had occurred many other girl students, though had managed to come out of the bus, had sustained burn injuries and had also sustained other injuries.

5. The learned Senior Counsels for the review petitioners [Nedu @ Nedunchezian (Accused No. 2), Madhu @ Ravindran (Accused No.3) and C. Muniappan (Accused No.4)] have drawn the attention of the Court to the consideration bestowed by the bench hearing the appeal to the principles laid down in *Bachan Singh v. State of Punjab* [(1980) 2 SCC 684 = AIR 1980 SC 898] so far as the aggravating and mitigating circumstances and the requirement of balancing of both is concerned. In paragraph 72 of the judgment under review, the guidelines on death penalty sentenced laid down in *Bachan Singh* (supra) has

been dealt with as follows :

"72. The guidelines laid down by this Court for awarding death sentence in *Bachan Singh v. State of Punjab*, AIR 1980 SC 898, may be culled out as under:

- (a) The extreme penalty of death may be inflicted in gravest cases of extreme culpability;
- (b) While imposing death sentence the circumstances of the offender also require to be taken into consideration along with the circumstances of the crime;
- (c) Death sentence be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime; and
- (d) Extreme penalty can be imposed after striking the balance between aggravating and mitigating circumstances found in the case.

Aggravating circumstances include:

- (a) If the murder has been committed after previous planning and involves extreme brutality; or
- (b) If the murder involves exceptional depravity.

Mitigating circumstances include:

- (a) That the offence was committed under the influence of extreme mental or emotional disturbance;
- (b) The age of the accused. If the accused is young or old, he shall not be sentenced to death;
- (c) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society;
- (d) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (c) and (d) above;
- (e) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence;
- (f) That the accused acted under the duress or domination of another person; and
- (g) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

6. Proceeding further, the learned Senior Counsels for the review petitioners have relied on several pronouncements of this Court to show that it has been the consistent view of this Court that acts committed in the course of a mob violence would not be sufficient to attract the principle of "rarest of rare case" so as to

justify the death penalty. Reference in this regard has been illustratively made to the decisions of this Court in *Kishori v. State of Delhi* [(1999) 1 SCC 148], *Manohar Lal alias Mannu and another v. State (NCT) of Delhi* [(2000) 2 SCC 92], *Lokeman Shah and another v. State of W.B.* [(2001) 5 SCC 235]. It is urged that the aforesaid principle does not find due consideration in the judgment under review while awarding the death penalty.

7. Learned counsels appearing for the review petitioners have also pointed out that one relevant circumstance that was required to be noticed while considering the question of imposition of death penalty, as held in *Bachan Singh (supra)*, is the possibility of the accused being reformed and rehabilitated. The aforesaid principle has been reiterated by this Court in two of its recent pronouncements, namely, *Birju v. State of Madhya Pradesh* [(2014) 3 SCC 421] and *Anil @ Anthony Arikswamy Joseph v. State of Maharashtra* [(2014) 4 SCC 69]. No such consideration is discernible in the judgment of this Court review of which has been sought.

8. The learned counsels for the review petitioners have also drawn the attention of this Court to a finding recorded in the judgment under review with regard to the offence having been committed after previous planning which, however, stands contradicted by the subsequent findings that the acts attributed to the accused were totally unprovoked. All the above vital facts have not been considered while awarding the extreme penalty in the present case.

9. Shri M. Yogesh Kanna, learned State Counsel, in reply, has submitted that the manner of commission of the offence, proved against the accused - review petitioners, is extremely brutal, diabolical and gruesome. However, as the arguments on behalf of the review petitioners are only with regard to the sentence imposed, learned State counsel has submitted that the matter is left for just consideration by the Court.

10. We have considered the matter in its entirety. We have taken note of the views expressed by this Court in the decisions referred to earlier. We have noticed that the acts attributed to the accused/review petitioners leading to the death of the three innocent girl students of the University were committed in the course of a mob frenzy which started with destruction of public property. The intent of the mob including the accused review petitioners, all along, was to cause damage to public property in order to show their resentment and protest against the conviction of the political leader in question. The victims were unknown persons; there was no premeditation or planning and all that had occurred had so occurred in the flash of a moment. Keeping in mind the totality of the circumstances narrated above, which does not appear to have received due consideration in the judgment under review, we deem it proper to take the view that the present is not a fit case for awarding the extreme punishment. Rather, the ends of justice would be met by imposing the punishment of life imprisonment. We accordingly review the order dated 30th August, 2010 and commute the sentence of death to one of life imprisonment for each of the

review petitioners [Nedu @ Nedunchezian (Accused No. 2), Madhu @ Ravindran (Accused No.3) and C. Muniappan (Accused No.4)].

11. The review petitions consequently are allowed to the extent indicated above.