
(1988) 04 GAU CK 0003
In the Gauhati High Court
Case No : Criminal Appeal No. 88 (J) of 1987

Rengta Majhi

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 25-04-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 354(3), 377, 386, 397, 401
Penal Code, 1860 (IPC) — Section 302

Citation : (1988) 1 GLR 481

Hon'ble Judges : B.L. Hansaria, Acting C.J.; J. Sangma, J

Bench : Division Bench

Advocate : J. Singh and H.A. Sarkar, for Amicus Curiae, for the Appellant; P.K. Goswami, General and K. Deka, Public Prosecutor, for the Respondent

Judgement

B.L. Hansaria, Actg. C.J.

1. When should a High Court issue Rule for enhancement of sentence suo motu? is the question which needs our determination. This question has arisen because it has been noticed that the present appeal concerns a convict found guilty u/s 302 IPC for having caused "most brutal and dastardly" murder of five persons belonging to a family. The learned Sessions Judge having found the Appellant guilty for annihilating the whole family of Rupsai, sentenced the Appellant to imprisonment for life; of course, after applying his due mind to the question whether the convict deserved the extreme penalty of death as the punishment for the offence committed by him.

2. When the appeal came up before us for hearing on 18.3.88, we had posed a question as to whether Rule for enhancement of the sentence should be issued or not by this Court suo motu. We felt that before such a Rule is issued we should give due consideration to the question as to when this Court would be justified in issuing a Rule of enhancement in a case where the accused by virtue of the issuance of the Rule may become liable to be sentenced to death also. In view of the importance of the subject matter, we directed issuance of notice to

the learned Advocate General to appear and assist the Court in deciding the aforesaid question. We thereafter heard the learned Advocate General as well as Mr. Singh who had been appointed as amicus curiae on behalf of the Appellant as he had not been in a position to arrange for his own (sic).

3. The learned Advocate General brought to our notice that Section 439(1) of the Code of Criminal Procedure, 1898, thereafter "the old Code", had given a specific power of enhancing the sentence in a case which had been called for by the High Court itself. This provision was understood to give power to this Court to issue Rule suo motu for enhancement of sentence. Though such a power has not been conferred by Section 401 of the Code of Criminal Procedure, 1973, hereinafter "the new Code", which Section is parallel to Section 439 of the old Code, it was submitted by the learned Advocate General that the power of issuing Rule for enhancements suo motu has not been done away with by the new Code inasmuch as u/s 397 of the new Code this Court can examine the question of propriety of sentence also. Our attention was invited that this Court while examining a case in its revisional capacity can exercise power conferred, inter alia, by Section 386 of the new Code, whereunder this Court while hearing an appeal or enhancement of sentence can with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same as provided in Clause (c)(iii). It was submitted that the power conferred on Central Government or State Government by Section 377 of the new Code to file appeal against sentence has not taken away the power of the High Court to issue a Rule suo motu for enhancement of sentence.

In this connection we have noted two decisions of the Apex Court: (1) Nadir Khan Vs. The State (Delhi Administration), and (2) Eknath Shankarrao Mukkawar Vs. State of Maharashtra, In para 4 of Nadir Khan it was observed by Goswami, J. as below:

...It is true, the new Code has expressly given a right to the State u/s 377 Code of Criminal Procedure to appeal against inadequacy of sentence which was not there under the old Code. That however does not exclude revisional jurisdiction of the High Court to act suo motu for enhancement of sentence in appropriate cases. What is an appropriate case has to be left to the discretion of the High Court....

It had been pointed out earlier in this para that this power which was regarded in the nature of "remedial action" on the part of the High Court should be exercised even though the State might be slow or silent in preferring an appeal provided for under the new Code.

4. In para 6 of Eknath, the Court speaking through Goswami, J. stated:

We should at once remove the misgiving that the new Code of Criminal Procedure, 1973, has abolished the High Court's power of enhancement of sentence by exercising revisional jurisdiction, suo motu. The provision for appeal against inadequacy of sentence by the State Government or the Central

Government does not lead to such a conclusion. High Court's power of enhancement of sentence, in an appropriate case, by exercising suo motu power of revision is still extant u/s 397 read with Section 401 Code of Criminal Procedure, 1973, inasmuch as the High Court can "by itself" call for the record of proceedings of any inferior criminal court under its jurisdiction. The provision of Section 401(4) is a bar to a party, who does not appeal, when appeal lies, but applies in revision. Such a legal bar u/s 401(4) does not stand in the way of the High Court's exercise of power of revision suo motu, which continues as before in the new Code.

There is thus nothing to doubt about the existence of the power of this Court in issuing a Rule of enhancement of sentence suo motu. This position has not been disputed, and rightly, by Shri Singh. The important question is under what circumstances the Court should exercise this power. It seems it is difficult to lay down precisely as to when this power should be exercised. There however, seems to be no doubt that if a case be of public importance e.g. "the familiar cases of food adulteration" of which mention was made by Goswami, J. in *Nadir Khan*, this Court would be justified to act suo motu if it is found even on perusal of newspaper records that grossly inadequate sentence has been awarded. What would happen or what view should be taken by this Court when a case is not really of public importance but is a result of some personal grudge etc. is the question with which we are concerned in this present appeal. The learned Advocate General submitted that non preferring of appeal by the State Government against the sentence awarded is one of the circumstances which may weigh with the Court is not exercising the aforesaid power and in this connection he referred to *Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd.*, in para 6 of which it was observed that the Session Judge did not treat this as a fit case for awarding the maximum penalty under the law and that no steps were taken by the State Government before the High Court for enhancement (sic) the sentence". May it be stated that this case was one of (sic) burning for dowry. The observation made in para 6 (sic) however, be read to mean, according to us, that if State Government does not prefer appeal for enhancement of the sentence, this Court should not exercise the power of issuing Rule for enhancement suo motu. Indeed what has been stated in para 4 of *Nadir Khan* would clearly show that the silence of the State in preferring appeal against the sentence would be no ground to refuse to exercise the power in question if the case really demands the same.

5. We would, however, agree with Shri Singh that the power has to be exercised sparingly and with great restraint. We have also to bear in mind in this connection that while confronted with the question of issuing a Rule for enhancement in a case u/s 302, which would make the convict liable to be sentenced even for death, the power has to be used every sparingly, inter alia, because the normal punishment for murder is to be taken as imprisonment for life in view of what has been stated in Section 354(3) of the new Code as much as it requires special reasons to be given where the convict is awarded death

sentence.

6. We would think that before issuing a Rule of enhancement in a case u/s 302 a High Court has prima facie to be satisfied that:

- i) manner of commission of murder,
- ii) motive for commission of murder,
- iii) anti-social or socially abhorrent nature of the crime,
- iv) magnitude of crime, or
- v) personality of victim of murder,

about which mention has been made in *Machhi Singh and Others Vs. State of Punjab*, demands a sentence of death. Without such a satisfaction, which, of course, has to be prima facie, a Rule for enhancement ought not to be issued inasmuch as the issuance of the Rule itself has a telling effect on the convict who sees the sword of Damocles hanging over his head day in and day out. If in a case, which falls within the foresaid category, the trial Court without applying its mind to the aforesaid aspects mechanically sentences the accused to imprisonment for life, we are in no doubt that the High Court would be justified in issuing a Rule of enhancement. The question, however, is if the trial Court has applied its mind to the question of sentence and while deciding the same has looked into the relevant considerations and thereafter refrained from awarding that sentence whether the High Court should issue a Rule for enhancement and, if so, whether it should do so on being further satisfied that the reasons given for not awarding the death sentence are not convincing and cogent. We are of the view that it would be in fitness of things if before ordering the issue of Rule of enhancement in the case of the present nature where the convict becomes liable even to sentence of death, the High Court should look into the reasons given by the trial Court and satisfy itself whether the same are cogent, and convincing, If the reason be not cogent, there should be no hesitation in issuing Rule, if a case for the same he otherwise made out. Even if some relevant reasons are given, the High Court may in a given case which is so shocking to the conscience as to be ignored, feel the necessity of having a second look into the question of sentence. We would, however, like to state that whether ultimately white disposing of the appeal filed by the convict the High Court would in fact like to award the sentence of death ought not to be the relevant consideration while issuing a Rule of enhancement. Though in the written note submitted by Shri Singh, who also rendered valuable assistance to us in trying to answer the question posed above, it has been stated that the High Court should be solve in disturbing the sentence when two reasonable conclusions can be reached on the basis of the materials on record, we do not think if this consideration should weigh while deciding the question of issuing a Rule of enhancement.

7. The above analysis leads us to say as below on the question under examination:

- i) The power of issuing Rule for enhancement suo motu exists even under the new Code.
- ii) The power is however to be exercised sparingly and with great restraint.
- iii) This power ought to be exercised on reaching a prima facie satisfaction that the case demands enhancement of sentence.
- iv) In arriving at the aforesaid satisfaction, the reasons given by the trial Court, if any, in awarding the sentence as imposed by it should also be borne in mind.
- v) Non-preferring of appeal by the Central or the State Government against the sentence awarded may not be a good ground to refuse to issue Rule of enhancement, if the Court is otherwise satisfied about the need to issue the Rule.
- vi) Whether ultimately the High Court would award the enhanced sentence ought not to be a relevant consideration while issuing Rule of enhancement.
- vii) Extreme caution has to be exercised in issuing a Rule of enhancement in a case which makes the convict liable to be punished to death.

8. Coming to the facts of the present case, what we find that, if the allegation of the prosecution be correct, the accused had not only killed Rupsai who was supposed to have accused the death of mother and brother of the accused long (sic) back by applying magic and driven away the father of the accused from home also by applying magic, as stated in the confessional statement of the accused, but had done to death his wife Gulapi (50), daughters Sukura (12) and Bandbana (6), and his son Fagu (22). The magnitude of the crime is thus writ large on the face of what had happened on 27.10.84. The autopsy reveals that the murders were committed in a brutal manner inasmuch as the accused had either completely severed the neck or had given forceful blow with dao on the head of the deceased. The victims of the crime were innocent member of the family of Rupsai including two helpless children. The murder was pre planned and was committed in cold blood. The above factors do make out a prima facie case for awarding of sentence of death.

9. The further question is whether the reasons recorded by the learned trial Court for not awarding death sentence are good and cogent. In this connection, we would only like to observe that though some of the reasons given by the learned Sessions Judge: (1) young age (22) of the convict; (2) the dependence of the family on him; (3) lack of any past criminal record, are quite cogent; but some others (1) confession before the Manager of the garden and before the Judicial Magistrate subsequently retracted, because of which the learned Sessions Judge stated that the accused threw himself at the mercy of the criminal justice system, (2) the accused is an illiterate tea garden labour, (3) commission of the crime due to the mistaken belief that Rupsai had caused the death of his mother and brother by practising sorcery and had also driven away his father from home, may not really be regarded as mitigating circumstances. In any case, a second look at the matter is called for because of the shocking

nature of the case-eliminating the entire family of Rupsai by committing five brutal murders, including some innocent persons and helpless children in cold blood after pre-planning.

10. For the reasons aforesaid we would order for issuance of Rule of enhancement of sentence making it returnable within 3 weeks. We do realise that we are ordering to issue Rule for enhancement though the accused had come to us seeking relief against his conviction for which he was sentenced to imprisonment for life; but having known about the aforesaid features of the case, we have felt constrained to order to issue Rule of enhancement.

11. Shri Singh prayed that in case Rule was to be issued he might be given opportunity to receive instructions from the Appellant. This prayer is allowed. Shri Singh would be given all opportunity by the Superintendent of District Jail, Dibrugarh, where the Appellant is confined to receive all instructions from the Appellant. The expenditure incurred by Shri Singh in connection with his tourney to and from Dibrugarh for this purpose shall be borne by the High Court Legal Aid Committee.

12. The case would be placed for hearing before a Bench without both of us very soon after the returnable date making it first item subject to part heard. We have passed this order keeping in view one of the points mentioned in the written submission of Shri Singh that this is required for the reason that "justice should not only be done but should seem to have been done". What the learned Counsel sought to say was that the convict might not feel that his case is being heard by a prejudged mind insofar as sentence is concerned. We make it also clear that the observations made by us relating to establishment of a prima facie case for awarding death sentence, or about some reasons given by the learned Sessions Judge not really constituting mitigating circumstances should not in any way influence the mind of the learned Judges who would be hearing the appeal in future insofar as the question of sentence is concerned.