

(1980) 12 BOM CK 0029

In the Bombay High Court

Case No : Confirmation Case No. 3 of 1980 with Criminal Appeal No. 708 of 1980

State of Maharashtra

APPELLANT

Vs

Manohar Kashinath Ghodake

RESPONDENT

Date of Decision : 19-12-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 432
Penal Code, 1860 (IPC) — Section 149, 302, 303, 307, 326

Citation : (1982) 84 BOMLR 29

Hon'ble Judges : Sawant, J;Mehta, J

Bench : Division Bench

Judgement

Sawant, J.—His Lordship after dealing with the merits of the case proceeded]. That takes us to the question of proper sentence to" be imposed on the accused. The sentences for the offences u/s 307 read with Section 34 of the Indian Penal Code and Section 326 read with Section 34 of the Indian Penal Code cannot in the circumstances be said to be either severe or improper. Nor did Shri Mistry make a grievance about them. Hence it is not necessary to reconsider them. However, since almost all the arguments advanced by the learned Counsel were directed against the ultimate penalty imposed on the accused for the offence u/s 302 read with Section 34 of the Indian Penal Code for causing the death of Bhiwa, we gave our anxious consideration to the same. The learned Judge in support of the ultimate penalty has given his reasons. According to him, the accused along with Baban who were charged for the offence of murder of Gajendra and for mutilating Shiva, were absconding, at the relevant time. They were so absconding with the object of doing away with Shiva who was a material witness to the said incident. The object was also to kill or mutilate as many brothers of Shiva as possible. The learned Judge has also taken further into consideration the fact that the victims of the case viz. Balkrishna and Krishna Pawar were unarmed and Bhiwa came to be armed only when he managed to snatch the sword from Baban for the protection of his own life. There was no provocation from the side of the victims and the witnesses, and on the other

hand Baban and the accused had come armed with deadly weapons in broad daylight with the avowed object of injuring Shiva and his brothers. They were reckless and unmindful of any consequence and showed scant regard for law and life. They had also adopted inhuman and brutal methods of dismembering and killing the victims. If Baban and Atmaram had not been disarmed and controlled, it would be anybody's guess as to how many more persons would have lost their lives and/or limbs. The whole conduct of the accused and Baban showed callousness and cruelty. According to the learned Judge further there was no room for morbid pity on account of the youth of the accused. He also felt that there was no redeeming feature in the case to show any leniency in the sentence.

2. We have no doubt in our mind that the present case is an unusual one and requires an exemplary punishment. The unusual features of the case flow from the fact that these accused and the deceased Baban were required in a trial for the murder of Gajendra and for amputation of limbs of Shiva in an earlier incident between the same parties. The said offences were committed almost in broad-daylight and within the view of all and with the callousness and audacity which showed scant respect for law and life. After committing the said heinous crime, Baban and the two accused were absconding from September 9, 1979 till December 13, 1979 i.e. the day of the fateful incident in the present case. During this period instead of being repentant for what they had done, they were terrorising the brothers of the victims Gajendra and Shiva and also the prosecution witnesses for the said incident, the declared object of which was to destroy the prosecution evidence including Shiva and also to wipe out the other brothers of Shiva and Gajendra, It is with this object and no other, that they appeared on the scene at an opportune hour when the members of the armed constabulary were away and the unarmed witnesses were doing their work of guarding Shiva's life. When this un-armed gathering was in its unguarded moment, the three culprits came on the scene armed with lethal weapons - two swords with blades of 46 inches each and a battle axe. The time and the manner of attack shows that there was a good deal of cold-blooded planning and preparation beforehand. After descending on the scene, they commenced their attack all of a sudden with sword blows on a sleeping man and gave him near fatal blows on the leg, the right thigh, the left thigh and the fore-head. They then tried to rush at others equally ferociously. As stated earlier, were it not for some saving graces viz. the accidents such as that of Godse snatching the axe from the hands of Atmaram Krishna Pawar and thereafter Godse holding Baban, and Bhiwa snatching away the sword from Baban, there would have been more injured and dead. Further, the fact that accused No. 2 ran away after he was disarmed does not lessen the gravity of his offence a whit because he had avowedly come for the purpose of causing fatal injuries to the victims and others and would have, true to what he had done in the past, also indulged in the same horrendous assaults in which indeed his other companions did indulge. We have also to bear in mind that the present offence of murder was committed by the accused while they were needed for the earlier offence of murder. Although

technically they will not be covered by Section 303 of the Indian Penal Code for which offence death is the only penalty, the substantial nature of the offence is the same. Not only therefore there is no redeeming feature in the case but all the circumstances on record go to aggravate the nature of -the offence pointing out that a sentence of mere life imprisonment will not meet the ends of justice.

3. We are however of the view that the ultimate penalty is not necessarily the only appropriate sentence in such cases. Gallows may avenge the dead. They may also permanently remove from the scene desperadoes such as the accused who indulge in crimes out of vendetta or rivalry. However, they do not necessarily benefit the society in general in the long run. Rivalries are not suppressed, and vendettas perpetuate themselves from generation to generation. More often than not they are counter-productive. Death sentences in such cases are also not known to have proved a strong deterrence for others. It has at best a retributive value in the common sense. But as stated earlier, retribution is a never ending chain,

4. Death sentences do have their use when society in general requires protection, which protection cannot be afforded except by permanently removing the criminal from amidst it. Far from being counter-productive, death sentence in such cases restores the normal even flow of the social life by removing the temporary distortions, and eliminating the passing deformities and perversities. These cases are of blood-thirsty, irreclaimable, hardened criminals and murder maniacs. To spare such gentry from the gallows is to expose the society to an unknown number of murders of innocent lives. It is not to be humane but to be callous to allow such criminals to return to the society, for they are a certain and a constant menace to the society in general.

5. Things are however different with offenders such as the present ones. They are a menace to an individual or a family, and not to the society at large. They do not live on and for crimes. Their crimes are on account of a temporary possession of them by lust for women, wealth or power, or by animalism, vengeance or false notions of valour. They are not beyond reformation nor are they lost to the society permanently. The heinousness or gravity of their offence may show that they deserve a longer period of suffering, a longer period to meditate and repent, and a more than usual period to recant and reform. The passage of time, the growth in age with consequent physical, mental and moral change, and the reformatory and rehabilitative methods in the prison, whenever, adopted, have their own salutary effect on such offenders. If, therefore, in such cases, a sufficiently long period of imprisonment is awarded, it serves a triple purpose. It gives a chance to the offender to reform himself and to return to his family and society as a useful member thereof. It serves as a deterrent to others. It also does justice to the victims, their relations and well wishers and to the society at large, and protects them from the accused since they are incarcerated in prison till they are rendered physically and mentally harmless to them.

6. We are therefore of the view that in the present case death sentence is

unnecessary and therefore not a proper one. At the same time, usual life imprisonment which in practice means not more than 14 years" incarceration in prison will be too inadequate and a travesty of justice. This is a case which lies in the murky area between the sentence of death and of the usual life imprisonment, The accused have betrayed a tendency to settle their score by violence. They have no compunctions in using inhuman methods" to achieve their ends. Respect for law and life is alien to them. It will take sufficiently long time to reorient their outlook towards society and its affairs, to instill in them respect for law and life, and social discipline, and to make them repent for the reprehensible crimes perpetrated by them. It is also necessary that they are made to suffer for a sufficiently long time to bring home to them and others the unpleasant consequences of their brutal behaviour. At the same time, the relations and sympathisers of the victims and above all the members of the society must feel that justice has been done, that inhuman acts are adequately punished and crimes however audacious and horrendous are not dealt with lightly. The sentence of imprisonment has therefore to be both deterrent and exemplary. It is also necessary to keep such accused away from society for a sufficiently long period so that when they rejoin it, the society does not feel insecure again by their presence amidst it. It is for this reason that we are of the view that mere life imprisonment which does not last for more than 14 years in normal cases would not meet the ends of justice in the present case. It is necessary that the accused should remain in jail for a sufficiently long period and according to us, that period should not be less than 25 years in any case. While determining this period we are guided by the fact that as stated earlier, u/s 303 of the Indian Penal Code, an accused who is undergoing a sentence of imprisonment for life for the offence of murder has to go to gallows if he commits another murder while undergoing such a sentence. In the present case, the accused had committed the murder of Gajendra and had inflicted almost fatal injuries on Shiva and it is when they were absconding from the arms of law that they chose to commit the offences which are the subject-matter of the present case, including the offence of murder of Bhiwa. In the said case they have already been convicted by us and sentenced to life imprisonment for the offence of murder of Gajendra and also for the offence u/s 307 read with Section 149 of the Indian Penal Code for mutilating Shiva. In that case also, the learned Judge had awarded a sentence of death which we have reduced to a sentence of imprisonment for life. It will therefore be both unrealistic and mechanical if in the present case also the accused are merely sentenced to life imprisonment. For the sentences of life imprisonment given in both the cases are bound to run concurrently and hence in spite of the two sets of similar offences, the accused would come out of jail, like any other offender, after 14 years only.

7. It is therefore necessary that we give a direction in the present case that although we are reducing the sentence from death to life imprisonment for the offence u/s 302 read with Section 34 of the Indian Penal Code, in no case the present accused should be allowed to come out of jail unless they put in a

minimum of 25 years of imprisonment. With this direction, the reduction of the sentence from death to life imprisonment would serve the ends of justice in the present case.

8. We are aware that the direction we are giving is unprecedented. But want of precedent need not prevent us from passing an order which is just and legal. There is nothing in law to bar such direction. The nature of the sentence of life imprisonment is incarceration until death. It is only by virtue of the provisions of Section 432 of the Criminal Procedure Code read with those of Section 55 of the Indian Penal Code that the prisoners sentenced to life imprisonment, are able to come out of the prison at all. Therefore in a case such as the present one where the sentence is being given in lieu and instead of the sentence of death, a direction such as the present one is neither illegal nor unjust.

9. Accordingly we order as follows:-

The conviction of both the accused u/s 307 read with Section 34 of the Indian Penal Code for attempting to murder Balkrishna is confirmed. So also the sentence of life imprisonment imposed upon them for the said offence. We also confirm the conviction of both the accused for the offence u/s 326 read with Section 34 of the Indian Penal Code for causing grievous hurt with deadly weapons to Krishna Pawar as well as the sentence of rigorous imprisonment for five years given by the learned Judge on that account. We further confirm the conviction of both the accused u/s 302 read with Section 34 of the Indian Penal Code for committing the murder of Bhiva, We however do not approve of the sentence of death and instead and in lieu of the ultimate penalty, award to each of the accused life imprisonment on the condition that none of the accused will be released from jail unless and until each of them serves a minimum period of 25 years" imprisonment. We make it clear that each of the accused will remain in jail at least for a period of 25 years notwithstanding the remissions and concessions, if any, granted to him under the relevant rules.

10. All sentences to run concurrently with each other as well as with the sentences in Confirmation Case No. 4 of 1980.

11. Order in Confirmation Case No. 3 of 1980 as well as in Appeal No. 708 of 1980 accordingly.