

(1981) 09 BOM CK 0013

In the Bombay High Court

Case No : Confirmation Case No. 2 with Criminal Appeal No. 484 of 1981

The State of Maharashtra

APPELLANT

Vs

Chandrakant Krishna Bankar

RESPONDENT

Date of Decision : 28-09-1981

Acts Referred:

Arms Act, 1959 — Section 30
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (1982) 84 BOMLR 26

Hon'ble Judges : Kurdukar, J;B.A. Masodkar, J

Bench : Division Bench

Judgement

V. Masodkar, J.—Paras 1 to 32 xxx. 33. Turning to the question of sentence and the reference, we have already made a reference in the beginning to the statement at Ex. 3B filed in this Court by the accused. In the light of the evidence, we have already excluded the turn possibility of any scuffle or there being any immediate provocation for use of the 1930 gun. The statement merely shows what a is the age of the accused and who are the persons dependent on him. That does not necessarily throw light on the state with which we are concerned and which alone has to be kept in view for the in purpose of imposing adequate legal punishment.

34. The ultimate question in all such matters is what punishment would, be. legally just and fair ? To impose adequate the punishment according to law, is not only cats the duty of the Court, but it is the social obligation clearly enjoined upon it. A far-reaching question is always asked in such matters, as to whether a giver, punishment deters ? Juridical questions have been multiplied around initial inquiry as to the objects of penal system so as to find out whether the punishment reforms or whether it would retribute back the criminal as a good citizen to the society. Whatever may be the complex canvass of such queries, one thing is clear, and appears to us well settled, that we have to keep in view not only the crime but also the criminal. After examining both on the basis of the materials in a given case, if we come to the conclusion that here is a typical

criminal who is shown to be degenerate and who has acted in a cool and calculated manner so as to achieve his cruel objects, then it would be idle to talk of deterring him by subjecting him to classical method of imprisonment. The requirement of justice would be that this would be a case which could hardly admit improvement or hit could be met by restitutive process of meeting human justice. Once we hold that the crime was the result of a structural reaction of the debased mind, then the case is answered as one of being rarest of rare and must be met by the highest punishment.

35. The decisions on which reliance was placed by the learned counsel for the defence do not support the submission that this is a case which cannot be treated as rarest of rare. In *Rajendra Prasad Vs. State of Uttar Pradesh*, the Supreme Court found, as is evident in para 106, that the genesis of the crime showed a family feud and the person was not a murderer born but made by the passion of family quarrel, and he could be saved for society with correctional techniques and directed into repentance like the Chambal dacoits. The case does turn on its own facts. The decision in *Bachan Singh Vs. State of Punjab*, laid down a broad criterion in para. 194 in the matter of sentencing a person convicted of murder under S. 302 I.P.C. and it is stated, as a principle of law that the extreme penalty can be inflicted only in gravest cases of extreme culpability and in making choice of the sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender also. Thus, the matter in each case has to be appreciated the basis of facts and circumstances available therein.

36. As we have indicated above, we have no manner of doubt in holding that this is one of the gravest cases wherein two lives were taken for no earthly reason. There appears to be a preparation which, the evidence suggests, began with acquiring a gun just a week or two before. Thereafter, on the day of the incident itself, not only the accused appeared armed with a gun and was having with him live cartridges, but he appears to have gone first to the Temple of Yamal and thereafter went to the first victim Gajanan. The entire outrage left two persons killed, one being a member of the weaker sex, a helpless and hapless woman of about 50 years of age, and the third person, who could have fallen, just escaped. The contours of the crime leave no manner of doubt that the crime was cruel and callous, The evidence shows that Gajanan fell down from the stone after the first shot hit him and yet thereafter a second shot was fired by the accused against him. When his shout was heard and Shivaji and Shantabai were seen coming towards the injured Gajanan, the accused ran towards them and fired shots from his gun thrice, having no regard whatsoever either for the age or for the life. Thereafter, it is not as if that the accused remained at the spot, but the evidence is consistent that he ran away from the place of the occurrence, There are hardly thus any redeeming features. It is ghastly crime and it shows the criminal, a well determined and ready-to-finish anyone, using a weapon like gun, Hardly, we have any material to come to the conclusion that would indicate even smallest traces of reflecting consideration or slightest compunction. For firing five

shots, the gun must have been loaded five times. That itself shows a determined degenerate criminal mind. This objective factor throws flood of light both on the criminal as well as on the crime. He had a determined structural will to kill and nothing else. It is merely coincidence and chance that Shivaji survived and the gunner could not get at the vital parts, but the firing appears to be, as the evidence shows, from a closer range and, therefore, it is reasonable to infer that every time the accused loaded the gun, his hand did not shake and he could not get at the vital parts probably because the object which he aimed at was moving or he had no adequate skill. Had there been the slightest trace of compunction or of human consideration, there would be enough time available to such a person before every time the gun was loaded and fired. The very fact that the loading and firing were resorted in such repetitious times shows a hardened killer whose mind did not move nor his will deflected from the object. No reflections, no thoughts and no mercy. As must happen in such cases, against the first victim, as we have indicated above, two shots were fired one after another, while against the other two, at least three shots were resorted to. Thus, we are satisfied that this is a case where legally the penalty of death is the only adequate and appropriate penalty.

37. The facts that the accused is a young man and that he has a wife and two children and a small piece of land and a younger brother, are the matters which can be adequately considered if at all the accused approaches the Executive Government for mercy. The factors surrounding the criminal, like his family and the likely effect of the ultimate sentence, may well lie within the merciful considerations of the State which, we are sure, will be duly taken note of. Youthful age is, no doubt, a relevant factor in matters of imposing penalty, but in the present case, it is outweighed by the cruel and callous character of the crime as well as by the determined dare-doing actions of the criminal in murdering two persons, including an equally young boy and a middle aged lady, and further attempting murder of another young person, Youth, therefore, by itself it not a relieving factor. It is the crime, as executed by the criminal, that brings out the gravest character requiring gravest penalty. We think that in matters of penalty, Courts have a legal duty and a legal obligation to impose legal punishment. Upon evidence, we have no manner of doubt that imposition of death penalty is called for and is adequate for the murders of Gajanan and Shantabai.

38. In the result, therefore, we accept the reference made by the learned Additional Sessions Judge, and for the offences of committing the murders of Gajanan and Shantabai, we impose death penalty separately on both the counts upon the accused. He be hanged by neck till he dies. As far as the order of conviction and sentence for the offences u/s 307 I.P.C. S. 30, Arms Act, is concerned, the same is affirmed.

39. The reference accepted. The appeal of the accused dismissed.

40. Order accordingly.