CASE COMMENT: MADAN V STATE OF UTTAR PRADESH - CAN PRIOR CONVICTION BE THE SOLE GROUND TO IMPOSE THE DEATH PENALTY?

Mahanth P A*

INTRODUCTION

Any wrong or crime committed against the public should be punished. Sentencing a person for the death penalty is a double-edged sword. Trial courts in the country sentenced 165 people to death in 2022, the highest in a year in the last two decades[1]. On one hand, it is immoral and unacceptable to keep the perpetrator alive at the cost of the victims of the crime whereas on the other hand, imposing capital punishment violates the fundamental and human rights guaranteed under Article 21[2] of our constitution. Justice P.N Bhagwati gave his minority judgment observing that the death penalty violates Articles 19 and 21 of the Constitution in the case of Bachan Singh v State of Punjab[3]. The court in its various pronouncements has opined that the death penalty can only be awarded when the procedure is fair, just, and reasonable under Article 21 and will be applied only in the "rarest of rare cases" rendering special reasons for the same. Even the Law Commission of India recommended that the death penalty be abolished for all crimes other than terrorism-related offences and waging war[4]. The case comment attempts to analyze the constitutional validity of the death penalty, the principles and propositions laid by the court in order to satisfy the test of the rarest of rare cases, and the circumstances under which the court may grant capital punishment with relevant cases with the Apex court's perspective and reasoning.

FACTS OF THE CASE

The Appellant, Madan approached before the Honourable Supreme Court challenging the judgment and order of conviction and sentence passed by the Trial Court and the High Court of Allahabad. A First Information Report ("FIR") was lodged against Madan and other co-accused for offenses punishable under various Sections of the Indian Penal Code, 1860 (hereinafter referred to as "IPC")[5]. According to the FIR, Smt. Vimla Devi stood as a candidate

*BCOM LLB, FIRST YEAR, M.S. RAMAIAH COLLEGE OF LAW, BENGALURU.

[1] Himanshi Dhawan, '165 sentenced to death in 2022, highest in 2 decades', *The Times of India* (Jan 30,2023)

[2] Constitution of India 1950, art 21

[3] *Bachan Singh v State of Punjab* (1980) 2 SCC 684

[4] Law Commission, *The Death Penalty* (Law Com 262, 2015) para 7.2.4

[5] Indian Penal Code 1860, s 147, 148, 149, 302, 307, 323, 452

for the Gram Pradhan post in the elections whereas, the wife of one Arshad was the opposing candidate whom Madan and the co-accused supported in the elections. Ultimately, Vimla Devi won the election leading to a sense of jealousy to Madan and his members.

On one fine day Ram Kishan, who was the son of Vimla Devi, and a few other members went up to Rizwan who was the Up-Pradhan of the village to discuss some problems in the village. Meanwhile, Madan and his associates, who were armed came from behind and opened fire indiscriminately. As a result, two were dead at the scene. Another, Masooq Ali, who came out hearing the gunshots was killed. Ram Kishan, in order to save his life, entered into the house of the Rizwan. The accused persons followed Ram and fired shots at Ram Kishan, Rizwan, and Rihan, who were the sons of Arshad Khan. A couple of individuals who arrived at the incident were also killed.

Subsequently, the investigation was initiated and the chargesheet was filed against Madan, Ishwar, Sudesh Pal, and Kunwar Pal (who went absconding during the investigation) in the court of jurisdictional Magistrate. The trial court in its judgment held the accused persons guilty of committing the murder of six persons and accordingly convicted them under various sections of IPC and the Arms Act[6]. Being aggrieved, the accused moved an appeal to the High Court. The High Court in its judgment, commuted the sentence of Sudesh Pal from capital punishment to imprisonment for life and Ishwar's punishment was unchanged i.e. life imprisonment. However, the High Court conformed with the judgment and order of conviction and sentence passed by the Trial court in respect of the appellant Madan and was awarded Capital punishment unlike his co-accused whose punishment was commuted.

Madan, being aggrieved by HC's orders approached before the Honourable Supreme Court[7].

ISSUES RAISED

1. Were the witnesses who were cross-examined interested witnesses/chance witnesses and were there any inconsistencies in their evidence?
2. Were the killings based on the motive attributed to political enmity?
3. Does the instant case fall under the ambit of the rarest of rare cases?
4. Is the capital punishment imposed on the appellant warranted?

[6] The Arms Act 1959, s 25
[7] Madan v State of Uttar Pradesh (2023) SCC OnLine SC 1344

OBSERVATIONS OF THE SUPREME COURT

The counsel for the appellant, Mr. Anand Grover argued that the testimony of the witnesses in the instant case was doubtful and the evidence of the witnesses was substantially improved in their cross-examination and was contradictory to their original statement recorded under Section 161 Cr. P.C[8]. He further submitted that all the witnesses were related to the victim and were supporters of Vimla Devi. It was submitted that the witnesses were interested or chance witnesses and the testimony of such a witness cannot be relied upon as the prosecution did not examine the independent witnesses even though they were present in order to frame charges against the appellant[9]. The court referring to the case of Piara Singh and Others v State of Punjab[10] opined that merely because some of the witnesses are interested their evidence cannot be totally discarded. Both the High Court and the Trial Court thoroughly scrutinized the evidence and found the witnesses trustworthy and reliable. The court also relied upon Waman and Others v State of Maharashtra[11] wherein it held that if the evidence of interested witnesses were true, the court could not turn a blind eye, even though the witnesses were relatives of the victims.

The next contention of the senior counsel was of motive and political rivalry which was attributed as a factor for the killings by the appellant. The counsel submitted that the motive was a weak one, as the elections were conducted two and half years prior to the occurrence of the incident. The court reasoned that the instant case was of direct evidence, where the motive was immaterial citing the judgment of Darbara Singh v State of Punjab[12] and observed that "it is a settled legal proposition that motive has significance in a case, but where direct evidence is available, which is worth relying upon, motive loses its significance".

The counsel humbly submitted that the findings of the lower courts with respect to the case being the rarest of the rare cases are without any logical backing for the same. The court clarified the same using the aid of Bachan Singh v State of Punjab[13] case, where the Constitutional bench held that the usual punishment for the offence of murder was life imprisonment. The court can depart from the thumb rule stating the reasons for the same in writing. The court can grant a death sentence only if it feels like the act has the capability to

[8] The Code of Criminal Procedure 1973, s 161
[9] *Ibid*
[10] *Piara Singh and Ors v State of Punjab* (1977) 4 SCC 452
[11] *Waman and Ors v State of Maharashtra* (2011) 7 SCC 295
[12] *Darbara Singh v State of Punjab* (2012) 10 SCC 476
[13] *Ibid*

shake the conscience of the public at large. The court noted that in the case of Machhi Singh and Others v State of Punjab[14], the court laid down some propositions: Manner of commission of murder, Motive for commission of murder, Anti-social or socially abhorrent nature of the crime, Magnitude of the crime, Personality of a victim of murder which should be taken into account while deciding about the gravity of the punishment. The Apex court also made a clear distinction between Aggravating circumstances where the offences were heinous crimes having a history of such offences and convictions of the person the intention behind the commission of the crime was fear amongst the public at large, the offence involved inhumane treatment to the victim and many more as against Mitigating circumstances in which the offence was committed due to the mental state of the person under sudden provocation without any pre-determined plans, the chances of the convict being reformed and rehabilitated amongst a bunch of them. Applying the reasoning of the above-mentioned judgments to the instant case, the court opined that the appellants and the other accused persons were accountable for the death of six persons who were brutally killed by firing shots at them. It was also noticed that a witness was murdered when the matter was sub-judice and only 4 out of 11 witnesses' statements were recorded, the rest being declared hostile[15]. The court concluded that the act committed certainly shook the moral fabric and the conscience of the society, thereby the act falling under the category of rarest of rare cases.

The counsel for the petitioner further submitted that even if the conviction is confirmed, capital punishment is unreasonable and should be commuted to life imprisonment. The court cited the case of Swamy Shraddananda alias Murali Manohar Mishra v State of Karnataka[16] and many other judgments and held that the court cannot be limited only to two punishments, one being life imprisonment of not more than 14 years and the other capital punishment. The court stated that a conviction can either be altered from death to imprisonment or by a term in excess of fourteen years directing that no pre-mature release is given to the convict. In the case of Shankar Kisanrao Khade v State of Maharashtra[17], a middle path was adopted and commuted the death penalty into sentence for the rest of the life without remission. The court also cited the case of Sundar Sundarrajan v State by Inspector of Police[18] where it held that the death sentence is not the only alternative when the case was under the ambit of the rarest of rare

[14] *Machhi Singh and Ors v State of Punjab* (1983) 3 SCC 470
[15] *Ibid*
[16] *Swamy Shraddananda alias Murali Manohar Mishra v State of Karnataka (*2008) 13 SCC 767
[17] *Shankar Kisanrao Khade v State of Maharashtra* (2013) 5 SCC 546
[18] *Sundar Sundarrajan v State by Inspector of Police* (2023) SCC OnLine SC 310

cases. The court will also have to consider the nature of the crime, and the possible reformation of the convict while deliberating on the death penalty.

The court in the instant case also looked upon the Probation Officer's Report, Prison Conduct Report, and Psychological Assessment Report. As per the Prison Conduct Report, the appellant was 64 years old and had been in prison for more than 18 years. It further shows that the appellant was not involved in any quarrels in the prison and had maintained cordial relations with prison mates, he kept himself involved in prison activities posing a good character, and showed signs of reformation which was further supported by the Psychological Assessment Report[19]. It was held in the case of Rajendra Pralhadrao Wasnik v State of Maharashtra[20] and a host of cases that the prosecution must prove beyond a reasonable doubt that the convict if released, is a threat and a menace to the society. Also, the factor that the criminal's possibility of reformation shall be taken into account while dealing with death sentences. The court, took into consideration all the factors i.e. the appellant's age being 64 years, the years he served in prison which was over 18 years, the reports presented before the court as a mirror of the good character of the appellant, and the possibility of reform because of his good behavior. The court at the same time never disregarded the fact that the applicant was convicted for an offence in the past. But the court referred to the Rajendra case[21] and held that the history of the convict cannot be a ground for awarding him the death penalty.

DECISION

The Apex court after weighing all the factors held that death sentencing is not the only alternative in the instant matter. The court also observed that all the accused were on the same plane when it came to the commission of the crime. The evidence of the witnesses also showed that the roles attributed to the accused were similar. The high court commuted the death sentence to life imprisonment for the appellant's co-accused Sundresh Pal and concurred with the trial court's decision of life imprisonment for Ishwar. The High Court dismissed Madan's appeal and stayed with the trial court's decision of capital punishment as he was convicted of an offence previously.

[19] *Ibid*
[20] *Rajendra Pralhadrao Wasnik v State of Maharashtra* (2019) 12 SCC 460
[21] *Ibid*

However, the Apex court in this appeal, observed that "*past conduct does not necessarily have to be taken into consideration while imposing the death penalty*"[22] and noted that the High Court decision was not justified as it partly allowed Sundresh Pal's appeal and dismissed Madan's appeal. However, both their act of firing shots at people were the same.

The court found that the interest of justice would be met by converting the death penalty into life imprisonment for 20 years without remission. The appeal by Sundresh was dismissed and the appeal filed by Madan was partly allowed. Madan was convicted under Section 302 of the IPC[23], but his sentence was commuted from death to life imprisonment and stated that no pre-mature release will be sought until he completes 20 years in prison.

ANALYSIS

The Apex Court took a holistic approach while dealing with the instant case. For a simple understanding, major questions posed before the court were whether the case fell in the ambit of the "rarest of rare cases" and whether was it warranted and justified to sentence the appellant to death. The court agreed with the lower courts that the appellant and his co-accused person's acts fell in the ambit of the rarest of rare cases. The court came to this conclusion by citing criminal precedents and judicial pronouncements. It referred to the decision made in Machhi Singh and Others v. State of Punjab[24] to lay down some propositions in determining the reasons for imposing the death penalty. It also distinguished between mitigating and aggravating circumstances and held the current act of the appellant and the other convicts under aggravating circumstances because of the planned nature of the act and the heinousness of the commission of the crime in the brutal killing of six innocent persons and that it certainly shook the moral conscience of not only the court but in the society as well.

The court differed with the High Court judgment that the appellant should be convicted for life. The lower courts failed to provide any reasons as to why they convicted Madan for capital punishment and commuted his co-accused sentences whereas, the mens rea and the actus rea of all the accused were similar in furtherance of the commission of the crime. The court in the case of Ram Naresh v State of Chhattisgarh[25], laid down some principles that should be applied for determining whether a death sentence is to be awarded or not. However, the High Court did

[22] *Rajendra Pralhadrao Wasnik v State of Maharashtra* (2019) 12 SCC 460
[23] The Indian Penal Code 1860, s 302
[24] *Ibid*
[25] *Ram Naresh v State of Chhattisgarh* AIR 2012 SC 1357

not take these principles into due consideration. The Apex court denounced the High Court order Stating that the appellant was sentenced to capital punishment since he had a history of previous conviction. The court in the case of Rajendra[26] held that *"the history of the convict by itself cannot be a ground for awarding him the death penalty."* Moreover, According to Section 354(3) of CrPC[27], the judgment shall state special reasons for an offence that is punishable by death. But in the instant case, the High Court reasons that the appellant had already been convicted of an offence in the past which is nullified by the Supreme Court's judgment cited above. The court provided reasons as to why the appellant's sentence should be commuted as the appellant was old, had already been in prison for years, and had shown a good character and a possibility of reformation that is the quintessence of a society. The decision of the court was very nuanced when it convicted the appellant under Section 302 of IPC and laid a middle path by commuting his death penalty and sentencing him to 20 years without remission.

CONCLUSION

An analysis of the case above, it is clear from the pronouncement of the court that various circumstances shall be evaluated while convicting an offender punishable with death or life imprisonment. As stated under section 354(3) of CrPC, life imprisonment is the rule, and capital punishment is an exception when special reasons are stated[28]. The death penalty shall be regarded by the courts as a last resort option if the court finds that there is no other least viable alternative. Before opting for the death penalty, the court should take notice of not only the circumstances of the "crime" but also the circumstances of the "offender"[29]. The rarest of the rare cases exists when an accused would be a threat or a menace to society as held in the Purushottam case[30]. The court's judgment was very much reasoned when it stated that the act of the accused fell under the ambit of a "rarest of rare" case. At the same time, the court was considerate in commuting the appellant's death sentence to life imprisonment factored by the similarity of the crime committed collectively by all the accused, the appellant's history, and his good conduct in jail. The judgment by the Apex court in the instant matter serves as a perfect example to the lower courts to satisfy the test of the rarest of rare cases by applying the principles and propositions by using judicial precedents, considering all the factors and

[26] *Ibid*
[27] The Code of Criminal Procedure 1973, s 354(3)
[28] *Allauddin Main v State of Bihar* AIR 1989 SC 1456
[29] The Indian Penal Code (Professional Book Publishers 2019) 110
[30] *Purushottam Dashrath Borate v State of Maharashtra* (2015) 6 SCC

circumstances of both the crime and the criminal when it comes to deciding matters on capital punishment and not pass indiscriminate orders.