

CASE COMMENT: BACHAN SINGH VS. STATE OF PUNJAB (1980)2

SCC 684

Anubhav Agrawal¹ & Ritika Tiwary²

ABSTRACT

Capital punishment is highly debatable issue across the world. It is very cruel, barbaric and inhuman in its effect and it does not have any moral or practical justification. It breaches our basic human rights.

Right to life and personal liberty except procedures established by law. Death Penalty is miscarriage of justice. In last 50-60 years, highest judicial tribunal of our country had given numerous verdict on Capital Punishment. As it had given birth to the doctrine of Rarest of Rare on death penalty according to which circumstances person can be found guilty.

The case study of *Bachan Singh vs. State of Punjab* categorically highlights the importance of doctrine of rarest of the rare. The case has a very unique importance in penological system of India.

¹ Student, Lloyd Law College, Email Id- anubhav.ips@gmail.com

² Student, Lloyd Law College, Email Id- flvingritikatiwary@gmail.com

CASE COMMENTS

BACHAN SINGH VS. STATE OF PUNJAB (1980)2 SCC 684

INTRODUCTION

Right from the ancient times, capital punishment has been enforced in India for a number of offences, the mention of which is always been found in our epics, viz. the Mahabharata and Ramayana.³ Death penalty extinguishes the flame of life for ever. It is barbaric and inhuman in its effect, mental and physical, upon the condemned man and is positively cruel.⁴ In every criminal case, two principles for sentencing should be born in mind. Firstly, the heinousness of the crime. Secondly, the particular circumstance in which the offence was committed. Court has to consider the totality of circumstances before awarding the punishment.⁵

BRIEF FACTS

It is the case of *Bachan singh vs. State of Punjab* where Bachan Singh was tried, convicted and sentenced to death by the Session Judge, Ferozpur, for causing the death of 3 persons namely Desa Singh(son), Durga Bai and Veeran Bai(daughters) of Hukam Singh and for causing grievous injuries to Vidya Bai(daughter), at 12 midnight between July 4 and 5, 1977.

³ Mahabharat Shantiparva Chapter CCLXVII verses 4-13

⁴ V.D MAHAJANS, JURISPRUDENCE & LEGAL THEORY, 137, Eastern Book Company Name, Fifth edition 2015.

⁵ Dr. K. L Vibhute, P S A Pillai's Criminal Law, 12th Ed, p. 396

The appellant was held of guilty of three charges under section 302 of Indian Penal Code, 1860 and was sentenced to death on each count. He was also held guilty under section 326 of the same code for the causing grievous hurt to Vidya Bai and was sentenced to three years of rigorous imprisonment and fine up to Rs. 500.

The Appellant, Bachan Singh filed criminal appeal 234 of 1978, against the judgement passed by the session judge. When the case went to The High Court, Hon'ble bench dismissed the appeal and confirm the death sentence. Further, Bachan Singh appealed before the Hon'ble Supreme Court of India by special leave petition under article 136 of the Constitution of India. The only question for consideration on appeal was, whether the facts before the courts would be "special reasons" for awarding, the death sentence.

ISSUES RAISED BEFORE THE COURT OF LAW

[1] Whether Section 302 of Indian Penal Code, 1860 is constitutionally valid for award of Death Sentence?

[2] Whether the facts and circumstances of the case would be Special Reasons for awarding the Death Sentence under 354(3) of Criminal Procedure Code, 1973?

JUDGMENT OF THE COURT

[1] Whether Section 302 of Indian Penal Code, 1860 is constitutionally valid for award of Death Sentence?

The challenge to the death penalty in this was premised, among other things, on irreversibility, fallibility, and that the punishment is necessarily cruel, inhuman and degrading. It was also contended that the penological purpose of deterrence remained unproven, retribution was not an acceptable basis of punishment, and that it was reformation and rehabilitation which were the purposes of punishment.

The constitutional bench of five judges were hearing this case out of which four of them did not accepted the contention stating death penalty unconstitutional. They overruled the case of *Rajendra Prasad*, and affirmed the *Jagmohan Case*, where they held that the death penalty could not be restricted to cases where the security of the state and society, public order and the interests of the general public is threatened. Errors, they held, could be set right by superior courts, and presentence hearing and the procedure that required confirmation by the High Court would correct errors.

In this case, the Court adopted the '*rarest of rare*' principle for the imposition of the death penalty, saying that reasons to impose or not impose the death penalty must include the circumstances of the crime and the criminal. *Justice Bhagwati* in his dissenting opinion found that the death penalty is necessarily arbitrary, discriminatory and capricious. He reasoned that "the death penalty in its actual operation is discriminatory, for it strikes mostly against the poor and deprived sections of the community and the rich and the affluent usually escape, from its clutches. This circumstance also adds to the arbitrary and capricious nature of the death penalty and renders it unconstitutional as being violative of Articles 14 and 21."

The validity of imposition of death sentence was challenged on the ground that the sentence puts an end to all rights guaranteed by fundamental rights under clauses (a) to (g) of sub clause (1) of article 19 of the Constitution and therefore, the law with regard to capital sentence is unreasonable and not in the interest of the general public. It was further contended that the discretion invested by the judges to impose capital punishment is not based on any standard or policy required by the legislature for imposing capital punishment in preference to imprisonment for life.

Further, it was submitted that the uncontrolled and unguided discretion of the judges to impose capital punishment or imprisonment of life is hit by article 14 of the Constitution.

Lastly, it was contended that the provisions of law do not provide for a procedural trial of

factors and circumstances, which is crucial for making the choice between the capital punishment and imprisonment for life and therefore article 21 is violated. The court rejected all the challenges against the award of death sentence on the ground of violation of the provisions of Constitution. The decision by the majority delivered in the case held the “special reasons” necessary for imposing the death penalty.⁶ The majority of four judges in this case negative the challenge to the constitutionality of death penalty.

[2] Whether the facts and circumstances of the case would be Special Reasons for awarding the Death Sentence under 354(3) of Criminal Procedure Code, 1973?

In the case of offences punishable with death, the sub-section requires special grounds for imposing such sentence. But if the offence is of such a grave nature that the court confirms the death penalty of such offence, then special grounds should be given. Thus, while the legislature retained that for imposing death sentence the courts should furnish reasons.

The object of requiring the grounds to be given regarding the sentence could be found in the Law Commissions Report⁷ and the Report of Joint Parliamentary Committee. The Law commission in Vol. 1, 35th report on the capital Punishment expressed that a considerable body of opinion is in favour of a provision requiring the court to state its reason for imposing the punishment either of Death penalty or imprisonment of life.

In its 41st report⁸ on the CrPC, the Law Commission recommended the amendment which also observed that there were certain offences for which the penal code prescribes the punishment as death or in the alternative life imprisonment.

⁶ *Rajendra Prasad vs. State of Punjab*, A.I.R. 1979, S.C. p.916.

⁷ 262nd Report of Law Commission.

⁸ 41ST Report of Law Commission.

The joint committee of parliament added that a death sentence is the extreme Penalty of law and a court can award such sentence in a case where the alternative sentence of imprisonment for life is also available, however, it should give special reasons in support of the sentence. For giving effect to the recommendations of Law Commission and the Joint Committee of a Parliament, subsection (3) was to be amended in the present form.

By the introduction of section 354(3) of CrPC the normal sentence is lesser sentence of imprisonment for life and if the death sentence is awarded for special reasons it will have to be recorded. The court before imposing a death sentence should be satisfied that the offence is of such a nature that the extreme penalty is necessary for touching the ends of justice.

The decisions rendered by this court after the introduction of the amendment of section 354(3) by Act 2 of 1974 have reiterated this position. In *Balwant singh vs. State of Punjab*⁹ the court observed that under section 354(3) CrPC, 1973, the court is required to state the reasons for the sentence awarded and in the case of death sentence special reasons are required to be stated. Awarding the sentence other than death sentence is the general rule, and only special reason connotes that special facts and circumstance in a given case, will warrant the passing of death sentence.

Three developments subsequent to the judgment in *Jagmohan* encouraged a improved challenge in Bachan Singh's case to the constitutional validity of death penalty. The CrPC was re-enacted in 1973 and sec 354(3) requisite that the judgment recording conviction for an offence punishable with death shall state special grounds for such sentence. *Secondly*, the decision in *Maneka Gandhi vs. Union of India*, required that every law of punitive detention both in procedural and substantive aspect must pass the test of reasonableness on a collective reading of articles 21, 19 and 14. The third development was that, India has

⁹ 1995 (1) SCR 411

acceded to the ICCPR that came into force on December 16, 1976. By ratifying the treaty, India had committed itself to the progressive abolition of death penalty.

CRITICAL ANALYSIS

Life imprisonment is a rule, capital punishment is an exception. From *Jagmohan Singh case* to *Balwant Singh case*, courts had rightly stated that the award of death sentence requires to address special reasons and courts are bound for doing so. With the change in time, social needs and human rights standards, the death penalty needs to be abolished for all the crimes other than terrorism related offence and waging war against country. It does not serve basic penological goals of deterrence of crime.

In this case though P.N. Bhagwati J. had dissenting opinion and was not in majority but the approach of Hon'ble judge was appropriate as he rightly pointed out the drawbacks of death penalty by stating it arbitrary, discriminatory and capricious.

When the judgement of Bachan Singh was delivered, most of the countries in the world had abolished the practice of death penalty. By 2014, 98 countries had abolished death penalty for all crimes, 7 countries abolished for ordinary crimes, and other 35 also abolished such practice, total of 140 countries in the world abolished such penological practice.

In 2015, Suriname, Madagascar and Fiji had also abolished capital punishment formally. Only some Countries like India, China, Indonesia and the United States, still follow practice of death penalty.

Guidelines given by the hon'ble court in the case owes high importance in the penological system of India. When the Statute give the court a choice of sentence, the court should not exercises arbitrarily or whimsically. There is no full proof formula to determine just and appropriate punishment for crime. In the absence of such formula discretion of the judge

helps in equitable judgment.¹ Where a statute gives the court a choice of sentence then discretion is rested with the court. The court has to bear in mind the necessity of proportion between an offence and the penalty. A court should not give maximum punishment specified in the crime. The court should reserve the maximum sentence for the worse example of the offence concerned.

CONCLUSION AND SUGGESTION

In the light of the above-stated arguments and the reasoning, the judgment of the Hon'ble Supreme Court appears to be of paramount quality. The constitution bench of hon'ble Court restricted the use of death penalty by characterising capital punishment reserved only for rarest of the rare cases. Death penalty in case of murder (Section 302 of I.P.C.) should be held unconstitutional because it violates the basic constitutional provisions and also create a society of 'eye for an eye' which in present scenario would not serve the purpose of justice. Capital Punishment is the highest punishment in any book of law across the world which is equivalent to judicial murder. Awarding death penalty for the simple act of murder would then eventually lead to miscarriage of justice.

Death penalty be-devils the administration of justice, hampers proper administration of criminal justice and inflict grievous injury on the administration of criminal justice. Keeping the guidelines and opinion of justice P.N. Bhagwati in mind life imprisonment should prevail and capital punishment should be kept at stake until and unless the crime is grave in nature.

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JURJAR