

State of Maharashtra Vs Namdeo Laxman Gedam

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Jan. 12, 1975

Acts Referred: Penal Code, 1860 (IPC) â€” Section 302

Citation: (1976) MhLj 319

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

Bench: Division Bench

Advocate: M.B. Mor, Asstt. Govt. Pleader for State, for the Appellant; R.S. Lambat, for the Respondent

Judgement

B.A. Masodkar, J.

Having upheld the conviction of the accused u/s 302, Indian Penal Code, which is not material for this Report, while

dealing with the sentence, the judgments Proceeds. Coming to the sentence, we have the reference of the Sessions Judge awarding sentence of

death and we feel that the same is well founded.

2. We are fully conscious of the call of philosophic and ethical modernity that penalty of death sentence should be removed from statute book and

also urging upon the Judiciary to save life rather than extinct it. Piquant question is asked, how the institution of law and the men that man it could

assume authority to put off the life or extinguish its flame or to undo the creation that does not owe its origin or birth to it? There is agitated appeal

to the principles of life and possibility of reformation and moral uplift of men from the morass of immorality and crime. Epic ethos of such root

questions and the bleak tragedy of humanity that surrounds it, is all present to our minds.

3. Still, while presiding over the Court of law, we have to look to law as the supreme protector of human culture and its values; and it being a

dynamic hope of its survival. It's purposes are reflected in its tenets and require to be firmly administered to achieve its goals. Obviously the system

and sanction behind penal measures permit use of overt force, so as to obtain state of compliance based on motivations of having peace and order.

Use, choice and imposition of penalties enacted, including the capital one, are all functional measures and have social ends in view. No doubt we

as judges have to possess rapport with the changing social and moral background but surely our judgments cannot be rested on the hypothesis of

tomorrow but must be based on facts of law present today.

4. Indian Legislature has not thought it fit to do away with the penalty of death. Its existence on statute book has clear reference to the pragmatic

necessities based on empirical data of social and human realities available to legislative machinery. With this, penology posits rules and choices for

judicious balances emerging from the known principles that are reformatory, retributive, reconstructive and deterrent all having origin in individual and

collective good of men. Experience in Euro-American countries and several other systems of Governments by law go to indicate that death

sentence is mainly retained as a deterrent and as such reformatory to all those who dare-do high and heinous crimes at the cost of others. Deterrent

and seeking reformation are mutually supporting principles that further support such punishment. That necessitates making up of the mind like any

other matter to find what would be legitimately right, fitting and proper penalty in a given cause. Judicial choice of a given penalty has to be clearly

object-oriented. Under law while imposing death penalty giving of special reasons is therefore made a rule. These reasons must and should emerge

from the facts unfolded by the particular crime and cannot depend on personal choice of the Judge. Anxiety should however always be to do

justice in accord with law, never forgetting the social overview and the powerful counter-points to be negotiated by the powerful, potential

mechanics of the system itself. While meting out justice to the high degree perpetration of crimes sentence should be such that will curb tendency to

such crime and prove law's warning for all those who transgress its bounds. When heinous crimes like that of murder are executed cruelly, in cold-

blood, are goal-oriented against weaker and defenceless members of the society and also indicate total void or basic human tenderness, good

reasons exist to clamp highest penalty provided for by law. Existence of such special circumstances make it appropriate to sanction the sentence of

death.

5. Here upon facts is a crime, clearly executed upon a pre-plan involving murders of two tender children and their mother in youth in a cruel

manner and devoid of any shred of sentiments. Finding of a weapon like Article 10, the dagger which must have been carried from earlier times,

followed by taking the family which was under the care and protection of the prisoner and as such his solemn and natural trust, by the lonely way

and after reaching the desolate sands of the river-bed using that weapon mercilessly on vital parts of victims several times only to kill, all go to

delineate the determined silhouette of the crime as well the base criminal. The placements of injuries on the bodies of Kalpana and Mohan cutting

ribs and intestines bring out the ghastly animosity. The defenceless and unfortunate mother of these two children must have tried to protect and in

that attempt must have been similarly silenced. It is most likely that the weapon was aimed primarily against the two innocent children of Girja who

were found uncared for and sent begging even for food and when she presumably tried to protect, she too was subjected to death While achieving

the object, the prisoner exposed all the base of animal-low, killing in rapacious sweep all the meek three almost one after another and in few

minute"s time. He was self-possessed and keenly selfish is exposed by the fact that he did not harm the small child which was born to Girja from

him. His taking care of his child and carrying it to the care of others from the place of offence indicate choice and balance and nothing noble.

Similarly the mood of repentance or remorse revealed in his immediate confessional disclosures does not make up for any noble gesture. It is

evident from facts that that mood too soon swept away and was prevented by calculated retraction. All this brings forth clearly a hardened base of

culpability.

6. Under these facts and circumstances and looking to the ghastly killings of defenceless mother and her two young-ones, we cannot but accept the

reference and confirm the death penalty as right, fitting and proper one on all the three counts separately; firstly for causing murder of Girja,

secondly of Kalpana and thirdly of Mohan. Consequently we direct that the accused be hanged by neck till he is dead.