JASHUBA BHARATSINH GOHIL AND ORS. A

v.

STATE OF GUJARAT

APRIL 13, 1994

[K. JAYACHANDRA REDDY AND DR. A.S. ANAND, JJ.] B

Criminal Procedure Code 1973—Section 354(3)—Death sentence—Where trial court has given elaborate reasons for awarding life imprisonment, held, the High Court was not justified in enhancing punishment to death sentence only because it looked at those reasons differently. C

Indian penal Code 1860—Sections 302, 302/149, 307/149.

Four accused not named in FIR, and none of the prosecution witnesses ascribing any particular role to them—Held, entitled to be given benefit of doubt and acquitted—Conviction of seven other accused maintained. D

Practice and procedure—One accused not filing appeal—Infirmities attaching to the case of three other accused applying to him also—Held, cannot be denied benefit of judgment.

Twelve accused were tried by the Sessions Court for offences punishable under Section 120-B read with Sections 302, 307, 148 IPC read with Section 149, Section 143 and in the alternative under Sections 302, 307/34 IPC and Section 25A of the Arms Act. Ten persons were killed in the incident which took place on 20th September 1984, and four persons were injured. E F

The prosecution's case in brief was that there was prior enmity between the accused – party and the complainant-party and that the former hatched a conspiracy to wreak vegeance by assaulting the latter. It was alleged that when the complainant party was returning from a condolence function, the accused party which had formed an unlawful assembly, lay in wait armed with deadly weapons like gun, spear, axe etc. When the tractor and trailer carrying the complainant party reached the place where the accused were hiding, A-11 fired from his gun to deflate the tyre of the tractor and brought it to a halt. The remaining accused came out from hiding and began assaulting the persons in the tractor. Gunshots G H

A were also fired and persons who sought to escape were chased and beaten. After returning from the village the accused continued to fire shots.

The Trial Court found all the accused guilty under Section 302 and section 302 read with section 149 IPC, and of lesser offences. All the accused were sentenced to life imprisonment.

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All the accused filed an appeal in the High Court. The State filed an appeal seeking enhancement of the sentence of life-imprisonment to death. The High Court confirmed the conviction of all the accused except A 4 who was acquitted. It partly allowed the appeal of the state and enhanced the C sentence of life imprisonment on A 11 to a sentence of death. The sentence of life imprisonment on the other accused was maintained.

All the convicted persons except A 10 appealed to this Court by special leave.

D Acquitting A2, A3, A6 and A10 by giving the benefit of doubt, and reducing the death sentence on A11 to life imprisonment, this court

HELD : 1. The prosecution evidence is clear, cogent and specific in so far as the involvement of accused other than A2, A3, A6 and A10 are E concerned. The appreciation of evidence by the courts below has impressed us, and we agree with the reasoning and conclusions arrived at by the courts below as regards their guilt. The eye-witness account is specific. Despite lengthy cross-examination of the eye-witnesses nothing has been brought out from the record to create any doubt about the credit worthiness of the testimony of any of the prosecution witnesses. The recoveries F made from them pursuant to the disclosure statements which have not been doubted, coupled with the medical evidence, show that the prosecution has established its case against them beyond every reasonable doubt. [479-B-C, 481-B]

2. It is not not disputed that the complainant knew A2, A3, A6 and G A10 as well as he knew the other accused persons. The complainant being an injured witness is a stamped witness and it is significant that he did not name A1, A3, A6 and A10 as members of the accused party in the first information reprot lodged soon after the occurrence. In his statement recorded by PW-11 the Executive Magistrate also, the comlainant did not H name A2, A3, A6 and A10 as having taken any part in the assault. Though

in the said statement it was mentioned that there were four other persons, it is difficult to understand as to what prevented him from giving the names of A2, A3, A6 and A10 since the names of all the other accused persons were mentioned in the report. At the trial of course an effort was made to implicate these four accused also, but then the court cannot lose sight of the fact that the tendency to rope in some innocent persons along with the guilty ones is not new. It appears that due to the enmity which is admitted between the parties and the past hostilities, the names of A2, A3, A6 and A10 were sought to be introduced in the prosecution case at a later stage, after thoughtful deliberations and the case was then developed to implicate them also. None of the witnesses produced by the prosecution has been able to ascribe any particular role to A2, A3, A6 and A10. The mention of "four others" by the complainant shows that he had designedly left a margin to add to the number of the accused later on after deliberations and consultations. The prosecution has failed to prove the case against A2, A3, A6 and A10 beyond reasonable doubt and the possibility that they have been implicated with other accused persons on account of their relationship and association with the other accused persons cannot be ruled out. A2, A3, A6 and A10 therefore deserve to be given the benefit of doubt and acquitted. [479-F-H; 480-E-F]

3. Though A10 has not filed any appeal in the court, since the infirmities which attach to the cases of A2, A3 and A6 are the same which attach to his case also, he cannot be denied the benefit of the court's judgment only because he has not filed any appeal. [480-G]

4. The principles laid down by this Court regarding the enhancement of sentence and also about the award of sentence of death are now well setting. Section 354(3) of the Code of Criminal Procedure, 1973, as amended, makes if obligatory in cases of conviction for offences punishable with death or with imprisonment for life to assign in support of the sentence awarded to the convict and further ordains that in case the Judge awards death penalty, "special reasons" for such sentence shall be stated in the judgment. Thus the Judge is under a legal obligation to explain his choice of the sentence. The legislature in its supreme wisdom thought that in some "rare cases" for "special reason" to be recorded it will be necessary to impose the extreme penalty of death to deter others and to protect the society and in a given case even the sovereignty and security of the state

A or country. It, however, left the choice of sentence to the judiciary with the rider that the court may impose the extreme punishment of death for "special reasons". The sentencing court has, therefore, to approach the question seriously and make an endavour to see that all the relevant facts and circumstances bearing the question of sentence are brought on record. B It is only after giving due weight to the mitigating as well as the aggravating circumstances, that it must proceed to impose the appropriate sentence. [482-D, H, 483-A-C]

Bachan Singh v. *State of Punjab*, [1983] 1 SCR 145, referred to.

C 5. In the instant case, the Trial Court dealt with the question of sentence elaborately from paragraphs 83 to 92 of the judgment and after referring to statutory provisions and taking note of the legislative change which has since been brought about by section 354(3) Cr. P.C. and some judicial pronouncements, came to the conclusion that the the sentence of D imprisonment for life would meet the ends of justice. Therefore, the Trial Court did not merely, by a cursory order, impose the sentence of life imprisonment and used its discretion not to award the capital sentence of death for detailed reasons recorded by it. The reasons given by the Trial Court cannot be said to be wholly unsatisfactory or irrelevant, much less perverse. The High Court differed with the reasoning of the Trial Court E and almost 5 years after the judgment had been pronounced by the Trial Court, proceeded to enhance the sentence of A 11 from life imprisonment to that of death sentence. The High Court also gave its own reasons in support of its view on the question of sentence. The High Court, however, did not opine that the reasons given by the Sessions Judge were perverse F or so unreasonable as no court could have advanced the same. It took a different view of the legislative policy as also of the law laid down by this Court and referred to some other judgments of this Court also in support of its "reasons" to impose the sentence of death. The view taken by the High Court, it can legitimately be said, is also a possible view. [483-D-G]

G 6. Prior to the incorporation of Section 354(3) Cr. P.C. in 1973 when the imposition of death sentence was almost the rule and imposition of life imprisonment required the trying Judge to give reasons, this Court in *Dalip Singh's* case [1954] SCR 145 held that the discretion on the question of sentence was that of the trying Judge, and if he gave reasons on which H a judicial mind could properly found, an appellate court should not

interfere. [484-B, D]

6.2. In view of the legislative amendment noticed above the present case stands on a better footing than *Dalip Singh's* case. Keeping in view the guidelines in *Dalip Singh's* case in the peculiar facts and circumstances of the present case, when the occurrence took place almost 10 years ago and for the last more than 6 years the spectre of death has been hanging over the head of A11, the High Court should not have enhanced the sentence for exercising its discretion in choosing the sentence the trial court had given elaborate reasons which it cannot be said no judicial mind can advance. Only because the High Court looked at those reasons differently, it did not justify the enhancement of sentence to death sentence. [484-F-H, 485-A]

Dalip Singh **v.** *State of Punjab*, **[1954] SCR 145, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 277-279 of 1992.

From the Judgment and Order dated 6.3.92 of the Gujarat High Court in Crl. A. Nos. 88, 89 & 58 of 1988.

T.U. Mehta, N.N. Keshwani, Ashok D. Shah and R.N. Keshwani for the Appellants.

Maganbhai Barot S.R. Divatis, H.M. Gandhi, S.C. Patel and Anip Sachthey for the Respondents.

E.C. Agrawala for the Complainant.

The Judgment of the Court was delivered by

DR. ANAND, J. Twelve persons namely, Bharatsinh Pathuba Gohil, Dhruvansinh Bharatsinh Gohil. Antruddsinh Bharatsinh Gohil, Jodha Khoda Rabari, Bhikhubha Shivubha Gohil, Bhupathsinh Bahadursinh Gohil, Kuvarisinh Ajitsinh Gohil, Nirubha, Ajitsinh, Baldevsinh Alias Babluha Sajubha Gohil, Jasubha Bharatsinh Gohil and Mohansinh Alias Nathabai Ranchhodbhai Thaker Alias Selanki Alias Parma were tried for offences punishable under Section 120-B read with Section 302, 307, 148 IPC read with Section 149, Section 143 and in the alternative under Section 302, 307/34 IPC and section 25A of the Arms Act by the learned Sessions Judge, Bhavnagar, (For the sake of convenience and brevity we shall refer

A to the No. of the accused. A1 to A12, in the same order in which their names appear in the Trial Court).

The Trial Court found that all the accused, as members of an unlawful assembly, under the leadership of accused No. 11 responsible for the death of deceased Diwaliben. It also held all the accused as members of unlawful assembly, responsible for the death of Jaram Bhagvan and Odhavji Bhagvan. In the opinion of the Trial Court, Accused No. 11 was also responsible for the death of deceased Purshottam Jaga and Popat Lakha. Further, accused Nos. 1, 5, 7, 8, 9, 10, 11, and 12 with active part played by accused Nos. 3, 10, 11 and 12 were held responsible for the death of Gordhan Lakha. Accused Nos. 1, 2, 5, 7, 8, 9, 10, 11 and 12 with active part played by accused Nos. 5, 8, 11 and 12 were also held responsible for the death of deceased Babu Bacher. The learned Sessions Judge also held guilty all the members of unlawful assembly, with an active part played by Accused No. 11, for the death of Madhu Khoda and Nagji Khoda. With regard to injuries caused to Pragji Mavji, all the accused were held guilty for an offence under Section 324 IPC. The Trial Court observed that with regard to the injury caused to Madhu Naran all the accused were guilty of the offence under Section 307/149 IPC and with regard to injury caused to Purshottam Mulji all the accused were held responsible for the offence under Section 307/149 IPC. The learned Sessions Judge also found that Dhanji Bhagvan had been caused injuries by all the accused and therefore they were guilty of an offence under Section 307/149 IPC. They were all sentenced to undergo life imprisonment for the offence under Section 302 IPC and 302/149 IPC. No separate sentence was, however, imposed for the offence under Section 120-B IPC. A1, A2, A5, A8, A9, A11 and A12 were also sentenced to suffer rigorous imprisonment of 3 years and to pay a fine of Rs. 1000 each or in default to further undergo rigorous imprisonment for six months for the offence under Section 25A of the Indian Arms Act. All the substantive sentences were directed to run concurrently. The accused filed an appeal in the High Court and the State also filed an appeal seeing enhancement of the sentence of life imprisonment to death sentence, since the accused had been found guilty of committing as many as 10 murders. The High Court acquitted A4. Accepting the State appeal in part, it awarded the sentence of death to All, Jashubha only. The High Court confirmed the conviction and sentence of life imprisonment on rest of the accused. Conviction and sentence for other offences was also maintained. The accused have, by special leave, filed this appeal challenging

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their convictions and sentences. There is, however, no appeal filed on behalf of A10, who has since been absconding. A

The prosecution case is as follows :

Village Mangadh and Chomaland are separated only by a boundary of earth embankment. In 1980 some Patels of village Mangadh committed the murder of 3 Darbar namely, Bhimdevsinh Ajitsinh, Son of A9, Khengarbha Chandubha and Sajubha Patubha, brothers of A1. 9 Patels of village Mangadh were tried for the said offence but acquitted. Enemity and hostilities between the two factions continued. B

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On 20th of September, 1984 the appellants herein with a view to wrack the vengeance of the said incident hatched a conspiracy to assualt the complainant party. It so happened that Gomtiben, the aunt of the complainant, died in village Manvilas and the news of her death was received at village Mangadh also where the parents of the deceased Gomtiben resided. As is customary, the villagers of Mangadh decided that they would take bath at the well situated outside the village and thereafter go to Manvilas the next day to offer condolences. One tractor alongwith a trailer was arranged for transportation of the villagers on 20th of September, 1984. 12 males alongwith some 12-13 females went in the tractor and trailer to village Manvilas to offer condolences. Taking advantage of this situation, appellants herein, alongwith A10 and the acquitted Accused A4, formed an unlawful assembly and lay in wait, armed with deadly weapons like gun, spear, axe and dhariya, for the tractor and the trailer to return from Manvilas. They concealed themselves behind the hedge separating the row near the Vadi of Koli Devji situated on the path-way between Manvilas and Mangadh. As soon as the tractor came on the road near the Vadi, All came on the road and fired from his gun thereby deflating the tyre of the tractor and brought the same to a halt. In the meanwhile, the remaining accused parsons also came out from behind the hedge and assaulted those who were sitting in the tractor. Gun shots were fired and some of the persons sitting in the tractor and trailer were injured. When some of the villagers tried to run away, after jumping from the tractor, they were chased and beaten up by members belonging to the accused party. As a result of the gun shots a number of persons received injuries and one of them, Diwaliben, died in the tractor. The accused then returned to the village and went towards southern outskirt of the village, where again shots were D E F G H

A fired by them at the persons working in different fields as well as on those who were returning on their carts from the fields. A number of persons were killed. Pragji Mavji, Purshottam and Dhanji received gun shot injuries. Odhavji Bhagvan and Jaram Bhagvan were chased and killed by the accused party. Ganesh who was also injured by the gun shot lay there in an injured condition but died on the way to the hospital. The accused also B fired at the residential place of Purshottam when he was unloading stones from the cart and he also died on the spot. Popat Lakha, Goverdhan Lakha and Babu Bacher were shot dead by the accused party while they were returning from their fields. Nagji Khoda and his associate Madhu Khoda were injured by gun shots and out of them Nagji died on the spot while C Madhu Khoda succumbed to his injuries in the hospital. Madhu Naran succeeded in running away after receiving some injuries during the incident and got medical aid in the hospital at Gariadhar. While he was in the hospital, some of the injured persons were brought to the same hospital while some others had been sent to Bhavnagar Government Hospital and D thereafter to Ahmedabad for treatment. Madhu Naran filed the complaint on the same day which forms the basis of the first information report and the investigation was taken in hand.

The prosecution led evidence in the case to show that a short time prior to the incident in question an assault had taken place on Purshottam E Pragji in which A8, All and A12 out of the present appellants alongwith the son of A9 and the brother of A7 were tried and convicted. Their appeal was pending against the conviction and sentence in the High Court, when the occurrence in this case took place on 20th September, 1984.

F That all the deceased in the case died as a result of the assault on them by fire arms and other weapons has not been disputed before us and we are, therefore, not obliged to refer either to the post-mortem reports, medical evidence or the other evidence including the evidence of the expert with regard to the use of fire arms. Learned counsel for the appellant, Shri Mehta however submitted that the evidence on the record does not prove G the case against A2, A3, A6 and A10 beyond a reasonable doubt and that the sentence of death awarded to A11 was also not justified since the Trial Court had sentenced him to suffer imprisonment for life, keeping in view all the facts and circumstances of the case. Learned counsel, however, was unable to point out any material on the record from which the substratum H of the prosecution case could be doubted insofar as the complicity of the

remaining accused persons are concerned. He drew our attention to some parts of the evidence led by the prosecution to draw a distinction between the cases of A2, A3, A8 and A10 on the one hand and the remaining accused on the other. The prosecution evidence, in our opinion, is clear, cogent and specific insofar as the involvement of accused other than A2, A3, A6 and A10 are concerned, whose cases we shall deal with a little later. Learned counsel for the appellants has been unable to point out any cogent reasons for not agreeing with the Trial Court and the High Court as regards the guilt of the remaining accused. It has, however, been argued that the enhancement of sentence to death in the case of A11 was not justified. The appreciation of evidence by the courts below has impressed us and we agree with the reasoning and the conclusions arrived at by both the courts below as regards the guilt of the appellants other than A2, A3, A6 and A10 and find that the same has been successfully brought home. However, before considering whether the High Court was justified in enhancing the sentence of life imprisonment to death in the case of A11, Jashubha, we propose to deal with the case of A2, A3, A6, and 10.

The learned Sessions Judge as well as the High Court rightly treated the complaint made by Pragji at the police chowky, as the first information report in the case, on the basis of which investigation commenced and a copy of which had also been for warded to the Court. A perusal of the said report shows that accused No. A1, A5, A7, A8, A9 A11, and A12 have been specifically named as the assailants. It is also specifically stated in the said report that out of them four of the accused were armed with fire arms and that the incident took place between 9.30 a.m. and 10.00 a.m. It is nobody's case and indeed in farness to learned counsel for the State, it must be recorded that he also did not dispute that the complainant knew A2, A3, A6 and A10, as well as he knew the other accused persons. The complainant, Pragji PW16 being an injured witness himself is a stamped witness and it is significant that he did not name A2, A3, A6 and A10 as members of the accused party in the first information report, lodged soon after the occurrence. It is also relevant in this connection to bear in mind that in his statement recorded by PW11, Shri Mehta, Executive Magistrate, Pragji PW16 again did not name A2, A3, A6 and A10 as having taken any part in the assault. Of course, in the statement the complainant had stated that there were four other persons also but since, the names of all the other accused were mentioned in the report, one fails to understand as to what prevented the names of A2, A3, A6 and A10 to be also given by the

A complainant in his report. At the trial, of course, an effort was made to implicate these four accused also but then we cannot loose sight of the fact that the tendency to rope in some innocent persons alongwith the guilty ones is not new. It appears that due to the enmity, which is admitted between the parties and the past hostilities, the names of A2, A3, A6 and A10 were sought to be introduced in the prosecution case at a later stage, after thoughtful deliberations, and the case was then developed so as to implicate them also. None of the witnesses produced by the prosecution has been able to ascribe any particular role to A2, A3, A6 and A10. The mention of the expression "4 other" by the complainant shows that he had designedly left a margin to add to the number of the accused later on after deliberations and consultations. The evidence of Pragji as well as the other prosecution witnesses, particularly Madhu Naran PW17, shows that the prosecution has made a concerted effort to improve upon its case and implicate A2, A3, A6 and A10 alongwith the other accused persons later on. In this connection, it requires to be noticed that a careful analysis of the testimony of the 3rd eye witness, Purshottam Mulji PW18, also creates an impression on our minds that while dealing with the two parts of the incident, one at the tractor-trolley and the other in the village, the role played by A2, A3, A6 and A10 has not been clearly brought out by him either. Our careful appraisal and independent analysis of the evidence on the record, coupled with the glaring omission in the first information report and the statement of Pragji recorded by the Executive Magistrate PW11, for which omission the prosecution explanation deserves a mention only to be rejected, has created an impression on our minds that the prosecution has failed to prove the case against A2, A3, A6 and A10 beyond a reasonable doubt and that the possibility that they have been implicated alongwith other accused persons on account of their relationship an association with the other accused persons cannot be ruled out. The Trial Court as well as the High Court, in our view, fell in error in not distinguishing their cases and in convicting and sentencing them also alongwith the other accused persons. These four appellants namely, A2, A3, A6 and A10, therefore, deserve to be given the benefit of the doubt and acquitted. We may hasten to add that A10 has not filed any appeal in this Court but since the infirmities which attach to the cases of A2, A3 and A6 are the same which attach to his case also, we cannot deny the benefit of our judgment to him also only because he has not filed any appeal against his conviction and sentence before us. We give him the benefit of the doubt

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also and set aside his conviction and sentence in the same manner as we set aside the conviction and sentence of A2, A3, and A6 by giving them the benefit of the doubt. A

So far as the remaining accused are concerned, the prosecution evidence is clear and cogent. The eye witness account is specific. Despite lengthy cross-examination of the eye witnesses nothing has been brought out on the record to create any doubt about the creditworthiness of the testimony of any of the prosecution witnesses. The recoveries made from them, pursuant to the disclosure statements, which have not been doubted before us coupled with the medical evidence shows that the prosecution has established its case against them beyond every reasonable doubt. We agree with the reasoning and findings of the Trial Court as well as the High Court and uphold the conviction of A1, A5, A7, A8, A9, A11 and A12 insofar as the offences under section 302/149 IPC and other offences are concerned. Since, the High Court itself did not grant the appeal of the State for enhancing the sentence of life imprisonment in the case of A8 and A12, we need not detain ourselves to deal with their case and it would suffice to record that we agree with the High Court that the sentence of life imprisonment on A8 and A12, did not call for any enhancement. B C D

We shall now come to the case of A11, who has been sentenced to death by the High Court by partially accepting the State's appeal. E

Indeed 10 murders had taken place in broad daylight. The conscience of the State appears to have been shaken when it found that the Trial Court had sentenced all the accused only to life imprisonment. The State Considering the gravity of the crime in which 10 innocent persons had lost their lives approached the High Court for enhancing the sentence of A8, A11 and A12 and the High Court enhanced it in the case A11 only. As already noticed, it was A11, Jashubha, who first emerged on the scene and fired from his gun and deflated the tyre of the tractor. After the tractor came to a halt, it was he again who fired the seconds hot on the passengers which caused injuries to some others including Diwaliben who died. Jashubha A11, according to the prosecution, fired yet another shot from his gun which hit Dhanji Bhagvan. The other shots fired by him could not be linked specifically to the injuries to any of the deceased or injured. The manner in which the murders were committed indeed exposes its gravity. Undoubtedly, the assault was made by the accused party led by A11 on F G H

A un-armed and innocent person, who were returning after offering condolences on the death of Gomtiben. That there was previous enmity between the parties certainly did not justify the manner in which A11 and his companions acted and went on a killing spree. The Trial Court which had the benefit of examining the demeanour of the witnesses chose not to
B inflict the extreme penalty of death on any of the accused persons and instead sentenced all the accused to life imprisonment by its judgment dated December 14, 1987. The High Court enhanced the sentence of A11 vide its judgment dated 6th March, 1992.

Learned counsel for the State has pleaded for upholding the sen-
C tence of death on A11 while Mr. Mehta, learned Sr. Advocate appearing for the appellant Jashubha A11 has pleaded that the sentence of death be not confirmed on him.

It is needless for us to go into the principles laid down by this Court regarding the enhancement of sentence as also about the award of sentence
D of death, as the law on both these subjects is now well settled. There is undoubtedly power of enhancement available with the High Court which, however, has to be sparingly exercised. No hard and fast rule can be laid down as to in which case the High Court may enhance the sentence from life imprisonment to death. Each case depends on its own facts ad on a
E variety of factors. The courts are constantly faced with the situation where they are required to answer to new challenges and mould the sentencing system to meet those challenges. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing appropriate sentence. The change in the legislative intendment relating to award of capital punishment notwithstanding, the opposition by
F the protagonist of abolition of capital sentence, shows that it is expected of the courts to so operate the sentencing system as to impose such sentence which reflects the social consience of the society. The sentencing process has to be stern where it should be.

G There are however certain basic principles which this Court has laid down in *Bachan Singh's* case [1980] 2 SCC, 684 for imposition of death sentence in "rarest of rare" cases and we need not repeat those principles.

Section 354 (3) of the Code of Criminal Procedure, 1973, as amended, makes it obligatory in cases of conviction for offences punihsable
H with death or with imprisonment for life to assign reasons in support of the

sentence awarded to the convict and further ordains that in case the Judge awards death penality, "special reasons" for such sentence shall be stated in the judgment. Thus, the Judge is under a legal obligation to explain his choice of the sentence. The Legislature in its supreme wisdom thought that in some "rare cases" for "special reasons" to be recorded it will be necessary to impose the extreme penalty of death to deter others and to protect the society and in a given case even the sovereignty and security of the State or country. It, however, left the choice of sentence to the judiciary with the rider that the court may impose the extreme punishment of death for "special reasons". The sentencing court has, therefore, to approach the question seriously and make an endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. It is only after giving due weight to the mitigating as well as the aggravating circumstances, that it must proceed to impose the appropriate sentence.

In the instant case, the Trial Court dealt with the question of sentence elaborately from paragraph 83 to 92 of the judgment and after referring to statutory provisions and taking note of the legislative change which has since been brought about by Section 354 (3) Cr. P.C. and some judicial pronouncements, came to the conclusion that the sentence of imprisonment for life would meet the ends of justice. Therefore, the Trial Court did not merely, by a cursory order, impose the sentence of life imprisonment and used its discretion not to award the capital sentence of death for detailed reasons recorded by it. The reasons given by the Trial Court cannot be said to be wholly unsatisfactory or irrelevant much less perverse. The High Court differed with the reasoning of the Trial Court and almost 5 years after the judgment had been pronounced by the Trial Court proceeded to enhance the sentence of A11 from life imprisonment to that of death sentence. The High Court also gave its own reasons in support of its view on the question of sentence. The High Court, however, did not opine that the reasons given by the Sessions Judge were perverse or so unreasonable as no Court could have advanced the same. It took a different view of the legislative policy as also of the law laid down by this Court and referred to some other judgment of this Court also in support of its "reasons" to impose the sentence of death. The view taken by the High Court, it can legitimately be said is also a possible view.

We have given our anxious consideration to the reasons advanced by

A the Trial Court for not choosing to impose the death sentence as also those given by the High Court for enhancing the sentence of life imprisonment to that of death on A11, Jashubha.

Prior to the incorporation of Section 354(3) Cr. P.C. in 1973 when the imposition of death sentence was almost the rule and imposition of life B imprisonment required the trying judge to give reasons, this Court was faced with almost a similar situation as in the present case. In *Dalip Singh's* v. *State of Punjab*, AIR (1953) SC 364, this Court dealt with the subject, thus :

C "On the question of sentence, it would have been necessary for us to interfere in any event because a question of principle is involved. In a case of murder the death sentence should ordinarily be imposed unless the trying judge for reasons which should normally be recorded considers it proper to award the lesser penalty. *But* D *the discretion is his and if he gives reasons on which a judicial mind could properly found an appellate court should not interfere. The power to enhance a sentence from transportation to death should very rarely be exercised and only for the strongest possible reasons. It is not enough for an appellate court to say, or think, that if left to itself it would have awarded the greater penalty because the discretion* E *does not belong to the appellate court but to the trial judge and the only ground on which an appellate court can interfere is that the discretion has been improperly exercised, as for example where no reasons are given and none can be inferred from the circumstances of the case, or where the facts are so gross that no normal judicial* F *mind would have awarded the lesser penalty.*" (Emphasis ours)

In view of the legislative amendment noticed above, the present case stands on a better footing than *Dalip Singh's* case (supra). Keeping in view the guideline in *Dalip Singh's* case (supra), we are of the opinion that in the peculiar facts and circumstances of this case, when the occurrence G took place almost 10 years ago and for the last more than 6 years the spectre of death has been hanging over the head of A11, Jashubha, the High Court should not have enhanced the sentence from life imprisonment to death because for exercising its discretion in choosing the sentence the trial court had given elaborate reasons which it cannot be said no judicial H mind could advance. Only because the High Court looked at those reasons

differently, in our opinion, it did not justify the enhancement of sentence to death sentence. We, therefore, commute the sentence of death imposed upon A11 by the High Court to that of imprisonment for life and restore the sentence as was imposed by the Sessions Judge.

Thus, in view of the above discussion, the appeals of A2, A3, and A6 are allowed and their conviction and sentence are set aside. A10 shall also be entitled to the benefit given to A2, A3, and A6 and his conviction and sentence are also set aside. The appeal of A11 is allowed to the extent that while maintaining his conviction the sentence of death imposed upon him is commuted to the sentence of life imprisonment. In all other respects his appeal fails and is dismissed and his conviction and sentence for other offences maintained. Appeals of the remaining accused A1, A5, A7, A8, A9 and A12 are dismissed and their convictions and sentences are maintained.

A2, A3, A6 shall be set at liberty forthwith if not required in any other case.

R.R. Appeals of A2, A3, A6 & A10 are allowed.
Appeals of A1, A5, A7, A8, A9, & A12 are dismissed.