

JURISPRUDENCE ANALYSIS OF DEATH PENALTY BY CASE STUDY

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Case: Ediga Anamma v. State Of Andhra Pradesh

Citation: 1974 AIR 799, 1974 SCR (3) 329

The present case is about a murder of a young woman and her child due to fury developed out of sex jealousy by the accused in a small village of Andhra Pradesh. The accused in this case had an illicit relationship with another man despite being married. Later when discovered by her father in law, she was flagged out of the house for this act. She however continued to have the relationship with her paramour lover. Now the deceased, Anusuya was unfortunately neighbor of accused and was also a married woman. In no time she also developed erotic relation with the paramour of the accused person. When the accused came to know about the shifting of affection by her lover towards Anusuya, she was fired by jealousy and decided to liquidate her rival. On the day of November 4, 1971 on the way to field she stabbed Anusuya and her 10 year old daughter Nirmala brutally with a chisel and moreover disfigured the face of her which was found burnt. With a view to mislead and escape detection she removed her cloths and replaced with her owns. She also removed the child, wrapped her up in a piece of cloth and buried it in river sand. This strategic planning worked well until the Patel of the village moved down with the accused and unraveled the secret. After further investigation and findings the accused was charged of offense committed under section 302 and 201 of I.P.C. Though there was no direct evidence of the case but persecution had placed a number of circumstantial evidences and extra judicial confession of the lover of the accused also substantiated the version. She was therefore awarded death sentence by the trail court and conviction was upheld by high court also. Now the question before Supreme Court was whether the conviction of accused by the lower courts was correct and whether the sentence of awarding life imprisonment to be converted into lesser penalty i.e. life imprisonment.

From the time immemorial the issue of capital punishment has been discussed at both national and international level but nothing conclusive came till present. The question has been tried to answer by jurist, judges, social philosophers, and many social thinkers by venturing into pros

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and cons of the same. Capital punishment has been an integral part of criminal justice system and has been accepted as the same in many countries.

The Indian jurisprudence is based on reformatory and deterrent theories.

REFORMATIVE THEORY supports the jurisprudence where the offender should be given the opportunity for reformation whereas the punishments are to be imposed to deter the offenders. This theory also supports that while awarding the punishment the judges should consider age of the offender, his character, his upbringing, social background, the circumstances under which he committed the offence, and the object with which he committed such offence. This theory does not justify capital punishment. Moreover the propagators of this theory contend that by a sympathetic and loving treatment every offender can be transformed into a better human being. One does not cease to be a human being even if he commits grossest crime.

According to reformatory theory, also known as rehabilitative theory, a crime is committed by a person as a result of conflict between the character and motive of the offender . Sometimes the motive is stronger than the restraint by character which leads one to commit an offence.

Even reformatory punishment justifies the life imprisonment not only as preventive measures but also as a cure. The offender here is regarded as a patient and therefore unsafe for the society. He can only be discharged when responds to the treatment i.e. under go his sentence.

Gandhi- "*Hate the sin, not the sinner*"

Here in the case of *Ediga Anamma vs State Of Andhra Pradesh* the apex court to an extent supported the reformatory theory of punishment. Justice V R Krishna Iyer showed at various instances his belief in reformatory theory of punishment although he completely did not supported the abolishment of death penalty considering various social factors present in the society. The choice between death penalty and life imprisonment has to be made in a situation which is not altogether satisfactory . As supported by this theory and mentioned above various factors like her tender age, social background, her expulsion from the home and being mother of a young boy were considered by the judge in deciding her conviction.

Court further took a note of a similar case (*N. Sreeramula v. State of Andhra Pradesh*) decided by the same court supported the reformatory theory.

"In committing the offence the appellant must have been actuated by jealousy or by indignation either of which would tend further to disturb the balance of his mind. He has besides been awaiting the execution of this death sentence for over a year. We think that in this case a sentence of transportation for life would be more appropriate than the sentence of death."

Deterrent theory

Deterrence theory uses the punishment as a threat to deter the people from committing offences. The object of deterrence theory is to protect the community against heinous crimes. It also deters criminal who are given life imprisonment from repeating such criminal activities in future. This theory supports stricter punishment that may be given to the offender for the offence to set an example for others to deter and prevent them from committing offences. According to Rousseau capital punishment is proper punishment if criminal was beyond redemption. The society needs to be protected from such offenders. Rigorous and strict punishment serves better and prevents the commission of a crime as against moderate and lesser punishment. It considers hardened and habitual criminal as a rotten limb of the society which is required to be eliminated. However if death penalty is not considered necessary, imprisonment for the remainder of the life is awarded to the person to prevent him from being the part of society or to protect the society from any further wrong doings on his part . Therefore both death penalty and life imprisonment are in a way are used to deter the people from committing crimes.

In the present case the accused was awarded death penalty by the lower courts which even got uphold by high court for the brutal murder that she committed not one but two which clearly depicted her mens rea and guilty mind. She although got awarded lesser punishment of life imprisonment by the apex court but still the act of hers was considered heinous and brutal enough to prevent her to be part of the society any more.

Guilt once established, the punitive dilemma begins .

There always existed a dilemma as to whether the accused be awarded death penalty or be put in imprisonment for rest of his life.

In India the concept of capital punishment came way before the parliament. On the other side there have been statutory changes since India became free. Under sec. 367(5) of the criminal procedure code, before the amendment of 1955, the general rule was death penalty for murder and to impose life imprisonment for reasons to be given in writing. By the amendment this

section was deleted and the new section came which gave the court the discretion to award either death penalty or life conviction. This has changed the earlier rule where death was the principle and life conviction was the exception. Further a great change has been recorded in the new Criminal Procedure Code 1973. Section 354(3) states:

"when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence." Thus after CrPC.1973 the position of law became that life imprisonment was the general rule and capital punishment was to be awarded only in special cases.

Since the power lies in the hands of court to decide between the punishments imposed under sec 302 of IPC, it must focus not only on the crime but also on the criminal. Also the facts of social and personal nature should bring before the court at the time of sentencing is determined. Here the accused is a young woman of 24 who was flogged out of her house by her father in law, living at her at parent's house, single and also is a mother of a child. The court observed that the rural area where the murder happened also seemed to be a region where inhabitants were not strict regarding sex and extra marital relations for the reason that both the accused and the deceased although married developed illicit relationship with the same person who himself was a widower. She was filled with the reckless passion of sex jealousy and in order only to protect her relation with the person she loved and eliminate her competitor she performed the double murder. The court believed that better world would be without legal knifing of life. The court pointed out the jurisprudential journey in awarding the punishment of lifelong conviction more normal than particularly from guillotine, gas chamber, electric chair and hanging till death. The same court in various other cases laid down points which plays an important role in mitigating the punishment awarded to the accused. The court after observing all the factors mentioned above collectively and individually and thereafter realizing the correlation between crime and punishment in this case chose to liquidate the death penalty by awarding her life imprisonment. The judiciary thus through a blended jurisprudence of both deterrent theory and reformative theory as existed in the Indian legal system pronounced a judgement whereby they tried to maintain a balance in the society as per the times.

"Each extreme is a vice, virtue lies in the middle"- Aristotle.