

Inder Singh and Another

Vs

The State (Delhi Administration)

Special Leave Petition (Criminal) No. 238 of 1978

(Jaswant Singh, V. R. Krishna Iyer JJ)

24.02.1978

ORDER

KRISHNA IYER, J. -

1. Mr. Frank Anthony has argued elaborately, punctuated with strident emphasis, several points in support of the innocence of the petitioners who have been convicted under Section 302, read with Section 34 and Section 307, I.P.C. The High Court has affirmed the conviction entered by the trial Court and sentences of life imprisonment have been awarded by both the courts for both the accused. Certainly, some persuasive factors, which may militate against the culpability of the accused and the prosecution version of the precise nature of the occurrence, were brought to our notice by counsel who also strongly urged that there were embellishments and improbabilities invalidating the conviction. We have had the advantage of perusing the extensively spread-out judgment of the High Court, in the light of the critical arguments addressed, but remain unconvinced that there is any serious error which warrants grant of leave.

2. Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up ? Because the court asks for manufacture to make truth look true ? No, we must be realistic.

3. We are satisfied that the broad features of the case, the general trend of the testimony and the convincing array of facts which are indisputable, converge to the only conclusion that may be reasonably drawn, namely that the accused are guilty. Theoretical possibilities may not shake up, fancied weaknesses may not defeat, when verdicts are rested on sure foundations. Stray chances of innocence haunting the corridors of the court cannot topple concurrent findings of guilt.

4. We feel unhappy that, while infirmity in some aspect or other of this prosecution case should not invalidate the culpability which is otherwise voraciously made out, tragic occurrences like this one, should and could be avoided by pre-emptive State action, given imagination and intelligence. Had that been done the lethal episode might not have materialised and a young life not been lost. And,

on the other side, two boys, if we may say so, are the convicts, one who is 16 years and the other barely 20 years, and yet the attack was induced by a previous murder, rending a family into two feuding branches and leading to this vengeful murder. And the pity of it is this bleeding explosion was sparked off by a trivial friction caused by turns of irrigation. We refer to the observation of the High Court :

"As is well known and borne out by the reported cases the drawing of water by turns is an endless cause of dispute."

In this socio-economic source of irritation, induced by turns of irrigation, were so frequent, it behoved any aware Government not to watch and wait for murders to take place and then to prosecute after lives have been lost but to anticipate and smoothen the whole process so that avoidable frictions and tensions do not hot up. Violence often erupts from stress and distress. If wars are made in the minds of men crimes are rooted in the consciousness of man. It is the vigilant duty of a responsible Government not to merely track down criminals after the crime but to forestall escalation of traumatic build-ups by quite timely steps before the crime. The Administration, we hope, will not wait for drunken brawls and deaths in festivals, fights over turns of water and deaths in fields and other like collusions, but, like good Governments should do, produce detente in the villages by appropriate measures which deepen the finer awareness and foster the better fellowship of men. It is obvious that this duty has gone by default and may continue to do so, unless the etiology of crime, in a broader social perspective, were traced and holistic measures adopted in advance. Criminology is more than police billy and 'peace and order' is more than smart F.I.R. It is positive action for prevention, detection and prompt prosecution.

5. Once we agree, as we do, that the conviction under Section 302 is right, the sentence imposed, namely, life imprisonment is the minimum. Even so, there is an amount of psychic distress in marching two young men into lifelong incarceration. The humanistic aspect of the case may highlight the deplorable plight of the man behind the murderer and the mind behind bars. The fact that he has committed a murder in a fit of anger or prodded by family feud, cannot warrant his being further criminalised by a long term of brutalising prison life. These two young men must be redeemed for society because they are after all, men. In this land elevated by the noble example of Valmiki and the human faith of Gandhiji, anyone with any background has a hopeful future given a therapeutic prison process.

6. The spiritual basis of our constitutional order - and that is the dharma of danda neeti - is human dignity and social justice and not the sadistic cruelty of hard confinement for years on end. The rationale of court sentence is social defence coupled with personal correction.

7. The California Supreme Court implied rehabilitation when it said :

There is no place in the scheme for punishment for its own sake, for the product simply of vengeance or retribution. (In re Estrada, 63 Cal 2nd 740 (1965))

8. Most correctional codes acknowledge the intent to rehabilitate - making it the purpose of confinement. In that context, Justice Blackmun's language is meaningful in a United States Supreme Court decision :

At the least due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.

(Jackson v. Indiana, 406 US 715 (1972) : 32 L Ed 2d 435).

9. In 1971 a U.S. District Court in Maryland found total rehabilitative effort was missing in a prison system and ordered that treatment be accelerated. Budgetary limitations imposed by the State were no excuse. Neither was non-cooperative prisoners. After all, they need rehabilitation the most. (McCray v. State, 10 Cri L Reporter 2132) We are clear - and, indeed, this Court has on prior occasions driven home the sentencing essence - that the judicial imprimatur is given to keeping a man in jail, not in a cage, the difference being that in the former, the healing technique and hospital setting chasten the tiny world behind the tall walls. Therefore we emphasise the spirit of change towards rehabilitation. And,

"You cannot rehabilitate a man through brutality and disrespect. Regardless of the crime a man may commit, he still is a human being and has feelings. And the main reason most inmates in prison today disrespect their keepers, is because they themselves (the inmates) are disrespected and are not treated like human beings. I myself have witnessed brutal attacks upon inmates and have suffered a few myself, if he becomes violent. But many a time this restraining has turned into a brutal beating. Does this type of treatment bring about respect and rehabilitation ? No ! It only instills hostility and causes alienation toward the prison officials from the inmate or inmates involved.

If you treat a man like an animal, then you must expect him to act like one. For every action, there is reaction. This is only human nature. And in order for an inmate to act like a human being, you must treat him as such. Treating him like an animal will only get negative results from him. (Lewis Moore, 71, 72)

10. This reasoning compels us to issue certain positive directions, responsible as the court is to ensure that the deprivation of liberty is accompanied by curative strategy and human dignity. Karuna must refine life in career (sic).

11. So, instead of bolting these two young men behind the high walls of a prison and forgetting about them, humanising influences must be brought to bear upon them so that a better sense of responsibility, a kindlier attitude, behavioural maturity and values of a good life may be generated under controlled conditions. In this view, we direct the State Government to issue appropriate instructions to the jail authorities to give these two prisoners treatment which is not likely to degrade or offend dignity and decency but uplift and elevate. Work has a curative property but the kind of work assigned must be satisfying not degrading. The Medical Officer concerned will also be consulted on the proper prescription in this behalf. Furthermore, if the behaviour of these two prisoners shows responsibility and trustworthiness, liberal, though cautious, parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up. After every period of one year, they should be enlarged on parole for two months. Interviews by family members must be afforded as often as are sought. Useful crafts must be taught inside prison and studies encouraged. The Sessions Judge whose sentence we uphold, shall make jail visits to ensure compliance with these directions. Article 21 of the Constitution is the jurisdictional root for this legal liberalism. The State Government will take proper steps to comply with this curial command. With these broad obligations cast on the State and the Superintendent, we dismiss the special leave petition.

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