

Ram Prasad Sahu and Others

Vs

State of Bihar

Sri Narain Sahu and Another

Vs

State of Bihar

Criminal Appeals Nos. 613 and 614 of 1979

(V.R. Krishna Iyer, R.S. Pathak JJ)

12.10.1979

JUDGMENT

KRISHNA IYER, J. -

1. Limited leave to appeal granted.
2. These two appeals lend themselves to disposal by a common judgment having been filed by two different sets of accused against the same judgment convicting them all for different offences.
3. The facts found by the High court have our broad concurrence although Shri R. K. Jain, Advocate in Criminal Appeal No. 613 of 1979, has to some extent made a dent on the veracity of the persecution version. But we are not inclined to reopen the findings of fact concurrently rendered in exercise of our jurisdiction under Article 136 even assuming there are some errors of fact and of law. Every error does not confer a visa into this Court lest the floodgates of litigation flow in irresistible stream making the Supreme Court a superior High Court of appeal. Doing so would condemn the Court to functional futility and defeat the design of the founding fathers that ordinarily it shall operate as the nation's summit court deliberating and pronouncing upon issues of great moment and constitutional portent. For these reasons we have confirmed leave to appeal to the nature of the offence disclosed on the findings on record and the sentences to be imposed if variance is justified on principle.
4. The appellants in both these appeals have been held guilty by the Sessions court under Section 302 read with Section 149 IPC plus some lesser offence; but the High Court softened both the conviction and sentences having regard to all but one. The plea of the appellants in both the appeals that the conviction is unsustainable and, in any case, the sentence is harsher than the law permits.
5. A few facts. The deceased - one man dies as a result of a murderous assault and so it was that the trial Court rendered conviction under Section 302 read with Section 149 IPC - was attacked by the group of accused each playing a particular role, the lethal blow being attributed to accused Bansi Sahu. We do not interfere with the conviction and sentence of Bansi Sahu who is not an appellant in either appeal. The appellants in Criminal Appeal 613 of 1979 [arising out of SPL (Cri) 2340 of

1979] have been freed from overt acts by the High Court and consequently they have been found culpable under Section 325 read with Section 149 IPC having regard to the quantum of common object which made them constructively liable. They have been awarded six years' RI each. Some of these accused have received injuries for which the prosecution has offered no credible explanation. The special circumstances present in the case do not altogether absolve the prosecution from blame. While these suggest some distortion in the version of the State, they do not amount to any specific defence provided in the Penal Code and cannot disturb the conviction or the core of the prosecution version. Nevertheless, it is wrong on principle to exclude such circumstances in apportioning the sentences.

6. Secondly, a vital factor with grave impact on the sentencing verdict has been altogether omitted by the courts below. Appellant 2, Shankar Sahu, was barely 16 years old, but was tried, convicted and sentenced like an adult. Satyanarayana Sahu, appellant 1 in the same criminal appeal is state to be 20 years old. Had there been a children Act in the Bihar State like in most other State of the country, a compassionate trial process would have been statutorily mandatory and children could not be marched into regular criminal courts for trial and conviction, nor incarcerated with adult criminals with obvious debasement and subtle torture such as homosexual attacks. Unfortunately, despite repeated observations of this Court, the conscience of the State of Bihar has not been quickened into kindness towards children and its legislature has not found the mood or time to pass the Children Act. This is a bad omen in the International Year of the Child and we hope that amidst the general tumult the children will suffer from the legislative neglect. Rehabilitation of young offender is basic to juvenile justice which, in turn, is component of social justice. Will the International Year of the Child seethe end of this indifference on the part of the legislature and the executive ? We leave this part of the case on a hopeful note.

7. Had there been a Children Act, the above two accused, appellants 1 and 2, would have received more compassionate consideration at the hands of the court. We emphasise this aspect not merely with respect to the present case but also having in mind the generality of cases where the sensitivity of the court and the literacy of the bar have not risen to the level where Indian children can claim that charity due to them is being meted out.

8. For these reasons we consider that appellants 2 in Criminal Appeal No. 13 of 1979 be released forthwith, particularly because he is young and has no overt act attributed to him and more than all, has suffered around 5 months' imprisonment already. Constructive liability notwithstanding, the sentencing process will take note of the conspectus of circumstances including the absence of the overt act, age and antecedents of the offender. The penological purpose being to convert the offender into a non-offender it will be frustration of criminal justice if young lads are walled in and caged in the hope that cruelty will correct. We direct appellant 2 be discharged from prison at once.

9. The other appellants 1, 3, and 4 who are also not guilty of any overt acts deserve sentencing commiseration. Currently, it is widely accepted by penologists that the sharp shock of the initial phase of a prison terms is what hurts most and, therefore, a long may well be counter-productive and a shorter term sufficiently deterrent. We, therefore, reduce their sentence to two years' RI confirming the conviction against them.

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