

Sushil Kumar Mehrotra

Vs

State of Uttar Pradesh

Special Leave Petition (Cri) No. 972 of 1983

(A. Varadarajan, A. P. Sen JJ)

01.05.1984

ORDER

VARADARAJAN, J. -

1. The petitioner Sushil Kumar Mehrotra seeks special leave under Article 136 of the Constitution to file an appeal against the judgment of the Allahabad High Court (Lucknow Bench) in Criminal Appeal No. 24 of 1977, confirming his conviction by the learned Additional Sessions Judge, Lucknow for offences punishable under Section 302 read with Section 34 and Section 394, IPC and the sentence of life imprisonment awarded for each of the offences. The murder alleged was of the petitioner's mother's sister Urmila, wife of Bhalla, PW 4 in the house of the deceased and PW 4 at about 7.30 p.m. on March 22, 1975. The case of the prosecution was that at about 3 p.m. on that day the petitioner and his two friends Sushil Kumar Tandon and Shyam Shukla went to the residence of the deceased and PW 4, who was employed at that time as Assistant Station Master at Charbagh Railway Station, Lucknow, and those three persons stayed in the house of the deceased and PW 4, when PW 4 left the house for going to his duty at the Railway Station. Later, at about 7.30 p.m. Bansi Lal, PW 1, an RPF Inspector and neighbor of PW 4 came near the main gate of his house on a cycle and heard the shrieks of the deceased coming from the house. Thereupon, PW 1 parked his cycle and moved towards the main exit of PW 4's house. Om Prakash, PW 2, Shambhoo Surat, PW 3 and others who were present on the road into which the houses of PWs 1 and 4 open and also PW 1 saw the petitioner and two other persons coming out of the house of the deceased and running towards the north after holding out threats to them. One of those three persons had a pistol while the other had an open knife and the petitioner had a bag and was wearing only a baniyan and pants and not any shirt. PWs 1 to 3 went into the house of the deceased and PW 4 and found the deceased lying dead in the kitchen and some properties lying scattered and some valuable ornaments missing. There was also a blood- stained shirt lying inside the house of the deceased and PW 4. There was electric light burning in the street when the petitioner and the other two persons came out of the house of the deceased and PW 4 and ran away. PW 1 lodged the First Information Report about the incident at 8.30 p.m. on the same day. PW 4 who was sent for, came to the house later, and found his wife dead and the valuable properties missing. In the kitchen where deceased was lying dead, there were three tea cups and water was boiling in the kettle. Autopsy on the body of the deceased disclosed an abrasion on the right frontal area just above the eyebrow and contusion on the lip and multiple abrasions on the face and the neck. The Doctor who conducted the autopsy found clotted blood over the scalp of the deceased on the right temporal area as also in the right ear and in both the nostrils.

2. The evidence of PW 6 showed that no investigation was conducted in respect of Sushil Kumar Tandon and Shyam Shukla and no charge-sheet was even filed against them. There was no direct

evidence against the petitioner. The case against the petitioner rested only on circumstantial evidence. The trial court as well as the High Court relied on the circumstantial evidence and the identification of the petitioner by PWs 1 to 3 soon after the occurrence. PW 4 had deposed about the earlier visit of the petitioner and his two friends to his house and about their continuing to remain in the house even when he left for his duty at the Railway Station. The trial court as well as the appellate court found that the circumstantial evidence and identification of the petitioner by PWs 1 to 3 satisfactorily proved the guilt of the petitioner for the offences under Section 302 read with Section 34 and 394, IPC.

3. In the special leave petition notice was ordered to be issued confined to ground No. 1 of the additional grounds filed on August 25, 1983, namely, that the petitioner was a child at the time of the occurrence, namely, March 22, 1975 and his age was recorded as 17 years when his statement was taken on December 8, 1976 more than one year and nine months after the incident, and this itself shows that he was only 15 1/2 years old at the time of occurrence and under Section 27 of the U. P. Children's Act, 1951 no court could sentence him to death or imprisonment for life as he was a child below the age of 16 years within the meaning of Section 2 (4) of that Act.

4. The learned counsel for the petitioner was heard in the special leave petition confined to the question of age of the petitioner at the time of the occurrence. We are satisfied on a perusal of the record that the contention of the petitioner that he was only 15 1/2 years of age at the time of occurrence is a complete afterthought, for no such contention was raised either before the trial court or before the High Court when the appeal was heard or even in the grounds of the special leave petition as originally filed. The plea was taken only in the additional grounds filed on August 25, 1983 long after the filing of the special leave petition. The statement of the petitioner made before the trial court under Section 313 of the Code of Criminal Procedure was that the deceased was his aunt and had no issues and she wanted to adopt him as her son and there was no justification for the petitioner to murder her before she adopted him. The further statement and suggestion was that PW 4 suspected that the petitioner had illicit connection with the deceased and, therefore, if the petitioner would have thought of murdering, it would have been of PW 4 and not the deceased. If the petitioner was only 15 1/2 years old at the time of the occurrence and only a little over 18 years of age at the time of trial it is improbable that such a stand would have been taken on behalf of the petitioner and that such an important circumstance that he was a child below 16 years of age under Section 2 (4) of the U. P. Children's Act, 1951 would not have been taken note of by the learned counsel for the petitioner at the time of trial or during the hearing of the appeal in the High Court or while drafting the grounds in the special leave petition as originally filed. Therefore, we find no material on record on the basis of which it could be held that the petitioner was below 16 years of age at the time of occurrence in this case and that Section 27 of the U. P. Children's Act, 1951 was attracted. There is no merit. The special leave petition is dismissed.

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