

Vinod Kumar

Vs.

State of U. P.

Criminal Appeal No. 287 of 1986

(B. C. Ray, A. P. Sen JJ)

21.04.1987

JUDGMENT

SEN, J. -

1. This appeal by special leave directed against the judgment of the Allahabad High Court dated April 26, 1985 upholding the judgment and sentence passed by the learned Additional Sessions Judge, Kanpur dated July 11, 1977 raises the question whether the appellant was a child as defined in Section 2(4) of the U.P. Children Act, 1952 and therefore was entitled to the benefit of Section 29 of the Act. The point was not taken in the High Court nor was there any such plea raised during the trial. This was a case of triple murder. The appellant along with his ten companions was convicted by the learned Additional Sessions Judge under Section 302 read with Section 149 of the Indian Penal Code, 1860 for having committed the murders of the deceased Basdeo, Anant Ram and Mahabir in furtherance of the common object of the unlawful assembly and they were each sentenced to undergo rigorous imprisonment for life. The court has granted special leave to the appellant Vinod Kumar alone and dismissed the special leave petitions filed by the other accused.

2. In this appeal, the appellant sought special leave mainly on two grounds, namely : (1) The High Court was not justified in dismissing the appeals before it without hearing learned counsel appearing for the accused on the ground that the court was satisfied that the appeals ought to be allowed (sic). And (2) the trial of the appellant Vinod Kumar and the sentence of imprisonment for life awarded upon his conviction under Section 302 were vitiated in view of the decisions of this Court in Jayendra v. State of U. P. ((1981) 4 SCC 149 : 1981 SCC (Cri) 809), Umesh Chandra v. State of Rajasthan ((1982) 3 SCR 583 : (1982) 2 SCC 202 : 1982 SCC (Cri) 396 : 1982 Cri LJ 994) and Gopinath Ghosh v. State of W. B. ((1984) 1 SCR 803 : 1984 Supp SCC 228 : 1984 SCC (Cri) 478 : 1984 Cri LJ 168) as the appellant at the time of the incident was not even 14 years of age, his date of birth being April 18, 1959, and was a 'child' as defined in Section 2(4) of the Act and he ought to have been tried by the special court as required under Section 29 and his trial by the Court of Session was bad in law.

3. We have heard Shri Dharam Pal Singh, learned counsel for the appellant at quite some length. It was stated that the only question raised at the stage of grant of special leave, which again was the solitary point urged by him before us, was that the appellant was a child within the meaning of Section 2(4) of the Act at the time of the occurrence and therefore entitled to the benefit of Section 29. The learned counsel made a statement at the bar that the other point was not pressed at the hearing of the special leave petitions, namely, that the High Court did not give a hearing to the appellant and the other accused.

4. Normally, it would seem unnecessary to state the facts of the case in detail as they may not be germane to the issue now sought to be raised, namely, that the High Court was not justified in dismissing the appeal preferred by the accused without giving them a hearing. But in the facts and circumstances of the present case we think it necessary to do so. The facts brought out in the prosecution case clearly show that the appellant not only led the assault but also played a prominent role which resulted in the gruesome triple murder and it is incredible that he was a child at the time of the incident. The incident which led to the triple murder appears to be calculated, preplanned and ruthlessly executed.

5. Briefly stated, the facts disclosed by the evidence of the prosecution are that there were two rival factions in village Pania Mau, one led by the deceased Basdeo to which the other dead persons Anant Ram and Mahabir belonged, and the other of which the appellant Vinod Kumar and his ten companions were members, and the relations between them were extremely strained. It appears from the prosecution evidence that this ghastly incident took place on the morning of August 20, 1973 on the banks of a tank lying on the western outskirts of the village abadi which is used by the village people for purposes of bathing and washing their clothes. At about 11.30 a.m. the three deceased Basdeo, Anant Ram and Mahabir had gone to the tank for taking bath and washing their clothes. One of the eyewitnesses Kumari Shashi Kala, PW 3, sister of the deceased Basdeo had also gone there for similar purposes. She was at the southern burj of the tank, deceased Basdeo was on the northern burj, deceased Mahabir and Anant Ram were on the steps of the ghat on the eastern bank. The appellant Vinod Kumar along with his companions suddenly appeared at the ghat armed with deadly weapons like gun, pistol, sword, kanta, lathi etc. and they opened an assault on the three dead persons. The accused (sic Hanuman) almost simultaneously opened fire with his gun at the deceased Basdeo and the appellant Vinod Kumar with his pistol at the deceased Mahabir. Basdeo on receiving gun shot injuries jumped into the tank to swim across and take to safety. The deceased Mahabir was also injured by gun fire and tried to escape but fell down on receiving another gun shot fired by the accused Hanuman. When he fell down, the accused Shiv Prasad and Ranjit Singh repeatedly hit him with their sword and kanta resulting in his instantaneous death. The deceased Anant Ram was also assaulted by the accused Roop Ram and Gopal with their sword and kanta and he died on the spot as a result of the injuries received by him. The appellant Vinod Kumar and the accused Hanuman then rushed to the western bank of the tank and opened fire at the fleeing Basdeo and on being hit he fell down in the field of Deo Karan. By that time all the accused reached the spot and there he was again assaulted by the appellant and his companions and his head was chopped off the trunk. Thereafter, the appellant and his companions made good their escape and the accused Roop Ram carried the decapitated head of the deceased Basdeo.

6. The appellant abjured his guilt and complained that he had been falsely implicated due to previous animosity. His only plea in defence at the trial as well as in the High Court was one of alibi. It was alleged that he was a student of intermediate class in C.A.V. Inter College, Allahabad and on the date of occurrence i.e. on August 20, 1973 he was actually attending his classes in the college. He tendered in evidence the college attendance register and also examined Virendra Kumar Mehta, DW 1, a lecturer in Physics in the college in support of his plea of alibi.

7. The learned Additional Sessions Judge and the High Court have during the course of their carefully written judgments marshalled the entire evidence and came to the conclusion that the guilt of the appellant and the other accused was proved by the prosecution beyond all reasonable doubt. The High Court on a consideration of the evidence has come to the conclusion that there was no reason to disbelieve the unimpeachable testimony of PW 3 Kumari Shashi Kala, sister of the deceased Basdeo as well as the testimony of the three other eye-witnesses PW 1 Ram Shanker, PW

2 Ram Swarup, brother of the deceased Mahabir and PW 6 Prayag Narain, who were undoubtedly present at the place of the incident, and have given a graphic description of the entire incident. It observed that though these witnesses were subjected to close cross-examination, the defence had failed to impeach their credibility as truthful witnesses. The evidence of these witnesses clearly brings out that it was the appellant who led the assault which resulted in the triple murder of Basdeo, Anant Ram and Mahabir.

8. As to the plea of alibi raised by the appellant, both the learned Additional Sessions Judge and the High Court have recorded a finding that he has failed to substantiate that plea. The crude attempt to establish the plea of alibi by production of the college attendance register and the examination of Virendra Kumar Mehta, DW 1 has failed. The High Court agreeing with the learned Additional Sessions Judge has come to the conclusion that the entries in the college attendance register were forged and has passed strictures against this witness that he being a person in a responsible position, should have appeared as a witness for the defence and had not cared to uphold the dignity of his position, and by giving suborned evidence has tried to thwart the course of justice not only by his evidence but also by interpolating the college attendance register.

9. From the narration of the facts it is incredible that the appellant was only a child within the meaning of Section 2 (4) of the Act i.e. below the age of 16 years at the time of occurrence, which is nothing but a complete afterthought. Undeterred by the fact that the appellant had failed to establish the false plea of alibi by the production of the forged college attendance register and taking cue from the various decisions of this Court as reported in *Satto v. State of U. P.* ((1979) 3 SCR 768 : (1979) 2 SCC 628 : 1979 SCC (Cri) 534 : 1979 Cri LJ 943), *Jayendra v. State of U. P.* ((1981) 4 SCC 149 : 1981 SCC (Cri) 809), *Umesh Chandra v. State of Rajasthan* ((1982) 3 SCR 583 : (1982) 2 SCC 202 : 1982 SCC (Cri) 396 : 1982 Cri LJ 994) and *Gopinath Ghosh v. State of W. B.* ((1984) 1 SCR 803 : 1984 Supp SCC 228 : 1984 SCC (Cri) 478 : 1984 Cri LJ 168) displaying the court's deep concern and solicitude about the treatment of juvenile offenders, the appellant is emboldened to come forward with this belated plead that he was a child within the meaning of Section 2(4) of the Act and therefore the trial was vitiated by reason of Section 29. However, before we deal with the question on merits we would like to advert to unseemly features in this case.

10. The case presents a feature which is rather disturbing. In the first place, there are false averments made in the special leave petition in order to present a distorted picture of the hearing of the appeals in the High Court. Secondly, there are wild and unfounded allegations made against the learned Judges in an attempt to destroy their credibility and create doubt about the correctness of the judgment appealed from. As to the first aspect, the legal advisors of the appellant and the other accused have gone to the extent of making out an entirely false case, namely, the High Court did not give a hearing to them. Merely because the learned counsel disdained from raising the point at the stage of grant of special leave, does not imply that we should not take notice of the facts alleged. We shall indeed the failing in our duty of we do not comment upon the conduct of the appellant and the other accused and their legal advisors in trying to create prejudice against the High Court. It is averred in paragraph 13 of the special leave petition that the appeals were taken up for hearing on April 1, 1985 at 3.15 p.m. and that day only the names of the accused, weapons, sections and sentences, date and time of the occurrence etc. were given out when the court rose for the day at 3.45 p.m. It is then averred in para 14 that on the next day i.e. on the 2nd, the appeals could not be taken up. They were taken up on the 3rd at 2.10 p.m. when the case was called out when Shri Chandra Shekhar Saran and Shri P. C. Chaturvedi, the two senior counsel along with Sarvashri Dharam Pal Singh, G. S. Chaturvedi and A. K. Sachan appeared. It is alleged that when the case was called out and Shri Chandra Shekhar Saran wanted to argue the appeals, the learned Judges said

that they had seen the case and they did not want to hear the appellants but wanted to hear the State counsel. At this point, it is said that Shri P. C. Chaturvedi pointed out the age of the appellant Vinod Kumar and thereupon one of the Judges (Hon'ble Mr. Justice X who delivered the judgment) observed that since they wanted to allow the appeals, therefore, they did not want to hear the appellants and if need be, they would call upon them later. It is then alleged that the court called upon the State as to how it supported the judgment as two of the four eye-witnesses had been disbelieved by the learned Additional Sessions Judge and the remaining two witnesses were partisan witnesses, one of whom being PW 3 Kumari Shashi Kala, who was a young girl of 15 years and would not go to the tank alone at that time. It is further alleged that after the prosecution had placed the evidence of PW 2 Ram Swarup, the court was not satisfied and reserved the judgment. At this stage, it is said, Shri P. C. Chaturvedi again tried to point out the age of the appellant but Mr. Justice X observed that when the veracity of the two eye-witnesses was doubtful there remained no need to proceed further. The court rose at 3.45 p.m. the allegations in paras 14 to 17 are that the Judges gave an impression at the conclusion of the hearing on April 3, 1985 that the appeals would result in an acquittal while they pronounced the judgment on the 26th dismissing the appeals and it is then averred in para 17 that this decision came as a shock to the counsel appearing for the accused. There is nothing on record to substantiate these allegations apart from the letter written by Shri Dharam Pal Singh to the counsel in this Court to file the special leave petition to which we shall presently refer. In view of the conduct of the appellant and the other accused and their legal advisors we are not prepared to act on the assertion in the letter written by Shri Dharam Pal Singh. If there was any truth in this assertion, it was expected that the learned Judges would have made a mention of the fact that a contention was advanced on behalf of the appellant that he was a child within the meaning of Section 2(4) of the Act for whatever it was worth.

11. We feel deeply concerned that the appellant and the other accused do not rest themselves by making this false assertion that they were not heard by the High Court but they have gone further and made wholly wild and unfounded allegations against the learned Judges casting serious aspersions on them. They have brought into existence certain correspondence in an attempt to create prejudice against the learned Judges. We fail to see the propriety of placing copies of these two letters unless it was with a view to create doubts and suspicion about the integrity of the learned Judges. It shows that the appellant and his legal advisors can go to any extent to secure a reversal of the judgment of the High Court upholding the conviction of the appellant for having committed offences of murder punishable under Section 302 read with Section 149 of the Indian Penal Code. First is a letter dated April 23, 1985 i.e. just three days before the delivery of the judgment, said to have been written by Shri K. L. Grover to the accused Ram Gopal Sachan. We understand that Shri. Grover is comparatively a senior counsel practising in the High Court at Allahabad. The letter of Shri Grover appears to be written in response to a letter written by the accused dated April 20, 1985 seeking his assistance. Shri. Grover naturally expressed his resentment and displeasure that the should try to influence the learned Judges. It is in these terms :

I was surprised and sorry after reading it. Neither I am a counsel in Criminal Nos. 1937 and 1938 of 1977 Hanuman and others and Vinod and others, nor I know any of them and I have no connection with these cases. You have written about Shri D. P. Singh, advocate. He is a good counsel but your assertions are baseless. I do not take part in any unscrupulous thing. This is correct that Hon'ble X is my friend but he is a Judge and I am an advocate. Decisions are not sold in the High Court very honest Judge. Either you have written false thing or you have been cheated by somebody. Kindly do not correspond with me in this connection.

12. The other is a letter dated May 24, 1985 addressed by Shri. Dharam Pal Singh to the counsel in

this Court instructing him to file the special leave petition, saying that as a counsel his "conscience was shocked", narrating that at the hearing the learned Judges gave the impression that this was a case which deserved acquittal and they would like to hear the prosecution counsel and thereafter, if necessary, they would hear the accused. In the letter he asserts that on this the senior counsel Shri Chandra Shekhar Saran did not address the court, but Shri. P. C. Chaturvedi told the court that the appellant was a child upon which one of the learned Judges observed that since they were allowing the appeal, it was not necessary to go into the question. He then goes on to say that he and the other counsel were shocked by the judgment delivered by the learned Judges dismissing the appeals. He also adverts to Shri. Grover's letter and mentions that he had taken the accused Ram Gopal Sachan to Shri. Grover's place and enquired about the letter since the accused denied that he had written any such letter. According to his version Shri. Grover declined to give them the letter as he did not want to get involved in any controversy and he then adds :

As counsel, we owe a duty to our client and all of us appearing on behalf of the accused feel that we have failed therein and our conscience is in distress.

He then concludes by saying :

We do not know whether all these facts should be placed before the Hon'ble Supreme Court and this decision we leave in your hands. But we do request you to kindly see that the hearing which we could not get for these accused (having a case for acquittal) do get an opportunity of placing their case before the courts.

A perusal of these letters would tend to show that there was an attempt to blackmail the learned Judges. We cannot but deprecate the conduct of the appellant and the other accused in making such wild allegations about the propriety and conduct of the learned Judges. We have no doubt in our mind and the allegations are totally false and untrue. It is pertinent to observe that Shri. Dharam Pal Singh has chosen not to file any affidavit in support of the assertions made by him in his letter. The learned counsel who drafted the special leave petitions should have shown greater circumspection before casting such serious aspersions on the High Court. We are not prepared to believe that it was mentioned before the learned Judges at the hearing of the appeals that the appellant was a child within the meaning of Section 2(4) of the Act when this fact is not borne out by the judgment and there is nothing on record to substantiate the allegation.

13. In the facts and circumstance of this particular case, we are not prepared to countenance the argument that the appellant was a child within the meaning of Section 2(4) of the Act. After the grant of special leave, the appellant apart from his own affidavit, filed two affidavits of his father Shri. Narain Sachan and an affidavit by Shri Jitendra Prasad Singh, advocate, brother of Dharam Pal Singh. He has also placed on record copies of certain documents, namely (1) extracts of the kutumb register in Form 'A' of Pania Mau Gaon Sabha issued by the Village Panchayat Officer, Nyaya Panchayat, Deo Rahat. (2) Certificate of the High School Examination, 1973 issued by the Secretary of Madhyamik Shiksha Parishad, Uttar Pradesh. (3) Entry from the electoral roll relating to U.P. State Legislative Assembly Constituency No. 275, Allahabad, Mohalla Buxi Khurd. (4) Statement of the appellant recorded by the learned Additional Sessions Judge under Section 313 of the Code of Criminal Procedure, 1973. We have gone through these affidavits and other documents and we are not prepared to act on them. At the hearing we asked the learned counsel to produce the original documents. We are satisfied that the documents are of doubtful authenticity and it would be unsafe to rely upon such documents. Such documents can always be brought into existence. We would refer to the statement of the appellant recorded by the learned Additional Sessions Judge on June 4, 1975

wherein the appellant stated his age to be 17 years. Beneath the statement, there is an endorsement in ink : "The age of 17 years appears to be correct". We are left to guess who made this endorsement. Even assuming that the endorsement was made by the learned Additional Sessions Judge, that was only an estimate of age and does not necessarily show that the appellant was a child within the meaning of Section 2(4) of the Act at the time of occurrence. In view of the earlier attempt made by the appellant and his legal advisors to substantiate the false plea of alibi by production of forged attendance register and the tendering of evidence of Virendra Kumar Mehta, DW 1 against whom the High Court has passed strictures for suborning himself in an attempt to thwart the course of justice, it is quite evident that the appellant and his legal advisors would go to any extent in creating evidence to support the false plea now taken.

14. In conclusion, we cannot but once again deprecate the growing tendency on the part of unsuccessful litigants to impute unworthy motives to Judges and this has become not uncommon these days. We frown upon the practice of making such baseless imputations against Judges and time has come for this Court to take serious notice of this unhealthy trend before it becomes a growing menace and an unmitigated evil. We feel that the members of the bar equally share this responsibility and should ensure that uncalled for aspersions are not cast on the Judges. Such a course of action on their part would enhance the prestige of the court and the legal profession.

15. For these reasons, the appeal must fail and is dismissed.

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