Ghanshyam And Ors. vs State Of Uttar Pradesh on 17 February, 1982

Equivalent citations: AIR1983SC293, 1982(1)SCALE540, (1982)2SCC400, 1982(14)UJ289(SC), AIR 1983 SUPREME COURT 293, 1983 ALL. L. J. 819, 1982 CRI APP R (SC) 102, 1982 SCC(CRI) 449, (1982) ALLCRIR 175, (1982) IJR 272 (SC), 1982 UJ (SC) 289, 1983 ALLCRIR 175, 1982 CRILR(SC MAH GUJ) 139, 1983 CHANDLR(CIV&CRI) 549, 1982 (2) SCC 400, (1982) ALL WC 249, (1982) SC CR R 195

Bench: D.A. Desai, V. Balakrishnan Eradi

ORDER

1. Special Leave is of Ghanshyam. In rejected.

2. The appellant Kehar Singh with his brother Dhir Singh and father Ghanshyam and acquitted accused Hukam Singh were tried by the learned III Additional District & Sessions Judge, Saharanpur, for having committed offences under Section 302/34 and Section 323/34 of the Indian Penal Code. Hukam Singh was acquitted. The remaining three accused including Kehar Singh were convicted for both the offences and with respect to the first offence each one of 10 them was sentenced to suffer imprisonment for life and in respect of the second offence, rigorous imprisonment for six months. Substantive sentences were directed to run concurrently.

3. The appellant, his father Ghanshyam and brother Dhir Singh preferred Criminal Appeal No. 2170 of 1976 in the High Court of Judicature at Allahabad. A Division Bench of the High Court dismissed the appeal and confirmed the conviction and sentence of Ghanshyam and Dhir Singh but while confirming the conviction of appellant Kehar Singh the High Court set aside the sentence and referred his case to the State Government under Section 32 of the Uttar Pradesh Children's Act, 1951 ('Act' for short) and pending the decision of the Government under Section 32 (2), Kehar Singh was directed to be kept in safe custody in Jail but he was neither to be treated as convict serving a sentence nor under trial and the confinement was for safe custody only.

4. All the three convicted accused moved an application to obtain Special Leave to Appeal against the judgment of the High Court. When the matter earlier came up before Beharul Islam and v. Balakrishna Eradi, JJ., a notice was ordered to be issued limited to the question of the right of private defence claimed by the petitioners. Thereafter the matter came before us and after hearing the learned Counsel, Mr. R.K. Garg, for the petitioners and the learned Counsel Mr. Bharadwaj for the respondents, we granted leave to appellant Kehar Singh alone and rejected the Special Leave Petition of the other appellants. With the consent of the parties we heard the appeal on merits.

5. There was some civil dispute between the deceased Dhoom Singh and the father of the appellant, Kehar Singh. Dhoom Singh apprehending danger td his life had sent an application on June 16, 1975, to the Superintendent of Police, Saharanpur, complaining that not only his life but the life of his son was in danger at the hands of Ghanshyam, Hukam Singh and others. There were some unsuccessful attempts at rapprochement between the parties. It is the prosecution case that on June 21, 1975, deceased Dhoom Singh, P.W. 2 Dharampal and one Chuttan, when they were on their way to Pir Ka Maidan, were intercepted by the acquitted accused Hukam Singh and the three co-accused. Hukam Singh had a table with him and each of the three co-accused, including the present appellant, was armed with a lathi. It is the prosecution case that all the four accused persons started belabouring Dhoom Singh. P.W. 2 Dharam Pal intervened to rescue Dhoom Singh and in the process suffered a lathi blow at the hands of accused No. 1 Ghanshyam Singh. Accused No. 2 Dhir Singh is said to have given a lathi blow on the head after Dhoom Singh had fallen down. Dhoom Singh fell on the ground and died on the spot. A report was sent to the police station and after usual investigation the four accused hereinbefore mentioned were charge sheeted and tried and dealt with as mentioned above,

6. The limited question before us is whether the participation by Kehar Singh is established to the satisfaction of the Court. The first thing to note is that Kehar Singh is the younger son of the original accused No. 1 Ghanshyam. At the relevant time it is an admitted position that the appellant was aged 15 years and this is borne out by the endorsement made by the trial Court in the Court proceedings. It is found as a fact that on the date of the offence the appellant was aged 15 years and the offence was committed in the District of Saharanpur in which the Act was in force at the relevant time. Section 2(4) of the Act defines 'child' to mean a person under the age of 16 years. Indisputably the appellant being under the age of 16 years on the date of offence, was a child and this case would be governed by the Act. The learned Session's Judge after having recorded the age of the appellant Kehar Singh did not proceed according to the provisions contained in the Act but tried him with the co-accused and convicted the appellant for offences under Section 302/34 and Section 323/34 and sentenced him to suffer imprisonment for life for the first offence. Now, Section 27 of the Act provides that notwithstanding anything to the contrary contained in any law no court shall sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine. There is a proviso to the section that if the child is found to be unruly in behaviour or depraved; that he is not fit to be sent to an approved school and/or the other provisions under which the case can be legally dealt with are suitable, such a child, if shown to be 12 years of age, may be committed to prison. Section 29(1) provides that when a child is found to have committed an offence punishable with imprisonment for life and the court having been satisfied on inquiry that it would be expedient to so deal with the child, may order him to be sent to an approved school for such period of stay when the child will attain the age of 18 years or for a shorter period, the reasons for such period to be recorded in writing.

7. The High Court noticed all these provisions but ultimately found that murder being an offence of serious nature, which is punishable with death---not awarded in this case-no punishment under the provisions of the Act which the Court is authorised to inflict is sufficient and, therefore, referred the case to the State Government as provided in Section 32(1). We are satisfied that this approach in the facts of this case is not correct.

8. We would first revert to the facts of this case and find out as to whether participation by the present appellant Kehar Singh in the assualt on deceased Dhoom Singh is established to the satisfaction of the Court. Dharam Pal, P.W. 2 is the most important witness. Dharam Pal deposed that after accused No. 1 Ghanshyam said that he would take revenge, all the four accused belaboured Dhoom Singh. In his evidence he generally involves all the four accused including acquitted accused Hukam Singh. His evidence against Hukam Singh is not accepted. Appellant Kehar Singh, a young boy of 15 years of age is ascribed the roll in vague terms. Maybe, he was present. But is this evidence sufficient to inculpate him? Could he be said to be sharing the intention of his father and elder brother who gave repeated blows? Evidence of other two witnesses, P.W. 3 Ram Pal and P.W. 4 Ved Prakash is to the same effect. The meeting at a place where the incident is alleged to have occurred is purely accidental because there is no evidence to show that the accused knew in advance that the deceased and his companions were to pass by that route. Jfl this state of evidence we are not satisfied that appellant Kehar Singh, a young boy participated in the attack. It is reasonable to believe that he might have been present at the time pf occurrence but mere presence in the circumstances of this case is not indicative of sharing the intention of the father and the brother. Therefore, we are satisfied that there is no convincing and reliable evidence to hold that the present appellant shared the common intention of his father and brother and participated in the assault on the deceased and that the charges under Section 302/34 and Section 323/34, Indian Penal Code, have been brought home to him. His conviction and sentence are, therefore, unsustainable.

9. We accordingly allow this appeal, set aside the conviction of the appellant Kehar Singh by the trial Court and the High Court as also the directions given by the High Court concerning him, and we acquit him of all the charges. He may be set at liberty forthwith.