RAM PRASAD SAHU AND ORS. A

*v.*

STATE OF BIHAR

*October* 12, 1979

[V. R. KRISHNA IYER AND R. S. PATHAK, JJ.] B

*Special Leave, under Article* 136 *of the Constitution—Limitations—Sentencing Verdict—Factors to be taken note of.*

The appellants were held guilty by the Sessions Court under Section 302 read with Section 149 I.P.C. plus some lesser offences; but the High Court softened both the convictions and sentences having regard to all but one. Hence the C appeals by special leave, limited to sentence.

Allowing in part, the Court,

HELD : 1. Every error does not confer a visa into this Court lest the floodgates of litigation should flow as an irresistible stream making the Supreme Court a superior High Court of appeal. Doing so, in exercise of this Court's D jurisdiction under Art. 136 of the Constitution, 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. [928 D-E]

Constructive liability notwithstanding, the sentencing process will take note of the conspectus of circumstances including the absence of overt act, age and E antecedents of the offender. It is wrong on principle to exclude such special circumstances like injuries found on the accused, in apportioning the sentence. [930 A-B]

Rehabilitation of young offenders is basic to juvenile justice, which in turn, is a component of social justice. The penological purpose being to convert the offender into a non-offender, it will be a frustration of criminal justice, if young F lads are walled in and caged in the hope that cruelty will correct. Further it is widely accepted by penologists that the sharp shock of the initial phase of a prison term is what hurts most and therefore, a long term may well be counterproductive and a shorter term sufficiently deterrent. [929 F, 930 B-C]

*Observation.*

[Unfortunately, despite repeated observations of this Court, the conscience G 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 a Children Act. This is bad omen in the International Year of the Child and it is hoped that amidst the general tumult the children will not suffer from legislative neglect, Had there been a Children Act in the Bihar State like in most other States of the country, a compassionate trial process would have been statutorily mandatory and children could not be marched into regular criminal courts H for trial and conviction, nor incarcerated with adult criminals with obvious debasement and subtle torture such as homosexual attacks.] [929 D-F]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 613 and 614 of 1979.

Appeals by Special Leave from the Judgment and Order dated 24-4-1979 of the Patna High Court in Criminal Appeal No. 289 of 1975.

B *R. K. Jain* (613/79), *A. N. Mulla* (614/79) and *R. P. Singh* for the Appellants.

*U. P. Singh* for the Respondent.

The Judgment of the Court was delivered by

C KRISHNA IYER, J.—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.

The facts found by the High Court have our broad concurrence D 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 prosecution version. But we are not inclined to re-open 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 E litigation should flow as an 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 confined leave to appeal to the F nature of the offence disclosed on the findings on record and the sentence to be imposed if variance is justified on principle.

The appellants in both these appeals have been held guilty by the Sessions Court under s. 302 read with s. 149 I.P.C. plus some lesser offences; but the High Court softened both the convictions and sentences G having regard to all but one. The plea of the appellants in both the appeals is that the conviction is un-sustainable and, in any case, the sentence is harsher than the law permits.

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 H under s. 302 read with s. 149 I.P.C.—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. The appellants in Cr. Appeal 613/79 (arising out of SLP (Crl.) 2340 of 1979) have been freed from overt acts by the High Court and consequently they have been found culpable under s. 325 read with s. 149 I.P.C. having regard to the quantum of common object which made them constructively liable. They have been awarded six years R.I. 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 sentence.

Secondly, a vital factor with grave impact on the sentencing verdict has been altogether omitted by the courts below. Appellant No. 2 Sankar Sahu was barely 16 years old, but was tried, convicted and sentenced like an adult. Satyanarayan Sahu appellant No. 1 in the same criminal appeal is stated to be 20 years old. Had there been a Children Act in the Bihar State like in most other States 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 a 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 not suffer from legislative neglect. Rehabilitation of young offenders is basic to juvenile justice which, in turn, is a component of social justice. Will the International Year of the Child see the end of this indifference on the part of the legislature and the executive? We leave this part of the case on a hopeful note.

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.

A For these reasons we consider that appellant No. 2 in Crl. Appeal No. 614 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 overt act, age and antece-
B dents of the offender. The penological purpose being to convert the offender into a non-offender, it will be a frustration of criminal justice if young lads are walled in and caged in the hope that cruelty will correct. We direct appellant No. 2 to be discharged from prison at once.

C 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 intial phase of a prison term is what hurts most and therefore, a long term may well be counter-productive and a shorter term sufficiently deterrent. We therefore, reduce their sentence to two years' R.I. while confirming the
D conviction against them.

S. R. *Appeals allowed in part.*