

(2007) 08 DEL CK 0282

Delhi High Court

Case No: Criminal Appeal 927 of 2002

Birndavan Sharma

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 24, 2007

Acts Referred:

- Constitution of India, 1950 - Article 10, 21, 21A, 23, 24
- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Reva Khetrapal, J; Mukul Mudgal, J

Bench: Division Bench

Advocate: Bhupesh Narula, for the Appellant; Sunil Sharma, APP., for the Respondent

Judgement

Mukul Mudgal, J.

This order is a sequel to the orders passed 23rd November, 2006 by this Court in the following terms:

After arguments were concluded, learned Counsel for the appellant stated that he has instructions from the appellant to the effect that the appellant is ready to give his entire movable and immovable property to his three children so that they can be looked after.

2. Thereafter the appeal filed by the appellant in this Court was dismissed and his conviction for the murder of his wife Meenakshi u/s 302 IPC was upheld and the appellant's sentence for life awarded by the learned Sessions Judge on 27th March 2002 was confirmed. Subsequent thereto, on 16th January 2007, the following order was passed:

We have heard the convict and also perused the report given by Mr. Dharmesh Sharma, Secretary, Delhi High Court Legal Services Committee. The present situation is that Ms. Renu is living with her maternal grandfather while Surender and Amar Sharma are living in "Arya Orphanage", Pataudi House, Daryaganj. We have

enquired from Surender and Amar Sharma regarding their well being. They appear to be reasonably satisfied with the arrangements at the Orphanage. Renu Sharma is also studying in B.A. 1st year in Kalindi College.

3. Thereafter, an account was opened in the name of Renu Sharma daughter of the appellant. On 25th April 2007 this Court concluded as follows:

A report has been made on behalf of Delhi High Court Legal Service Committee by Mr. Sharma which states that it may not be feasible and desirable to let out the shop and the residence in view of the complications which may arise owing to stay of a tenant. In the report it is also stated that it is better if the premises are retained for the use of the children who may like to stay together in the premises of the father. The report taken on record.

4. On 27th July 2007, the following order was passed:

Mr. Ashutosh Sharma, maternal grand father of the three children of the appellant is present and he states that he will be accommodating the two sons after their studies are over as both are studying in class 10th and Class 11th. He seeks time to ascertain the views of the children. He has been informed that it may be possible to handover a monthly payment to the children for pursuing studies.

5. Thereafter since a philanthropic and generous citizen of this country Mr. Vinod Dhawan on a suggestion made by this Court readily agreed to bear the expenses of the two children, the following order was passed on 13th August 2007:

The maternal grand father of the appellant's children is present in Court today. He has handed over a letter of the children which shows that the Renu Sharma, the daughter and Surender and Amar, the two sons of the appellant are willing to accept the sum of Rs.2,000/- per month offered by Shri Vinod Dhawan. A separate order is being passed giving reasons. The letter be taken on record. We appreciate the role played by both the counsel and the Delhi High Court Legal Services Authority.

The matter is part heard.

List on 12th November, 2007.

6. This case discloses the plight of the three children in a present case where their father was convicted for murdering his wife, the mother of the 3 children. The children are now left destitute and virtually orphaned and thus are the victims not only of the crime, but also the punishment for the crime. The children are Therefore victims of a system which does not provide any apparent relief to such unfortunate and totally innocent victims of a crime and its aftermath. The two sons who were examined in the Court expressed their agony to this Court and stated that the minute they reach the age of majority, they would be asked to leave the orphanage. In a situation where both the children are nearing the age of 18 years soon, we are

of the view that it is necessary to secure some kind of financial support to such victims of crime. This has been necessitated by the fact that as of today, nothing has been brought to our notice to suggest whether there is any social benefit available to such victims of crime as the children in the present case. The Court cannot be a helpless and mute spectator in such cases and must devise within our legal system some procedure to help such hapless victims of both the crime and the punishment. The Court is duty bound in law to ensure that the mandate of Articles 21 and 39 is given effect to. Accordingly, Shri Vinod Dhawan was asked by the Court to help such children and as an enlightened citizen he has readily agreed to pay a sum of Rs.2100/- per month for these children till their attainment of majority to be shared by them equally and, even thereafter, until they secure suitable employment. Mr. Dhawan has also offered to give training by the children in his establishment so as to absorb them as employees.

7. The amount shall be paid directly to the account held by Renu Sharma in the Punjab National Bank, Kirti Nagar, near S.D. Girls' High School, East Patel Nagar, New Delhi, and the Secretary, DHCLSC shall communicate the Account number to Shri Vinod Dhawan (Mobile No. 9811050886) the benefactor .

8. We deeply appreciate the role played by Shri Vinod Dhawan in this case, who as a compassionate citizen has shown that affluence can also lead to extending selfless benefit to the less privileged, resource less and unfortunate citizens, such as the three children in the present case. While dealing with this case, the most beneficial fallout rendered by a citizen to the children would be that all the three children will be able to stay together and be able to take care of their maternal grandfather, who had been good enough to look after his grand daughter in spite of his advanced age.

9. While the misfortune befalling the three children in the present case is taken care of by one of the compassionate citizens of this country, we are of the view that it is for the Government to devise some method and procedure so as to ensure that the victims of crime such as the three children in the present case, are looked after institutionally and provided succour and support.

10. It cannot also be lost sight of that it is the destitute child who grows up to be a juvenile delinquent and the juvenile delinquent into a habitual criminal. In any event, a destitute or a throwaway of society is a potential criminal, for, he must fend for himself and does not always know how to. He is an easy victim to criminality and highly susceptible, to say the least.

11. The obligation to look after such children is mandated by Articles 21 and 39(e) & (f) of the Constitution of India, which read as follows:

Article 21. - Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 39. - (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age of strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

The father of the Nation, Mahatma Gandhi was of the view that "if we are to reach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with children. And if they will grow up in their natural innocence, we won't have to struggle, we won't have to pass fruitless, idle resolutions, but we shall go from love to love and peace to peace, until at last all the corners of the world are covered with that peace and love for which, consciously or unconsciously, the whole world is hungering."

12. Article 21 of the Constitution of India guarantees to young citizens of this country the same right to a life of dignity as it does to adult citizens. The Supreme Court of India has through several landmark judgments, rendered the fundamental right to life and personal liberty, a repository of various human rights, by declaring that the right to life included the "finer graces of civilization." [Dr. P. Nalla Thampy Terah Vs. Union of India \(UOI\) and Others](#), Thus it includes the right to live with human dignity, the right to a healthy environment, the right to pollution free water and air, protection against hazardous industries, free education up to 14 years (reiterated later by the introduction of Article 21A making education a fundamental right), the right to health, timely treatment in Government hospitals and emergency medical aid, the right to privacy, to shelter, to livelihood, to fair and speedy trial, right not to be driven out of a State, the right to free legal aid when the conviction for an offence may involve loss of life or personal liberty. This would necessarily include every child's right to develop to his or her fullest potential, with siblings, in a family environment, with even the grandfather as in the present case. The above list is not exhaustive.

13. In Article 39 of the Directive Principles of State Policy, the Constitution of India states that the State shall, in particular, direct its policy towards, inter alia, securing that the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength, and that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

14. Reading Articles 21 and 39 of the Constitution of India and the provisions of the Convention on the Rights of the Child relating to Survival, Protection and Development into the lives of these three unfortunate victims of crime and its aftermath, it is necessary to give further directions.

15. (a) The Convention on the Right of the Child, 1989 (referred to as the CRC) was adopted by the General Assembly of the United Nations on November 20, 1989. It came into force on September 2, 1990. It was the fastest ratified human rights convention by the maximum number of countries. The Government of India ratified the CRC on December 11, 1992.

(b) The Convention in its Preamble recalls that in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance. It further records its conviction that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. It recognizes that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. It bears in mind and records that the need to extend particular care to the child has been stated in the Geneva Convention on the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular Articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in Article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children. It further bears in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

(c) The CRC through its various Articles recognizes the right of every child to Survival, Development, Protection and Participation in his/her own life (when he/she is old enough to do so). The relevant Articles of CRC read as under:

Article 2.2 - States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 8.1 - States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

Article 12.1 - States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 12.2 - For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 39 - States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Specifically, under Article 2.2 of the CRC, State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members. Under Article 8.1, State parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Under Article 12.1, State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. Under Article 12.2, for this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. Under Article 39, State Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

(d) Apart from the mandate of Articles 21 and 39 of the Constitution of India, this Court is duty bound to recognize the country's obligation to its responsibilities and duties under the CRC 1989. This obligation has also been mandated by the Hon'ble Supreme Court in [Vishaka and others Vs. State of Rajasthan and Others](#), where it was held that:

The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse.

Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between

them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.

16. This Court accordingly, in consonance with the above constitutional mandate is issuing a notice directly to the Ministry of Social Justice and Empowerment, Government of India and the Secretary, Ministry of Women and Child Development to consider the framing of a scheme and provision of appropriate funds for such purposes. Such a welcome and socially benevolent step by the Government would facilitate the children who are the victims of crime, such as the three children in the present case, to escape destitution and provide avenues for becoming responsible citizens of this country. A similar notice shall also be issued to the Chief Secretary, National Capital Territory of Delhi to consider the mandate of this order and furnish the response thereto by 12th November 2007 when this case shall be listed before this Court. Notice shall also be issued to the Secretary-General of National Human Rights Commission for the response and suggestions of the Commission in respect of the issues arising in this case. A possibility of destitution and want of such children, pushing them to undesirable avocations and activities, cannot be ruled out. At the first instance, we are of the view that such children should not be charged any fees in any institution associated, run or sponsored by the Government of India or substantially financed or funded by it. The Government of India will also furnish their response by 12th November, 2007. Considering the importance of the issues arising in this case, we would request the Attorney General of India to either appear himself or nominate an appropriate Law Officer to appear in this case.

17. We are also sending a copy of this order to the Principal of Kalindi College as well as the Vice Chancellor, Delhi University and requesting both of these high educational functionaries to extend a helping hand to the girl Renu Sharma by considering her case for exemption from payment of tuition fees and other charges.

18. The Registry of this Court is directed to issue a notice without process fee, returnable on 12th November, 2007, along with today's order to:

(a) The Secretary, Ministry of Social Justice and Empowerment, Government of India ;

(b) The Secretary, Ministry of Women & Child Development, Government of India;

(c) The Secretary, National Human Rights Commission;

(d) The Chief Secretary, Govt. of National Capital Territory of Delhi;

(e) The Attorney General of India.

(f) National Commission for Protection of Child Rights through its Member Secretary, Mezzanine/Second floor, Jeewan Deed Building, Parliament Street, New Delhi.

19. A copy of this order shall also be sent by the Registry forthwith to the Principal, Kalindi College, and to the Vice Chancellor of the Delhi University.