

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.654 OF 2002

MATIBAR SINGH ... APPELLANT
VERSUS
STATE OF U.P. ... RESPONDENT

O R D E R

a This appeal by special leave arises out of
judgment and order dated 26th September, 2001 passed by the
High Court of Judicature at Allahabad whereby State Appeal
No.902 of 1979 against Indra Sen alias Male and Matibar
Singh was allowed, judgment and order dated 20th November,
r 1978 passed by the Addl. Sessions Judge, Jaunpu
acquitting them for offences punishable under Section 307
read with Section 34 of the Indian Penal Code, 1860 (IPC)
set aside and both Indra Sen and Matibar Singh convicted
a and sentenced to undergo rigorous imprisonment for
period of five years on the said count.

The facts in the background whereof both Indra Sen
and Matibar Singh came to be arrested and prosecuted for
the commission of an offence punishable under Section 307

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Sanjay Kumar
Date: 2015.04.21

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read with Section 34 of the IPC have been set out at
considerable length by the learned Trial Judge as also by
the High Court in the judgments impugned before us.

It

over again at length. All that we need say is that the incident in question appears to have taken place on 20 th April, 1976 at about 7.00 a.m. when the complainant and victim of the assault was going from his house situated in village Samodhpur, Police Station Sarpataha, District Jaunpur to Surpur Inter College on his bicycle to attend a function said to have been organized in the honour of the Governor of Uttar Pradesh.

The prosecution version is that when the victim reached the crossing near Samodhpur Primary Pathshala, Indra Sen, Matibar Singh and Awadh Bihari, who has since died, appeared on the spot and assaulted him with a knife and a country made pistol.

While the pistol was held by Indra Sen, the knife was wielded by Matibar Singh and Awadh Bihari. The gun shot

fired from the pistol by Indra Sen is said to have missed the target, but Matibar Singh was successful in inflicting a knife blow on the right side of the back of the complainant. The complainant is said to have fallen from

the cycle whereupon Indra Sen is alleged to have inflicted a knife blow on the left side of the back of the complainant while Awadh Bihari assaulted him on the head.

The complainant raised an alarm which brought Ram Bahadur, Ram Jeet Kahar and Tilakdhari Singh to the spot, who saw Indra Sen, Matibar Singh and Awadh Bihari and saved the complainant from the clutches of the accused. The

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complainant was moved to the hospital where he remained admitted for nearly a month before his discharge.

A case was on the basis of a complaint filed by the complainant registered against Indra Sen, Matibar Singh and Awadh Bihari in Police Station Sarpataha and investigation started.

A charge sheet was in due course filed before the jurisdictional court who committed Indra Sen, Matibar Singh and Awadh Bihari, to face trial before the Addl. Sessions Judge, Jaunpur. At the trial, the

prosecution examined the complainant and victim of the assault, Thakur Prasad Singh as PW-1, Ram Jit as PW-3 and Tilakdhari Singh as PW-2 apart from other witnesses, including the investigating officers. In defence, the accused persons examined defence witnesses, Kamta Singh (DW-1), Vijay Bahadur Singh (DW-2) and Paras Nath Tripathi (DW-3) in an attempt to prove the plea of alibi set up by Matibar Singh, appellant herein.

An appraisal of the evidence adduced before it led the Trial Court to eventually hold that the prosecution had not been able to bring home the charges framed against the accused persons and, accordingly, acquitted them in terms of its judgment and order dated 20 th November, 1978. The Trial Court gave three main reasons in support of that conclusion. Firstly, the Trial Court held that there was a longstanding enmity between the complainant, on the one hand, and the accused party, on the other, regarding management of certain educational institutions, because of which enmity, certain other criminal offences had also been committed by some of them. Secondly, the Trial Court held that the witnesses examined by the prosecution at the trial were all interested witnesses closely associated with the complainant's party and that the prosecution had left out some independent witnesses, which made the entire prosecution case suspect. The third and the only other reason given by the Trial Court disbelieving the prosecution version was that the prosecution case relied heavily upon a supplementary injury report obtained from Dr.Uday Singh (PW-5), which report suggested that Injury No.2 sustained by the complainant was dangerous to life. This report, according to the Trial Court, has been brought in to existence due to the influence which the complainant's son who was himself a doctor wielded with

Dr. Uday Singh (PW-5), surgeon under whose treatment and care victim had remained hospitalized.

In the acquittal appeal filed by the State of Uttar Pradesh, the Division Bench of the High Court of Judicature at Allahabad had an opportunity of reappraising the evidence adduced by the prosecution and that led by the defence in an attempt to prove the plea of alibi set up by Matibar Singh. The High Court examined the reasons given by the Trial Court while acquitting Indra Sen, Matibar Singh and Awadh Bihari and found that each one of the

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reasons was erroneous, hence insufficient to justify an acquittal.

The High Court held that the enmity between the two parties being a double-edged weapon, the Trial Court was not justified in viewing the prosecution case with suspicion only on that count. The High Court also noted that not only was there enmity between the two parties in relation to the management of certain educational institutions, but certain other criminal cases had also been registered on account of the said enmity.

On the question whether the prosecution had left out any independent witness, the High Court held that the witnesses examined at the trial were natural witnesses to the occurrence and that just because they were associated with the complainant's party in one way or the other did not necessarily make them unreliable especially when the victim of the assault had survived to tell the tale and other evidence, such as the medical evidence of the doctors examined by the prosecution, sufficiently corroborated the complainant's version.

On the third aspect, the High Court held that the view taken by the Trial Court regarding the nature of Injury No.2 being dangerous to life and the supplementary injury report having been procured from Dr. Uday Singh

(PW-5) because of the influence which the complainant's son wielded over him was also untenable.

The High Court

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found that there was no reason to disbelieve the version given by Dr. N.M. Aggarwal (PW-4) and Dr. Uday Singh (PW-5), examined by the prosecution in regard to the nature of injury nor was there any real reason to justify the inference that the supplementary injury report had been illegally procured only to fix Indra Sen, Matibar Singh and Awadh Bihari with undeserved liability arising out of the incident.

The High Court also examined the evidence in defence led by the accused persons and found that the plea of alibi raised by Matibar Singh, appellant herein was wholly untenable and the evidence adduced to establish the same unreliable. The High Court on those findings reversed the view taken by the Trial Court and convicted the two surviving accused persons, Indra Sen and Matibar Singh of the offences punishable under Section 307 read with Section 34 of IPC and directed them to undergo rigorous imprisonment for a period of five years.

The present

appeal, as noticed earlier, has been filed to challenge the correctness of the said judgment and order passed by the High Court.

During the pendency of this appeal, an application was filed on behalf of Indra Sen claiming that he was a juvenile as on the date of the commission of the offence. That plea was allowed to be raised, no matter the same was urged at a belated stage, and the matter referred to the

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Trial Court by an order dated 9th January, 2013 for an enquiry in terms of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short "the Rules"), framed under the Juvenile Justice (Care and

Protection of Children) Act, 2000 (for short "the Act").

An enquiry has accordingly been conducted by the Trial Court who has submitted a report dated 2 nd May, 2013 to this Court. The said report was accepted in terms of an order of this Court dated 21st August, 2014. By the same order, this Court had disposed of the present appeal insofar as it related to Indra Sen by directing the matter to be placed before the Juvenile Justice Board concerned for an appropriate order in accordance with law in terms of the Act and the Rules made thereunder.

When the matter came up again on 8th December, 2014, learned counsel for Indra Sen submitted that the order of this Court dated 21st August, 2014 passed qua Indra Sen called for a suitable clarification as the same did not specifically mention whether Indra Sen stood acquitted or convicted of the charges framed against him.

This Court had accordingly adjourned the matter by two weeks to enable Indra Sen to file an application seeking clarification of the said order.

When the matter appeared again today, Ms. Sandhya Goswami, learned counsel for Indra Sen and Matibar Singh submitted that although no formal application for

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clarification has been made, this Court could clarify the said order suitably and issue appropriate directions

keeping in view the fact that Indra Sen is at present nearly 55 years of age and may not have to be committed to any observation/protection home in terms of the provisions of the Act. On behalf of the respondent - State of Uttar

Pradesh, it was submitted that there was no room or justification for acquittal of Indra Sen who was as much guilty of the assault made on the life of the victim as Matibar Singh, but since according to the finding recorded by the Trial Court he was a juvenile and that finding has been accepted by this Court by the order dated 21st August,

2014, the order could be suitably modified setting aside the sentence awarded to Indra Sen. There is, in our opinion, merit in that contention. Just because Indra Sen is found to be a juvenile as on the date of the commission of the offence will be no reason for us to acquit him of the charges framed against him if there is otherwise no justification for such an acquittal. We shall presently deal with the question whether there is any such justification for the acquittal of Indra Sen on facts, but assuming that Indra Sen's conviction is upheld, the same would not necessarily result in his being sentenced to undergo imprisonment. Indra Sen being a juvenile on the date of commission of the offence, no sentence can be awarded to him. To that extent, therefore, learned

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counsel for Indra Sen is correct in submitting that since Indra Sen is fairly old, being 55 years of age, there is no question of sending him to an observation home for possible reformation and that the only option in that event would be to set aside the sentence awarded to him and to discharge the bail bonds furnished on his behalf.

That brings us to the question whether there is any room for our interference with the conviction of Matibar Singh, appellant, as recorded by the High Court in the impugned judgment. We must, at the outset, say that the High Court's judgment, which has been read out at length before us, has dealt with the evidence adduced at the trial as also the submissions made by the learned counsel for the parties with commendable clarity. We have, therefore, no hesitation in affirming the reasoning and the conclusions arrived at by the High Court. The fact that there was previous enmity between the complainant's party and the rival group of which the accused happen to be members or sympathizers is a factor that need to be

taken as adverse to the prosecution. Enmity is a double-edged weapon. It was because of the said enmity that the victim was assaulted while he was on his way to attend the function. The existence of such enmity lends support to the prosecution case rather than demolish the same. The Trial Court was obviously in error in taking a contrary view which the High Court has rightly corrected

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by the impugned judgment. So also, the High Court was, in our opinion, perfectly justified in holding that the deposition of the victim and the eye-witnesses examined at the trial had not been shaken in cross-examinations to render it unsafe for the Court to rest an order of conviction against the accused persons. The High Court

has, in our opinion, correctly held that the sequence of events leading to the incident as also the version given by the witnesses was free from any infirmities, hence, fully reliable. The fact that there was not even a

suggestion either to the victim of the assault or to the doctors examined at the trial that the stab injuries sustained at the back were self-inflicted clearly shows that the version of the complainant could not be rejected just because the so-called independent witnesses had not been examined. It is in any case difficult for us to

accept that the victim when assaulted in broad day light would have allowed the real offender to go scot free to falsely implicate some innocent persons. The third and

the only reason which the Trial Court recorded for acquitting Indra Sen and Matibar Singh was that the nature of Injury No.2 had been falsely described as grievous and that the false description was on account of the influence which the complainant's son wielded with Dr. Uday Singh (PW-5). We have been taken through the deposition of two

doctors examined at the trial.

We see no suggestion worth

the name that Injury No.2 had been described to be grievous only because of the influence which the victim's son wielded with doctors who had treated him. Even otherwise, in the absence of any basis for that suggestion, it would be difficult for us to disbelieve the depositions of the doctors who have treated the victim for nearly a month in the hospital where he remained admitted.

It was lastly contended by learned counsel for Indra Sen that while Indra Sen was a juvenile on the date of the occurrence, Matibar Singh was around 40 years of age and is currently more than 80 years with multiple medical problems. It was submitted that a sentence of imprisonment at this stage of his life, that too, for a period of five years would be totally disproportionate to the gravity of the offence committed by him and that this Court could take a lenient view in the matter insofar as the award of sentence was considered.

On behalf of the respondent - State of Uttar Pradesh, it was submitted that while Matibar Singh, appellant herein is a fairly aged person, the delay in disposal of this appeal and the conclusion of the proceedings should not entirely go to his benefit especially when the victim is also entitled to protection of law and suitable compensation if the Court were to be of the view that the sentence awarded deserves to be reduced.

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There is no manner of doubt that the incident is very old. It occurred as early as in the year 1976. Nearly 40 years have gone by since then Matibar Singh today is about 80 years old and if we believe the statement made by learned counsel appearing for Matibar Singh he has age related medical problems also. We are,

therefore, inclined to take a lenient view in the matter keeping in mind the nature of injury inflicted upon the victim which has not resulted in any major physical disability or reduced his life span. In the totality of the circumstances, we are of the view that the sentence of five years awarded to Matibar Singh, appellant herein could be reduced to rigorous imprisonment for a period of six months with a fine of Rs.1,00,000/- (Rupees one lakh only). In the event of the fine being paid, a sum of Rs.75,000/- shall be disbursed to the victim if he is alive or to his family in case he has passed away. The

remaining amount of Rs.25,000/- shall, however, go to the State Treasury towards fine. In the event of default in payment of fine, Matibar Singh, appellant herein shall undergo imprisonment for a further period of six months.

Insofar as Indra Sen is concerned, while we uphold on a parity of reasons the conviction recorded by the High Court, we set aside the sentence awarded to him. He is currently on bail. His bail bonds shall stand discharged.

Order dated 21st August, 2014 passed by this Court shall

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stand modified to that extent.

Appellant - Matibar Singh shall surrender to custody for undergoing the sentence awarded to him in terms of this Court. The needful shall be done by him within four weeks from today failing which the Trial Court shall take steps to have him apprehended and committed to prison in accordance with law.

This appeal is disposed of in the above terms in modification of the order passed by the High Court.

.....J.
(T.S. THAKUR)

this Court. The needful shall be done by him within four weeks from today failing which the Trial Court shall take steps to have him apprehended and committed to prison in accordance with law.

This appeal is disposed of in the terms indicated in the signed order.

(SANJAY KUMAR-I)

COURT MASTER

(VEENA KHERA)

COURT MASTER

(Signed order is placed on the file)