

DR. V. K. SAXENA

v.

STATE OF UTTAR PRADESH AND VICE VERSA

August 29, 1983

[Y. V. CHANDRACHUD C.J., AMARENDRA NATH SEN
AND RANGANATH MISRA, JJ.]

Supreme Court Rules, 1966—Order XXI Rule 6, read with Article 136 of the Constitution—Special Leave to appeal cannot be granted against the conviction and sentence, (i) when the circumstantial evidence on record prove the motive and connect the accused to the crime and concealment thereof and (ii) when the High Court reduced the death sentence to one of life imprisonment for the reason that the two judges differed on the question of the guilt of the accused.

Dismissing the petition of the accused and the States petitions against the acquittal of the co-accused and for enhancement of the sentence to death sentence, the Court,

HELD : (i) In the instant case, the three petitions for special leave to appeal do not warrant interference by the Court. [761 D]

2:1 The circumstantial evidence on record clearly connect the accused with the crime and concealment thereof. Regarding motive, there is the clearest evidence in that Dr. Saxena had an illicit affair with the co-accused, a nurse due to which he used to harass, pressurise, threaten and assault the deceased Sudha his wife. Her murder was a consummation which the nurse must have devoutly wished for. [760 H; 761 E]

2:2 Further the conduct of the accused, in buying a box packing the dead body of his wife into that box, travelling with that box from Hardoi (the venue of crime) to Lucknow by the Sialdah Express, taking another train from Lucknow to Kanpur, throwing the box on way into the Ganges and little realising that the Ganges had refused to accept the box which contained tell-tale evidence of the dastardly murder of a defenceless woman, informing his own parents and parents-in-law that the deceased ran away from the house and finally lodging a false and misleading reports to the same effect with the police cannot favour the theory of commission of suicide by her.

[760 G-H; 761 A-B]

In the presence of Dr. Saxena in the house, the deceased could not have hung herself by a rope in that very house that too with a two year child near her. Neither a rope was found nor the medical evidence did show that the death was due to hanging. [760 G-H]

(3) Faced with such a situation where the death sentence so justifiably imposed by the learned Sessions Judge is reduced to life imprisonment by the High Court under Sections 392 and 370 Cr. P.C., for the reason that the two learned Judges differed on the question as to the guilt of the accused, the Supreme Court cannot interfere under Order XXI against the sentence.

[761 C-D]

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition Nos. 3372 of 1980 And 581-82 of 1981.

From the judgment and order dated the 30th October, 1980 of the High Court of Allahabad in Capital Reference No. 1 of 1980 in CrI. Appeals Nos. 43 & 70 of 1980 & 62 of 1980.

R.K. Garg, V.J. Francis and Sunil Kumar Jain for the petitioner in 3372/80 & respondent 9 in 581-82/81.

K.G. Bhagat Addl. Solicitor General, *Dalveer Bhandari* for the petitioner in 581-82 of 1981 & respondent 9 in 3372 of 1980.

The Order of the Court was delivered by

CHANDRACHUD, C. J. These three Special Leave Petitions arise out of a prosecution in which one Dr. V.K. Saxena and a Nurse, Bhagwati Singh were charged, *inter alia*, for the murder of Sudha, the wife of Dr. Saxena. The learned Sessions Judge, Hardoi convicted Dr. Saxena under sections 120-B, 302 and 201 of the penal Code and awarded the sentence of death for the offence of murder. Bhagwati Singh was convicted under section 120-B and was sentenced to life imprisonment.

The appeals filed by the two accused and the confirmation proceedings came up for hearing in the Allahabad High Court before Hari Swarup and M. Murtaza Husain, JJ. Hari Swarup, J. agreed that the box in which the dead body of Sudha was packed was thrown by the accused Dr. V.K. Saxena from a running train between Lucknow and Kanpur. However, according to the learned Judge, that was not enough to sustain the charges because, the possibility that Sudha died as a result of suicidal hanging could not be excluded and if a person destroys evidence of suicide committed by another, he commits no offence. Murtaza Husain, J. differed from Hari Swarup, J. and held that Dr. Saxena had committed the murder of

A his wife put her dead body in a box and threw that box from a running train. Unfortunately for Dr. Saxena and fortunately for the cause of justice, the massive and menceiful pillars of the bridge over the Ganges intercepted the box as a result of which the box fell on the railway track and not into the Ganges. By reason of the difference of views between the two learned Judges, the proceedings were placed before S. Malik, J., who agreed with Murtaza Husain, J. B By an order dated October 30, 1980, the High Court upheld the conviction of Dr. V.K. Saxena under sections 302 and 201 of the Penal Code but reduced the sentence of death to life imprisonment. The Nurse, Bhagwati Singh, was acquitted by the High Court of the charge of conspiracy. C

D Dr. Saxena has filed Special Leave Petition No. 3372 of 1980 challenging the order of conviction and sentence. Special Leave Petition No. 581 of 1981 is filed by the State of U.P., contending that Dr. Saxena must be sentenced to death. Sepcial Leave Petition No. 582 of 1981 is filed by the State of U.P., against the order of acquittal passed by the High Court in favour of Bhagwati Singh.

E There is no merit whatsoever in the Special Leave Petition filed by Dr. Saxena. We have heard Shri R.K. Garg for over an hour but we are unable to see even the semblance of point in favour of his client. With respect, we are somewhat surprised that having held that Dr. Saxena had thrown the box containing the body of his deceased wife from a running train, Hari Swarup, J., should have persuaded himself to take the view that Sudha may have committed suicide by hanging herself. It is plain logic that if she had committed suicide, there was no reason for her husband to pack her dead body in a box and throw that box from a running train into a river. F Dr. Saxena travelled with that box from Hardoi to Lucknow by the Sialdah Express, took another train from Lucknow to Kanpur and threw the box on way. It is also impossible to understand how, when Dr. Saxena was himself present in the house, Sudha could hang herself by a rope in that very House, with a two year old child near her. G No rope was found in the house and the medical evidence does not show that Sudha hanged herself. The conduct of Dr. Saxena in buying a box, packing the dead body of his wife into that box and throwing it from a running train, leaves no doubt that he committed hermurder. H There is the clearest evidence of motive on the record of the case. Dr. Saxena had an illicit affair with the Nurse due to which he used to harass, pressurise, threaten and assault Sudha,

Not only did he tell Sudha's father and his own father falsely that Sudha had run away but he lodged false and misleading reports that she had run away. Little did he realise that the Ganges had refused to accept the box, which contained tell-tale evidence of the dastardly murder of a defenceless woman. Special Leave Petition No. 3372 of 1980 must therefore be dismissed.

In so far as Special Leave Petition No. 581 of 1981 is concerned, if only Hari Swarup, J., had taken a mere pragmatic view of the facts, he would not have persuaded himself to the view that Sudha might have committed suicide by hanging herself. Presumably, the death sentence so justifiably imposed by the learned Sessions Judge on Dr. Saxena was reduced to life imprisonment for the reason that the two learned Judges differed on the question as to the guilt of Dr. Saxena. If the High Court were to uphold the sentence of death, we would not have interfered with that sentence. But we are faced with a situation in which the High Court has reduced the sentence of death to imprisonment for life. We do not feel called upon to restore the sentence of death.

In so far as Special Leave Petition No. 582 of 1981 is concerned, there is not the slightest doubt that Bhagwati Singh is the root cause of the murder of Sudha, wife of her paramour Dr. Saxena. We have also no doubt that Sudha's murder was a consummation which Bhagwati Singh must have devoutly wished for. But there is neither evidence of conspiracy between her and Dr. Saxena to commit the murder of Sudha nor any evidence that she was present at or about the time of Sudha's murder. We, therefore, dismiss the special leave petition though not without expressing our severe resentment against the overall conduct of Bhagwati Singh. She, like Dr. Saxena, has disgraced a noble profession. Together, they are responsible for the murder of an innocent woman — one morally and the other legally.

S.R.

Petition dismissed.