PETITIONER:
INDER SINGH & ANR.

Vs.

RESPONDENT:
THE STATE (DELHI ADMN.)

DATE OF JUDGMENT24/02/1978

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
SINGH, JASWANT

CITATION:
1978 AIR 1091 1978 SCR (3) 393
1978 SCC (1) 161

ACT:
Proof-Nature of Proof and credibility of testimony in criminal cases-Constitution of India, 1950 Art. 21-Duty of the Court in giving directions in criminal cases to ensure that deprivation of liberty is accompanied by curative strategy and human dignity.
Criminal Procedure Code, (Act II of 1974) 1973-Ss. 149 to 151-Police to prevent cognizable offences-Their duties reiterated.

HEADNOTE:
The petitioners aged 16 and 20 were convicted for offences u/s 302 read with s. 34 and s. 307 I.P.C. and sentenced to life imprisonment by the trial Court and the High Court affirmed both the conviction and the sentence awarded to the accused.
Dismissing the special leave petition, the Court
HELD: 1. Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial uestq for perfect proof often accounts for police presentation of fool-proof-concoction. Infirmity in some aspect or other of this prosecution case cannot invalidate the culpability which is otherwise veraciously made out. [394 D-F]
The rationale of Court sentence is social defence coupled with personal correction. Article 21 of the Constitution is the jurisdictional root for legal liberalism. Courts are responsible to ensure that deprivation of liberty is accompanied by curative strategy and human dignity, by issuing certain positive directions in this regard. [397 B]
The Court directed the State Government (a) to issue appropriate instructions to the jail authorities to give the prisoners treatment and work which are not likely to offend dignity and decency and if necessary in consultation with the medical officer; (b) If their behaviour shows responsibility and trustworthiness, to allow them liberal

and cautious parole so that their family ties may be maintained and inner tensions may not further build up; (c) To enlarge them on parole for two months after every period-of one year, (d) to afford interviews by family members as often as are sought, and (e) to teach them useful crafts inside prison and encourage their studies. The Court further directed the Sessions Judge to make jail visits to ensure compliance with the above directions. [396 G-H, 397 A]

OBSERVATION:

Criminology is more than police "billy" and "peace and order" is more than smart F.I.R. It is positive action for prevention. detection and prompt prosecution. [395 G]

[The Court reiterated the preventive action of the police u/ss. 149 to 151 contained in Ch. XI of the Criminal Procedure Code, 1973 "which duty has gone by default']

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Criminal) No. 238 of 1978.

(Appeal by Special from the Judgment and Order dt. 16-12-77 of the Delhi High Court in Crl. A. No. 135 of 1975).

Frank Anthony, Chaman Lal Itorara and O. P. Soni for the Petitioners.

The Order of the Court was delivered by

KRISHNA IYER, J.-Mr. Frank Anthony has argued elaborately, punctuated with strident emphasis, several points in support of the innocence of the petitioners who have been convicted under s. 302 read with S. 34 and s. 307 I.P.C. The High Court has affirmed the conviction entered by the trial court and sentences of life imprisonment have been awarded by both the courts for both the accused. Certainly, some persuasive factors, which may militate against the culpability of the accused and the prosecution version of the precise nature of the occurrence, were brought to our notice by counsel who also strongly urged that there were embellishments and improbabilities invalidating the conviction. We have had the advantage of pursuing the extensively spread-out judgment of the High Court, in the light of the critical arguments addressed, but remain unconvinced that there is any serious error which warrants grant of leave.

Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is, too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many, guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up ? Because the court asks for manufacture to make truth look true ? No, we must be realistic.

We are satisfied that the broad features of the case, the general trend of the testimony and the convincing array of facts which are indisputable, converge to the only

conclusion that may be reasonably drawn, namely, that the accused are guilty. Theoretical possibilities may not shake up, fancied weaknesses may not defeat, when verdicts are rested on sure foundations. Stray chances of innocence haunting the corridors of the court cannot topple concurrent findings of guilt.

We feel unhappy that, while infirmity in some aspect or other of this prosecution case should not invalidate the culpability which is otherwise, veraciously made out, tragic occurrences like this one. should and

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could be avoided by preemptive State action, given imagination and intelligence. Had that been done the letlial episode might not have materialised and a young life not been lost. And, on the other side, two boys, if we may say so, are the convicts, one who is 16 years and the other barely 20 years; and yet the attack was induced by a previous murder, rending a family into two feuding branches and leading- to this vengeful murder. And the pity of it is this bleeding explosion was sparked off by a trivial friction caused by turns of irrigation. We refer ,to the observation of the High Court :

"As is well known and home out by the reported cases the drawing of water by turns is an endless cause of dispute,."

If this socioeconomic source of irritation induced by turns of irrigation, were so frequent, it behaved any aware Government not to watch and wait for murders to take place and then to prosecute after lives have ’been lost but to anticipate and smoothen the whole process so that avoidable frictions and tensions do not hot up. Violence often erupts from stress and distress. If wars are made in the minds of man crimes are rooted in the consciousness of man. It is the vigilant duty of a responsible Government not to merely track down criminals after the crime but to forestall escalation of traumatic build-ups by quia time steps before the crime. The Administration, we hope, will not wait for drunken,_brawls and deaths in festivals, fights over turns of water and deaths in fields and other Eke collisions, but, like good Governments should do, produce detente in the villages by appropriate measures which deepen the finer awareness and foster the better fellowship of men. It is obvious that this duty has gone by default and may continue to be so, unless the stiology of crime, in a broader social perspective, were traced and holistic measures adopted in advance. Criminology is more than police billy and ’peace and order’ is more than smart F.I.R. It is positive action for prevention, detection and prompt prosecution.

Once we agree, as we do, that the conviction under s. 302 is right. the sentence imposed, namely, life imprisonment is the minimum. Even so, there is an amount of psychic distress in marching two young men into lifelong incarceration. The humanistic aspect of the case may highlight the deplorable plight of the man behind the murderer and the mind behind bars. The fact that he has committed a murder in a fit of anger or prodded by family feud cannot warrant his being further criminalised by a long term of brutalising prison life. These two young men must be redeemed for society because they are after all, men. In this land elevated by the noble example of Valmiki and the humane faith of Ghandiji, anyone with any background has a hopeful future given a therapeutic prison process.

The spiritual basis of our constitutional order-and that is the dharma of danda neeti-is human dignity and ’social justice’ and not the, sedastic cruelty of hard confinement for, years on end. The rationale of court sentence is

social defence coupled With personal correction.
The California Supreme Court implied rehabilitation when it said:
"There is no place in the scheme for punishment for its own sake, for the product simply of vengeance or retribution."
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Indiana, 406 U.S. 715 (1972).
Most correctional codes acknowledge the intent to rehabilitate making it the purpose of confinement. In that context, Justice Blackman's language is meaningful in a United States Supreme Court decision :

> "At the least due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." Jackson v. In re Estrada; 63 Cal. 2nd 740 (1965).

In 1971 a U.S. District Court in Maryland found total rehabilitative effort was missing in a prison system and ordered that treatment be accelerated. Budgetary limitations imposed by the State were no excuse. Neither was noncooperative prisoners. After all, they need rehabilitation the most. (McCray v. State, 10 Criminal Reptr 2132.) We are clear-and, indeed, this Court has on prior occasions driven home the sentencing essence-that the judicial imprimaturs is given to keeping a man in jail, not in a cage, the difference being that in the former, the healing technique and hospital setting chasten the tiny world behind the tall walls. Therefore we emphasis the spirit of change towards rehabilitation. And "You cannot rehabilitate a man through brutality and disrespect. Regardless of the crime a man may commit, he still is a human being and has feeling. And the main reason most inmates in prison today disrespect their keepers, is because they themselves (the inmates) are disrespected and are not treated like human beings. Does this type of treatment bring about respect and rehabilitation ? No It only instill hostility and causes alienation toward the prison officials from the inmate or inmates involved.
If you treat a man like an animal, then you must expect him to act Eke one. For every action, there is a reaction. This is only human nature. And in order for an inmate to act like a human being, you must treat him as such. Treating him like an animal will only get negative results from him. Lewis Moore (71 p. 72)".
This reasoning compels us to issue certain positive directions, responsible as the court is to ensure that the deprivation of liberty is accompanied by curative strategy and human dignity. Karuma must refine life in sarcer.
So, instead of bolting these two young men behind the high walls of a prison and forgetting about them, humanising influences must be brought to bear upon them so that a better sense of responsibility, a kindlier attitude, behavioral maturity and values of a good life may be generated under controlled conditions. In this view we direct the State Government to issue appropriate instructions to the jail authorites to give these two prisoners treatment which is not likely to degrade or offend dignity and decency but uplift and elevate. Work has a curative, property but the kind of work assigned must be satisfying not degrading. The Medical Officer concerned will also be consulted on the proper prescription in this behalf. Furthermore, if the behaviour of these two prisoners
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shows responsibility and trustworthiness, liberal though

cautious, Parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up. After every period of one year, they should be enlarged on parole for two months interviews by family members must be afforded as often as ire sought. Useful crafts must be taught inside prison and studies encouraged. The Sessions Judge whose sentence we uphold, shall make jail visits to ensure compliance with these directions. Art. 21 of the Constitution is the jurisdictional root for this legal liberalism. The State Government will take proper steps to comply with this curial command. With these broad obligations cast on the State and the superintendent, we dismiss the special leave petition.

S.R. Petition dismissed.

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