

Ghanshyam and ors. Vs. State

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Court : Allahabad

Decided On : Sep-22-1981

Reported in : 1982CriLJ138

Judge : H.N. Seth and; M. Wahajuddin, JJ.

Appellant : Ghanshyam and ors.

Respondent : State

Judgement :

M. Wahajuddin, J.

1. This appeal is directed against the iudgment and order of Sri D. N. Sharma. the then III Additional District and Sessions Judge, Saharanpur, convicting the appellants Ghanshyam, Dhir Singh and Kehar Singh, Under Section 302/34. I. P. C, as well as Under Section 323/34, IPC and awarding them life imprisonment on the former count and six months' R. I. on the latter count, both the sentences running concurrently. One Mr. Hukum Singh also figured as an accused in the case, but he was given benefit of doubt and has been acquitted.

2. The case set up by the prosecution is that a dispute existed between Dhoom Singh (deceased) and the accused persons concerning land and Dhoom Singh had filed a suit, which was pending on the date of occurrencet and several reports were also lodged by Dhoom Singh against some of the accused persons.

According to the prosecution. Dhoom Singh also preferred an application (Ext. Ka-1) on 16-6-1975 to the Superintendent of Police, Saharanpur, that he apprehended danger to his life and danger to his son's life from Ghanshyam, Hukum Singh and Dhir Singh, they being inimical to him. The prosecution maintained that the accused persons had animosity and bore grudge to Dhoom Singh. According to the prosecution, a day prior to the occurrence Dharam Pal (P.W. 2) and Chhuttan (related to the appellants) tried to bring about a compromise between the deceased and the accused persons, but the talks did not succeed, and on the next day, i. e., 21-6-1975 at about 5-30 A. M. Dhoom Singh, Dharam Pal (P.W. 2) and Chhuttan, while on their way to Pir Ka Maidan. outside the abadi of the village, were intercepted by Hukum Singh, who has been acquitted, armed with a Tabai and the three appellants armed with lathis and Ghanshyam observed that they would take revenge for the assault made on Kehar Singh and would kill Dhoom Singh, and all the four accused persons then started belabouring Dhoom Singh. Chhuttan ran towards the direction of the village. Dharam Pal (P.W. 2) intervened to rescue Dhoom Singh, but was given lathi blows by Ghanshyam appellant. A number of witnesses got attracted and saw the assault. After Dhoom Singh's fall on the ground, Dhir Singh gave further lathi blow on his head and Dhoom Singh then died at the spot. Dharam Pal also received injuries in that incident.

3. A report concerning the incident was lodged by Tiraspal (P.W. 1), son of Dhoom Singh (deceased), at police Station Deoband on the same day at 7-30 A. M., the distance of the place of the incident from the Police Station being five miles. Hukum Singh (P.W. 8), the then Head Moharrir of Police Station Deoband, recorded the first information report (Ext. Ka-10) and registered a case in the G. D. (Ext Ka-11). The case was investigated by Sri K. C Nirmal (P.W. 7), the second officer of police Station Deoband. He reached the place of incident at 9 A. M. and found the dead body of Dhoom Singh in Peer Ka Maidan. He held inquest and prepared challan and diagram of the dead body, which have been duly proved, and the dead body of Dhoom Singh was then sent for postmortem duly sealed. The statement of complainant Tiraspal (P.W. 1), Dharam Pal (P.W. 2). Ram Pal (P.W. 3), Ved Prakash and some others were recorded. The site plan (Ext Ka-7) was prepared. Blood-stained earth and ordinary earth were taken into custody from place '6' of the site plan and duly sealed and a memo was prepared (Ext. Ka-

8). Dharam Pal (P.W. 2) was sent to the Hospital for medical examination. The accused persons could not be found at their places. Their house was searched. Two blood-stained lathis are said to have been recovered from there vide memo Ext. Ka-9. On 22-6-1975 some more witnesses were interrogated. Accused persons could not be arrested. The investigation was taken by Sub-Inspector, Sri M. K. Asthana (P.W. 9) on 23-6-1975, who interrogated some more witnesses and continued the search for the accused persons. The accused persons surrendered in court on 24th and 25th June, 1975, and on 20th August, 1975, charge-sheet was submitted against them.

4. The prosecution in all examined 11 witnesses in this case, Hukum Singh (P.W. 8) is the then Head Constable, who prepared the Check. Constable Chaman Lai (P.W. 11) has proved the G. D. entries Exts. Ka-18 and Ka-19 concerning reports lodged by Dhoom Singh on 1-5-1975 and 18-6-1975 against some of the accused and one Babu Singh, father of Hukum Singh accused, who has been acquitted. It appears that an application was also given by Dhoom Singh on 22-4-1975. This witness (P.W. 11) has proved that application as well as the Challani report given by Sub-Inspector K. C. Nirmal. Sri R. C. Nirmal (P.W. 7) and Sri M. K. Asthana (P.W. 9) are the Investigating Officers. Dr. I. S. Mathur (P.W. 5) conducted the post-mortem examination on the dead body of Dhoom Singh and Dr. G.R. Sharma (P.W. 10) has proved the injuries of Dharam Pal. Dharam Pal (P.W. 2), Ram Pal (P.W. 3) and Ved Prakash (P.W. 4) have given eye witnesses' account, while Tiraspal (P.W. 1) has proved the first information report and has also given evidence on motive. The other evidence is of formal nature.

5. The appellants maintained to have been falsely (sic) that he had put his thumb impression on some papers and Dhoom Singh had obtained loan for installation of tube well. On the day of occurrence Dhoom Singh asked Ghanshyam to also share in the repayment of loan. Ghanshyam declined and Dhoom Singh attacked Ghanshyam and Ghanshyam then acted in the right of his self-defence. The other two appellants denied their presence and participation in the incident. In support of the defence version one Dr. Aiai Kumar (D. W. 1) was examined to prove the injuries of Ghanshyam.

6. The learned lower court after considering the entire evidence rejected the defence version and further held that the participation of all the three appellants in the incident is proved and found the appellants guilty on the aforesaid two counts, on which they ha/e been convicted.

7. For a proper appreciation of the direct evidence in this case, we may refer to the medical evidence first. The evidence of Dr. I. S. Mathur (P.W. 5) coupled with his post-mortem report (Ext. Ka-3) would show that he conducted the post-mortem examination of Dhoom Singh on 21-6-1975 at 4.30 P. M. and the duration of Dhoom Singh's death was about half day. Rigor mortis was present and the body was well built. The following ante-mortem injuries were found upon the person of the deceased-

1. Lacerated wound 5-5 cm x 0.75 cm. x bone deep anterior-posteriorly oblique 3 cm above the inner end of right eye-brow.

2' Lacerated wound 6.5 cm x 0.6 cm x scalp deep antero-posteriorly oblique and 6 cm above the right ear 1.5 cm behind injury No. 1.

3. Lacerated wound 2 cm x 0.5 cm muscle deep transversely oblique, just behind the lobe of the right ear.

4. Traumatic swelling 2 cm x 10 cm with a transverse contusion 7 cm x 4 cm just below the lobe of the right ear half of the neck and half of the face.

5. Traumatic swelling all around the left eye in an area of 4 cm around which contusion both sides. There is sub-con juctival haemorrhage present in the outer half of left eye.

6. Contusion with traumatic swelling 6 cm x 3 cm on the right upper eye lid.

7. Contusion 6 cm x 4 cm on the left side head 4 cm above the left ear slightly towards the front.

8. Abraded contusion 6 cm x 5 cm on the back of right forearm about the middle.

9. Multiple abraded contusion in an area of 24 cm x 12cm, vertically oblique on the back and outside of right buttock and upper part of right thigh.
10. Contusion 18 cm x 2 cm oblique on the outer part of right thigh about the middle.
11. Abraded contusion 4 cm x 1 cm on the outer part of right knee.
12. Multiple abraded contusion in an area of 18 cm x 6 cm on the outer part of right leg. Vertical about the middle.
13. Abraded contusion 2 cm x 1 cm on the inner side of left leg just above the left ankle.
14. Contusion 7 cm x 4 cm on inner side of left leg at the level of the tuberosity of left tibia.

Haematoma was noticed in the scalp under the injuries. There was linear fracture of the right frontal bone 4 cm long under injury No. 1 extending up to the base of the skull and there was another transverse fracture of left supra-orbital plate at the posterior part and both these fractures united resulting in a complete linear fracture of the anterior cranial fossa. Coagulated haematoma was present in the brain in both frontal lobes and) under surface and on the cerebral. According to the doctor the cause of death has come due to fracture of skull and injury to the brain.

8. As one of the accused persons, Ghanshyam. has set up the exercise of the right of private defence of persons we may lay down his injuries also. The evidence of Dr. Ajai Kumar (D- W. 1) coupled with his injury report (Ext. Kha-1) would show that he examined Ghanshyam on 21-6-1975 at 11 A. M. and found three injuries on his person, which are as follows:-

1. Lacerated wound $3\frac{1}{4}$ ' x $1\frac{1}{3}$ ' x scalp on right side head 3" above right ear.
2. Contusion $1\frac{1}{4}$ ' x $1\frac{1}{2}$ ' on back of left wrist.
3. Abraded contusion $1\frac{1}{2}$ ' x $1\frac{1}{4}$ ' on back of left hand 14 below left wrist. Injuries were simple and were caused by blunt weapon and were fresh.

9. Dharam Pal (p. W- 2) is most important witness of this case. His evidence would show that he, Dhoom Singh and Chhuttan at about 5-30 A. M. on the day of occurrence went out to ease themselves in the Pir Ka Maidan and were intercepted by the appellants and Hukam Singh (acquitted), and Ghanshyam declared that they would take the revenge for the assault made on Kehar Singh and Dhoom Singh would be killed and Dhoom Singh was then belaboured by Hukam Singh armed with Tabal and the appellants armed with lathi. Dharam Pal (P.W. 2) was also given lathi blow by Ghanshyam when the witness tried to rescue Dhoom Singh. Ram Pal (P. W- 3) and Ved prakash (P.W. 4) were also attracted and saw the incident. They were threatened. The witness further stated that after Dhoom Singh fell down Dheer Singh gave a lathi blow on his head and Dhoom Singh died on the spot. According to Dharam Pal, he had noticed the appellants and Hukam Singh from a distance of 20 paces coming towards Dhoom Singh. As Ghanshyam has also injuries, he was cross-examined on the point whether he and his companions were armed, and he stated that they were unarmed and no one assaulted Ghanshyam, nor did he notice any injury on the person of Ghanshyam.

10. Ram Pal (P.W. 3) and Ved Prakash- (P. W' 4) have also supported Dharam Pal on broad facts concerning the incident. Ram Pal stated that he was returning back after easing himself and at about 5.30 A. M. when he¹ reached near Pir Ka Maidan, he noticed all) the three appellants; and Hukam Sfcgh surrounding Dhoom Singh. He mentioned their weapons According to him, Hukam Singh hit Tabal blow from the reverse end and others gave lathi blows. He was also cross-examined on the surroundings of pir Ka Maidan. According to him, he noticed the assailants for the first time when they were coming out from their field at a short distance and at that time he wag at a distance of 18.20 paces south-east. He was also confronted with his statement Under Section 164, Cr. P. C, and he admitted that he did not mention there that Dheer Singh gave a lathi blow on the head of the deceased and Ghanshyam Singh and Kehar Singh also assaulted Dhoom Singh with lathis. He denied the suggestion that Ghanshyam was pairokar in the litigation between the witness and blacksmith concerning Chak road. He also denied the suggestion that there existed prior enmity between him and Hukam Singh. He also denied the suggestion that ho did not see the incident.

11. Ved Prakash (P.W. 4), to account for his presence, deposed that he had a manure pit near the scene of incident, and he was loading the manure on his cart from there when he noticed the appellants coming out from their sugarcane field. He then narrated the incident supporting Dharam Pal. It would appear that his Chak and that of appellant Ghanshyam are adjacent, but he denied the suggestion that there was any quarrel between them regarding any encroachment by Ghanshyam. While admitting that he has a Gher at a distance of about 800-900 yards, he maintained that he did not collect rubbish there and used to dump the Maili in the aforesaid manure-pit. According to him, he was there since 15 minutes before the incident. He also denied that Ghanshyam was assaulted by any one.

12. Tiraspal (P.W. 1), although not an eye-witness, claims to have been attracted at the pir Ka Maidan after hearing the alarm and he found dead body of his father lying there. He has mentioned the presence of the witnesses and several others. The incident was narrated to him. He scribed the report and lodged the report. His house lay at a distance of about 500 yards.

13. So far as the broad facts of the case are concerned, it would be found that all the three witnesses Ram Pal, Dharam Pal and Ved Prakash have given a consistent statement concerning the incident, Dharam Pal's presence is certain when he himself also received injuries. The medical evidence would show that he had a number of injuries of considerable dimensions. His injuries were also examined by Dr. G.R. Sharma P.W. 10 on the same day on which the incident took place. Ram Pal and Ved Prakash have also fully accounted for their presence.

14. We have already referred to the medical evidence. It supports the prosecution version concerning the time of the incident. From the medical evidence it would be found that Dharam Pal's injuries were also of the very hour when injuries were caused to Dhoom Singh. Ram Pal has again fully accounted for his presence. ved prakash has also accounted for his presence. His statement that he used to colled rubbish of sugarcane juice brought from Sugar Mill, Deoband, at the pit near the place of occurrence is undemolished. The Investigating Officer actually found such manure pit at a distance of 30 paces from the scene of occurrence. The mere fact

that the witness has also his Gher would not rule out collection of manure by him at the aforesaid pit. He has made a categorical statement that he did not collect Maili in his Gher. His explanation is that the rubbish of sugarcane is brought from Sugar Mill and the road running from the village to his fields was in a bad shape, so he preferred to collect such manure at the aforesaid pit.

15. From the statement of Tiraspal (P.W. 1) also the place and time of the incident is fixed up and his statement supports the other witnesses of the occurrence on that point. On the time of incident, the direct evidence finds support from the medical evidence also. There is nothing on the record to suggest that the incident could have taken place at some different hour. On the Place of incident also the direct evidence finds support by other circumstances. The direct evidence is that victim Dhoom Singh died on the spot itself. The dead body was found in Pir Ka Maidan. In fact, the Investigating Officer also found blood-stained earth, 'but the same was not sent to the Chemical Examiner. Nevertheless, the very circumstance that the earth was found stained with blood as per oral evidence would itself be significant. When there is nothing to suggest that the dead body, was moved to the Pir Ka Maidan from any other place, the place of incident would found to be the very place where the dead body was found, namely, Pir Ka Maidan. Ghanshyam accused has, in course of his statement, set up a case of exercise of right of self defence maintaining that he received injuries. He, thus, admits his involvement in the incident. Yet he has not suggested any other place of occurrence. The trial court has, therefore, rightly held that the place of occurrence is well established and is the Pir Ka Maidan.

16. Dharam Pal (P. W- 2) is a resident of district Muzaffamagar and his presence on the date and at the time of the incident was assailed by the defence. The lower court has rightly observed that the circumstance that Dharam Pal also received a number of injuries is a sufficient guarantee for his presence. True that any injuries, were not found on any vital part of the body, but the reason for the same is obvious. It was not he, but Dhoom Singh who was the target. He simply intervened to rescue Dhoom Singh and a few injuries were inflicted on account of the same. The culprits had no such grievance or grouse against Dharam Pal as to subject him to a merciless beating. It was argued that Dharam Pal did not go to the

oolice Station. That was not necessary, when the son of the deceased was proceeding to the Police Station to lodge the report. pharam Pal being a relation remained with the dead body.

17. Dharam Pal's visit to the village has also been properly accounted for. It would appear that Khata of Ghanshyam Singh and Dhoom Singh was joint. The loan was taken for tube well and had to be repaid. Dhoom Singh was keen that Ghanshyam should also contribute towards the payment of debt. The relations between Dhoom Singh and Ghanshyam were otherwise uncordial. Dhoom Singh and Ghanshyam happen to be cousins. Dharam Pal happened to be the son of Dhoom Singh's Mause. He was, thus, related to both. There is nothing unusual in his being called to make efforts to affect a compromise between Dhoom Singh and Ghanshyam, His account for his presence in the village can, therefore, be safely accepted. The efforts of course failed on the previous evening, but that would not mean that he had not come to the village,. It is also noteworthy that the Investigation Officer interrogated Dharam Pal on the same day within a few hours of the incident. We agree with the learned lower court that Dharam Pal's presence at the time of occurrence is well established. As an injured witness his testimony is rather of a greater importance.

18. Ram Pal claimed that he was returning back after easing himself. The site plan would show that there is a pond close to the Pir Ka Maidan, where the incident took place. It is a usual practice to go to such places for easing oneself. In fact, Dhoom Singh and Dharam Pal had also gone to 'pir Ka Maidan for easing themselves in the vicinity of that pond. It was argued that Ram Pal admits that there is another pond nearer to his house and that pond is also at quite a distance, i. e., 100-125 yards. Ram Pal has explained why he did not go to that pond, that pond is smaller in size and gets dried in summer season, while the pond near the pir Ka Maidan was larger in size. The site plan would show that it had also water when the site was inspected. This would itself indicate that this pond is of larger size as to not to (et dried even in peak summer.

19. Ved Prakash has also fully accounted for his presence, which we have already discussed. Neither Ram Pal, nor Ved Prakash have any grouse or animosity for

any false implication of the appellants. Ram Pal has repelled the suggestion of any prior dispute with Ghanshyam. All the three witness in fact have given consistent evidence on all broad facts relating to the incident. Their statements are also uniform that all the present three appellants were armed with lathis and figured in the incident, it was argued that the version that Dheer Singh gave the fatal blow is an after-thought. This, however, does not appear to be the case, simply because in the statement Under Section 161, Cr. P. C, it is found at the fag-end cannot be given any undue significance. The direct evidence is further fully corroborated by the first information report, which was lodged without any material delay. All the broad facts relating to the incident have been mentioned in the first information report.

20. The trial court has given the benefit of doubt to Hukam Singh accused. It was argued that such being the position the testimony of the witnesses against the other three appellants also cannot be believed and it would be unsafe to rely upon the same. We have considered such argument. it seems that any Tabal injury was not found and Ram Pal had stated that the Tabal hit the victim from the reverse side, while -Dharam Pal and Ved Prakash deposed that Hukam Singh plied Tabal in the normal manner. The trial court as abundant caution gave benefit of doubt to Hukam Singh. Butt so far as the present appellants are concerned, the direct evidence is that they all were armed with lathis and lathi injuries were caused. Such evidence finds support from the medical evidence also, because as many as 14 iniuries of blunt weapon have been caused spread all over the body of deceased indicating that the appellants armed with lathis belaboured the deceased and injured Dharam Pal, who too had four contusions.

21. In case there is direct evidence, motive looses its importance. In the present case there is sufficient evidence on motive also. Ghanshyam is the father and the other two appel-' lants are his sons. Ghanshyam is the first cousin of Dhoom Singh. A partition suit between Dhoom Singh and the appellants was pending. There was also a criminal case concerning alleged beating of Kehar Singh and appellants would have animosity on account of such alleged beating. Dhoom Singh had preferred an application to the Superintendent of police, Saharanpur, on 16-6-67 stating that he apprehends danger to his life and to that of his son from

Ghanshyam and others. There are other G. D. reports Exts. Ka-II and Ka-19 lodged by the deceased against Ghanshyam and others including others. In fact there is also a challani report of Police Station initiating proceedings Under Section 107/117, Cr. P. C. The relations between the deceased and the appellants were, thus, highly strained. The occurrence initiated with an observation by Ghanshyam that they would take revenge for the assault made on Kehar Singh earlier, as per direct evidence led in this case. We, therefore, hold that the argument that there is lack of motive on the part of the appellants to initiate attack has no force. It was further argued that the prosecution version itself indicates that a certain loan was taken for installing tube well and Dhoom Singh was keen that Ghanshyam should also contribute in the repayment if such loan and Dhoom Singh had initiated a move for a compromise which failed, so it is Dhoom Singh who would have motive to attack and vice versa. This argument does not appeal to us. When there happened to be a long standing enmity, Ghanshyam would be rather unhappy on this compromise move also, in fact, it may rather appear that Dhoom Singh being apprehensive of danger to his life, first moved application and then Pven sought the help of Dharam Pal to bring about a compromise and he had no aggressive feelings.

22. From the statement made by Ghanshyam Under Section 313, Cr. P. C. at the far end of the trial, one thing is very clear that an incident did take place in which Ghanshyam also received injuries. Ghanshyam's contention was that in such incident, the other two appellants did not figure and further that it was Dhoom Singh who was the aggressor. Such defence version is neither probable, nor is likely. Rather it would be found to be just a lame explanation for the injuries on the prosecution side and the defence version cannot hold water. We are conscious that the prosecution has to stand upon its own legs and cannot succeed on grounds of any weakness in defence case. We are also conscious of the fact that any plea of self-defence can be entertained by the court even in absence of evidence of proof and also notwithstanding that such stand is highly belated. But this does not mean that whenever there is any injury on the defence side, the defence is to go scot free and the prosecution case is to fail. All the facts and circumstances have got to be considered before coming to any conclusion. Dhoom Singh had as many as 14 injuries spread all over his body and Dharam Pal, who

tried to save him, had also four injuries, while Ghanshyam has only three injuries. This would not be the position if Dhoom Singh was the aggressor and Ghanshyam Singh simply acted in self-defence. In fact from the very large number of injuries caused on the prosecution side, it is manifest that a pre-planned attack was on Dhoom Singh and the defence contention and counter-version can be safely overruled. It was argued that the prosecution has failed to explain the injuries of Ghanshyam. The prosecution is not bound to do that. Ghanshyam's injuries are not of major dimensions. All the injuries are of superficial in nature. True that there is one injury on the scalp, but the dimensions of this injury is all the more superficial and insignificant (Size 3/4' x 1/8'). It is not shown that these injuries were caused in the same incident. It is also significant that there is no counter report, nor any complaint lodged. In the circumstances, the defence version of self-defence can be safely overruled.

23. We have already held that participation of all the three appellants, who were armed with lathis, is established; that all the three appellants came together before the attack was initiated, Ghanshyam made a verbal declaration that the deceased would be killed, all the three appellants joined in the attack and assault. There are three injuries of vital nature which could cause death, as per doctor's evidence. Injuries were caused on the vital part of the body. Lathi blows were given with force. The number of injuries caused are large and spread all over the body. There are number of injuries on the head. All the appellants also live together. The prior meeting of mind was also there, when it appears that all the three came together armed with lathis and Ghanshyam immediately made the aforesaid observation. The trial court was, therefore, justified in holding that all the three appellants had the common intention to kill Dhoom Singh. The medical evidence would show that the death was due to fracture of skull and injury to the brain. Head injuries were sufficient in the ordinary course of nature to cause death. The case would be covered Under Section 300, I- P. C. and the appellants have been rightly held guilty Under Section 302/34, IPC for committing the murder of Dhoom Singh. The medical evidence would also show that simple hurt was caused to Dharam Pal, when he intervened, and he too was belaboured by the appellants. They are, therefore, also guilty Under Section 323/34, I. P- C The conviction of all the three appellants Under Sections 302/34 and 323/34 IPC is, therefore, maintained.

24. We have been addressed on the point that Kehar Singh could not be awarded such sentences, as his case was covered by the Uttar Pradesh Children Act, 1951. It would be found that at the time of his statement under S- 313. Cr. P. C, Kehar Singh stated that his age is 15 years and the trial court also made an endorsement that h& seems to be of that age. It is submitted that U. P. Children Act. 1951. being in force when this case was tried and disposed of. the trial court should have dealt with Kehar Singh under the provisions of that Act and now the court of appeal must apply such provisions. It would be found that the Act was in force in entire Saharanpur district, when the offence took place and the trial proceeded.

25. Once the trial court has itself made a note about the age of accused Kehar Singh and the prosecution also in the trial court did not raise any dispute concerning the age of Kehar Singh given in the trial court, it can safely be held that as per the trial court observation itself the age of Kehar Singh at the time of incident was below 16 years and in case of Kehar Singh, therefore, the provisions of the Children Act would apply-Rather, the trial court erred in not applying such provisions. The trial court should have, therefore, considered the implication of the U. P. Children Act (hereinafter called as the 'Children Act'). Section 2 (4) of the said Act provides 'child' means a person under the age of sixteen years. Section 2 (13) defines 'youthful offender', any child who has been found to have committed an offence punishable with transportation or imprisonment'. Kehar Singh is covered under the definition of a child given Under Section 2 (4) of the Children Act. Section 27 of the said Act runs as below:-

27. Notwithstanding anything to the contrary contained in any law, no Court shall sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine;

Provided that if a child is twelve years of age or upwards may be committed to prison when the Court certified that he is of so unruly, or of so depraved a character that he is not fit to be sent to an approved school and that none of the other methods in which the case may legally be dealt with is suitable.

The next relevant section is Section 29 (1) of the Act, which runs as follows:-

29 (1) Where a child is found to have committed an offence punishable with transportation___ pr imprisonment, the Court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to an approved school for such period of stay as will not exceed beyond the time when the child will attain the age of 18 years or for a shorter period, the reasons for such period to be recorded in writing.

Under Section 29 (1) a child tan be sent to an approved School for a period of stay not exceeding the age of 18 years. S- 30 then provides for dealing with 'youthful offender', who are not to be detained in approved School and provides as follows:-

30 (1) A court may, if it thinks fit, instead of directing any youthful offender to be detained in an approved school, order him to be-

(a) discharged after due admonition,- or

(b) released on probation of good conduct and committed to the care of his parent or guardian or other adult relative or other fit person. On such parent, guardian, relative or person executing a bond, with or without sureties, as the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding three years and for- the observance of such other conditions as the Court may impose for securing that the youthful offender may lead an honest and industrious life.

The court may order that the youthful offender released under this clause may be placed under the supervision of a Re-formation Officer or of Rome other person appointed for the purpose by the Court.

Section 32 of the Children Act is the next important section, which reads as follows:-

32 (1) When a child is found to have committed an offence of so serious a nature that the Court is of opinion that no punishment which under the provisions of this Act it is authorized to inflict is sufficient, the Court shall order the offender to be kept in safe custody in such place or manner as it thinks fit and shall report the case for the orders of the State Government.

(2) Notwithstanding- the provisions of Section 13 the State Government may order any such child to be detained in such place and on such conditions as it thinks fit, and while so detained the child shall be deemed to be in legal custody.

Provided that no period of detention so ordered shall exceed the maximum period of imprisonment to which the 1982 Cr. P. Code, s. 101 child could have been sentenced for the offence committed.

The aforesaid succeeding sections lay down as to - how a child convict has to be dealt with.

Section 27 is a complete bar and a child can neither be sentenced to death, nor to transportation, nor to imprisonment for any term including the commitment to prison in default of payment of fine. The proviso permits detention of a child of 12 years of age or upwards and his commitment to prison, if the Court holds that the child is so unruly or of so depraved character as not to be fit to be sent to the approved School. The trial court has not recorded any such finding, nor the evidence shows that.

26. After considering the aforesaid provisions of the Children Act, we feel that Section 32 of the U. P. Children Act, as laid above, is attracted in this case and Kehar Singh is to be dealt with under that section. Murder is an offence of serious nature, which is punishable with death as well, although not awarded in this case. We have a feeling that no punishment which under the provisions of this Act the Court is authorised to inflict is sufficient and it is a case fit for report for orders of the State Government. We, therefore,, direct that the matter be reported Under Section 32 (1) of the aforesaid Act with a copy of this judgment for its orders Under Section 32 (2) of the Act. At the sametime while maintaining his conviction, his sentence of life imprisonment Under Section 302/34 I. P. C, as well as the sentence of 6 months R. I. Under Section 323/34. I. P. C, are set aside, as he could not be awarded any such sentence in view of the bar contained Under Section 27 of the Act. Kehar Singh cannot be sent to any approved School, being already of the age of more than 18 years. Pending orders of the State Government, he has to be kept in safe custody in such place or manner as the Court thinks fit. In view of his present age, the suitable place for safe custody

appears to be Jail itself. He shall be kept in safe custody in jail pending final orders by the State Government Under Section 32 (2) of the Act. It is made clear that he would neither be treated as a person serving any sentence, nor as an under trial. His detention in the jail would be simply for a safe custody pending orders of the State Government.

27. Conviction of the appellants Ghan-shyam and Dhir Singh for the offences Under Sections 302/34 and 323/34, I. P- C, and the sentences awarded to them by the trial court is maintained and their appeal is dismissed in toto. They are on bail. They shall surrender forthwith to serve out the sentence awarded to them.

28. The appeal of Kehar Singh is partly allowed, while his conviction Under Sections 302/34 and 323/34, IPC are maintained, the sentences passed against him under those sections are set aside and his case is referred to the State Government under S- 32 of the Children Act, and pending direction of the State Government Under Section 32 (2) of the Act, it is hereby directed that he shall be kept in safe custody in jail, but would neither be treated as a convict serving sentence nor as an under trial and would be kept there -just for sake of safe custody pending orders of the State Government. He is also on bail. He shall surrender for being sent to Jail for safe custody pending orders of the State Government.