

SUSHIL CHOWDHARY AND ORS.

v.

STATE OF BIHAR

September 6, 1979

[V. R. KRISHNA IYER AND P. N. SHINGHAL, JJ.]

Sentencing process—Sentence for aged persons and youthful offenders—Sections 354(3), 360 and 365 CrI. P.C., 1973.

Dismissing the appeal by special leave, the Court

HELD : 1. Having due regard to the age of the accused Munni Marandi and to the absence of any overt act, a sentence of two years R. I. would, in the circumstances of his case meet the ends of justice for the offence u/s 149 read with Section 326 I.P.C. [587 G-H]

2. Absence of legislation cannot be made up for by judicial legislation, Babua Marandi was aged 15 years at the time of the offence and there is no Children Act in Bihar. Though the conviction or sentence cannot be interfered with, in the hapless circumstances of the case and in the helpless situation of legislative vacuum all that this Court can do is to direct that Babua Marandi be placed either in an open prison or in a model prison or any other prison available in the State where young offenders are kept apart from the adult offenders. The special directions for doing so is that adolescents should be separated from adults in prison campuses for obvious reasons. [588C-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 483 of 1979.

Appeal by Special Leave from the Judgment and Order dated 22-3-1979 of the Patna High Court in CrI. A. No. 356 and 407/73.

B. P. Singh and *L. R. Singh* for the Appellants.

S. N. Jha and *U. P. Singh* for the Respondent.

The Order of the Court was delivered by

KRISHNA IYER, J. We have heard the arguments of appellants' counsel with specific reference to Munni Marandi and Babua Marandi the appellants herein. We have also read through the evidence relating to these accused persons aided by counsel for the State. The role attributed to Munni Marandi is that he was a member of the crowd which chased the deceased and in that sense was liable under Section 149 read with 326 I.P.C. We cannot fault the High Court for the conviction rendered, but having due regard to the age of the accused and to the absence of any overt act on his part, we consider that a sentence of two years' R.I. will, in the circumstances of this case, meet the ends of justice.

- A** Babua Marandi, a boy aged 15, was also in the crowd. In the excited chase of the deceased, this boy also followed and when the actual sword thrust was made by Ranjit Chaudhry, this boy held the deceased. In this sense, his part is different from that of Munni Marandi. We are not, therefore, disposed to interfere with his conviction or the sentence. Nevertheless, it is important to remember
- B** that Babua Marandi was aged 15 years at time of the offence. It is regrettable—and this Court has pointed this out more than once—that there is no Children Act in Bihar, and in this International Year of the Child we have to emphasize that the Legislature is expected to do its duty by the children of Bihar by considering the passing of a measure like the Children Act which long ago had been circulated by
- C** the Central Government and which exists in some other states in the country. Be that as it may, we are unable to deal with Babua Marandi as a child for the simple reason that absence of legislation cannot be made up for by Judicial legislation. All that we can do, in the hapless circumstances of the case and in the helpless situation
- D** of legislative vacuum, is to direct that Babua Marandi be placed either in an open prison or in a model prison or any other prison available in the State where young offenders are kept apart from the adult offenders. The special reason which induces us to make this direction is that, as is well known, adolescents should be separated from adults in prison campuses. The vices are obvious and we,
- E** therefore, direct accordingly.

V.D.K.

Appeal dismissed.