

A DR. PANKAJ KUMUDCHANDRA PHADNIS
v.
UNION OF INDIA MINISTRY OF LAW AND JUSTICE
(Special Leave Petition (Civil) No. 8293 of 2018)

B MARCH 28, 2018

[S. A. BOBDE AND L. NAGESWARA RAO, JJ.]

C *Mahatma Gandhi Assassination case – Prayer of writ petitioner to reopen the case – Mahatma Gandhi was assassinated about 70 years ago – Trial Court had convicted 7 accused persons for offence of murder and conspiracy and acquitted one – High Court had upheld the conviction of 5 accused persons and acquitted two accused persons – After about 70 years, writ petition before High Court on the basis of a new research – High Court declined to entertain the writ petition and to go into two questions raised i.e. whether the four bullets were fired as alleged and whether the Kapur Commission Report be opened after the period of 46 years – Special Leave Petition – Held: Criminal cases which resulted in conviction and even execution of death sentences and the demise of those who have served life sentences ought not to be reviewed – Moreover, there is no provision in law for such review – A new research into a long concluded matter would not justify a re-initiation of criminal investigation – Petitioner’s attempt to reopen this controversy is as an exercise in futility – Court must at all cost be wary of such contentious issues and must not allow its jurisdiction to be invoked for such purposes – SLP dismissed – Criminal Investigation.*

F *Ram Kishan Dalmia v. Justice S.R. Tendolkar*
[1959] SCR 279 : AIR 1958 SC 538 – referred to.

Case Law Reference

[1959] SCR 279 referred to Para 7
G CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 8293 of 2018.

From the Judgment and Order dated 06.06.2016 of the High Court of Judicature at Bombay in PIL No. 32 of 2016.

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A. Sharan, Sr. Adv.(AC), Sanchit Guru, Ms. Garima Bose, A
Ms. Aprajita Mukherjee, Samarth Khanna, Advs. for the appearing
parties.

Dr. Pankaj Kumudchandra Phadnis, Petitioner-in-person.

The following Order of the Court was passed :

ORDER

S. A. BOBDE & L. NAGESWARA RAO, JJ.

1. Mahatma Gandhi was assassinated on 30.1.1948; about 70
years ago. 9 accused were tried for the conspiracy and murder of
Gandhiji. After trial the judgment was delivered by Learned Special Judge,
Delhi on 10.02.1949 convicting seven accused and acquitting one. C
Accused Nathuram Godse and Narayan Apte were given death sentence,
four of the accused were given life sentence and remaining one was
given a sentence of seven years of Imprisonment. The conviction was
challenged in Punjab High Court in Appeal, High Court vide judgment
dated 21.06.1949 upheld the conviction for five of the accused persons D
and acquitted two of the accused persons. None of the accused are
alive today.

2. The petitioner who describes himself “An Engineer,
Management Graduate, Ph.D and a Researcher with passion”
approached the High Court by filing a Writ Petition¹ in the year 2016. E
The High Court declined to entertain the petition and go into two questions
raised i.e. whether the four bullets were fired as alleged and whether
the Kapur Commission Report should be reopened after the period of 46
years.

3. The delay with which the petitioner has raised this issue is
gross. According to the petitioner, he moved the court after doing some F
research about the circumstances in which Gandhiji’s assassination took
place and got convinced about the involvement of an unseen hand in the
assassination. We are, however, not satisfied that new research into a
long concluded matter justifies a re-initiation of criminal investigation or
that anything that might be stated should be allowed to reopen a case G
such as this. Criminal cases which result in conviction and even execution
of death sentences and the demise of those who have served life sentences
ought not to be reviewed, neither is there a provision in law for review.
But it was argued before us that the assassination of Gandhiji was an

¹ PIL No.32 of 2016

A event of far reaching consequences in the world and the nation has the right to know the truth. While undoubtedly the nation has right to know the truth, such a right cannot be invoked where the truth is already well known merely because some academic research raises a different perspective in law. This would amount to reopening issues based on hearsay.

B 4. We are constrained to make this observation because Nathuram Godse was convicted on the basis of the evidence of eye-witnesses who were present at the prayer meeting. The meeting itself was attended by innumerable people. Each one of the eye-witnesses described how Godse moved forward and shot Gandhiji.

C All the evidence reveals that three shots entered the body. It further revealed that:

(i) The weapon of assault was semi-automatic Berreta Pistol with a magazine that could carry seven cartridges at a time. The pistol was recovered with four live cartridges by

D PW-31.

(ii) Two empty cartridge cases were found at the place of occurrence; the third was found in the shawl when the last ritual bath was given to the body of Gandhiji.

E (iii) The death report mentions three bullet wounds:

(a) One injury on the right side of the chest near nipple.

(b) One injury below the chest on the right side.

(c) One injury on the right side of the abdomen.

F There were two exit wounds, one bullet did not exit the body. Thus, only two spent bullet were found at the place of occurrence. No fourth spent bullet or empty cartridge was found at the place of occurrence.

G 5. The FIR registered at 5.45 pm mentions firing of three shots. The inquest report prepared by Lt. Col. Taneja showed that Gandhiji had suffered bullet injuries from three bullets only. There were six eye witnesses; PW-31 (Amar Nath), PW-32 (Nandlal Mehta), PW-34 (Ratan Singh), PW-37 (Dharam Singh), PW-76 (Raghunath Naik), PW-82 (Sardar Gurbachan Singh). Each one of them mentions that three shots were fired by the sole assailant Nathuram Godse. No one from either

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side i.e. the prosecution or defence suggested that four bullets were fired or that there was a second assailant. The report submitted by Learned Amicus Curiae Shri Amrendra Sharan, Senior Advocate contains a detailed reference to all the relevant evidence in this regard. A

6. Another submission made by the petitioner is that this Court should review the Kapur Commission findings. G.V. Ketkar, grandson of Lokmanya Balgangadhar Tilak, made a statement that he had knowledge about the conspiracy to assassinate Mahatma Gandhi prior to the incident. This raised a political storm and the Kapur Commission was set up inter alia to inquire into the conspiracy to assassinate Mahatma Gandhi. The commission headed by former Judge of this Court Shri Jivanlal Kapur submitted its report in 1969. According to the petitioner, the following finding of Kapur Commission in its report is unfair since it hurts the sentiments of the followers of Shri Savarkar:- B C

“All these facts taken together were destructive of any theory other than the conspiracy to murder by Savarkar and his group”²

He, therefore, prayed for a review of this finding or setting up of a new commission. D

7. The Learned Amicus Curiae submitted that this finding was rendered after the demise of Shri Savarkar and no opportunity was given to Shri Savarkar or any of his representatives. He submitted that the finding is unfair since Shri Savarkar had been acquitted at the trial. There is no doubt that this finding does not in any way interfere with the acquittal and is a general observation probably made since Godse and others were found to have been associated with Shri Savarkar. It cannot have the effect of overturning of the finding of the criminal court which acquitted Shri Savarkar. Constitution bench of this Court in *Ram Kishan Dalmia v. Justice S.R.Tendolkar*³ considered the effect of the findings of a Commission as follows:- E F

“The Commission has no power of adjudication in the sense of passing an order which can be enforced *proprio vigore*.”

Further, the Constitution bench declined to act on the findings in the report of Commission of Inquiry; G

“But seeing that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective

² Kapur Commission Report, Page 303 of Volume II

³ 1959 SCR 279 : AIR 1958 SC 538

- A *proprio vigore* and the statement made by any person before the Commission of Inquiry is, under s.6 of the act, wholly inadmissible in evidence in any future proceedings, civil or criminal, there can be no point in the Commission of Inquiry making recommendations for taking action “as and by way of securing redress or punishment” which, in agreement with the High Court, we think,
- B refers, in the context, to wrongs already done or committed, for redress or punishment for such wrongs, if any, has to be imposed by a court of law properly constituted exercising its own discretion on the facts and circumstances of the case and without being in any way influenced by the view of any person or body, howsoever august or high powered it may be.”
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The submission of the petitioner that Shri Savarkar has been held guilty for the murder of Gandhiji is misplaced.

8. We are, however, not inclined to enter into the correctness or fairness of the findings in this report. That would be another exercise in futility and would none the less pan new fires of controversy. This Court must at all cost be vary of such contentious issues and must not allow its jurisdiction to be invoked for such purposes.
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9. We are, therefore, not prepared to accept the fourth bullet theory propounded by the petitioner. Learned Amicus Curiae categorically submitted that perusal of original photograph at the museum leads to no such inference. We consider the petitioner’s attempt to reopen this controversy as an exercise in futility. Since the person who took the photograph cannot be examined and any statement about the photograph made by any expert would not be admissible at this stage.
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10. The court is beholden to Shri Amrendra Sharan, Ld. Amicus Curiae who has painstakingly examined the entire record of the case & even exhibits of the national museum for the assistance of the court.
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11. We see no merit in this SLP and hereby dismiss the same.

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Ankit Gyan

Petition dismissed.