

Chief Justice's Court

Case :- CRIMINAL APPEAL No. - 3136 of 1983

Appellant :- Dhurandhar Singh

Respondent :- State of U.P.

Counsel for Appellant :- T. Rathore, Kamal Kumar, Namit
Srivastava, Rakesh Kumar Singh

Counsel for Respondent :- D.G.A., A.G.A.

Hon'ble Govind Mathur, Chief Justice

Hon'ble Vivek Varma, J.

(As per Vivek Varma, J.)

1. Heard learned counsel for the appellant and learned A.G.A., for the State.
2. This appeal has been filed against the judgment and order dated 26.11.1983 passed by Sessions Judge, Ballia in Sessions Trial No. 96 of 1983, whereby the appellant Dhurandhar Singh has been convicted for offence punishable under Section 302 IPC and has been sentenced to undergo imprisonment for life and was further convicted under Section 25 Arms Act and sentenced to one year R.I. Both the sentences were directed to run concurrently.
3. At the outset, learned counsel for appellant submitted that an application was filed on 22.05.16 to decide the appeal of the appellant as a juvenile in conflict with law. The said application was supported by an affidavit in which class - V and VII school leaving certificate of the appellant issued by the Headmaster of the Primary Vidyalaya, Ibrahimabad, Ballia, as well as High School Examination 1986 Certificate issued by the Board of High School and Intermediate Education, U.P. studied from Sudisthi Baba Inter College, Ballia, was enclosed disclosing the date of birth of the appellant as 03.01.66. It was contended that from the above material it is ascertainable that on the date of commission of the crime, that is 17.03.83, the appellant was

below 18 years in age and therefore was entitled to the benefit of the provisions of Juvenile.

4. By an order dated 28.07.16, the learned AGA was granted three weeks time to obtain instructions and to file counter affidavit in response to the application filed by the appellant.

5. Pursuant to the above order, a counter affidavit was filed on behalf of the State. Thereafter, by order dated 22.08.16, the Juvenile Justice Board, Ballia was directed to consider and decide the claim of juvenility set up by the appellant, after affording opportunity of hearing to both the parties, in accordance with Rules, preferably within a period of two months from the date of receipt of record.

6. A report of the Juvenile Justice Board, Ballia dated 6.11.16 is placed before us. From a perusal of record it reveals that accused-appellant was aged about 17 years 02 months and 14 days on the date of incident i.e.17.03.83. The Juvenile Justice Board, while conducting inquiry on the claim of juvenility, had issued notice to the informant. However, neither the informant appeared nor he submitted any objection with regard to the age of the appellant. In the inquiry so conducted, the statement of Srikrishna Ram (*paricharak*) and representative of the Principal of Sri Sudisthi Baba Inter College, Ballia was recorded. He had produced the scholar register and cross list of the institution. In the cross list, roll number was entered as 1443545 and the date of birth is mentioned as 03.01.66. The witness was also cross examined. The statement of Santosh Kumar (Assistant Teacher) of Primary Vidyalaya, Ibrahimabad, Ballia was also recorded and he was also cross examined.

7. The inquiry by the Juvenile Justice Board had been conducted as per Rules. Opportunity was given to complainant as well as accused-appellant to lead evidence and thereafter on the basis of date of birth recorded in educational certificate, it had come to a definite conclusion that the appellant was 17 years 2 months and 14 days old at the time of the incident.

8. Further, no appeal/revision has been filed against the order dated 16.11.2016 passed by Juvenile Justice Board declaring accused-

appellant Juvenile, and that no objection on behalf of State had also been filed challenging the report dated 16.11.2016 passed by Juvenile Justice Board. Thus, we accept the report and hold that the appellant was a juvenile as defined by Section 2(35) of the Juvenile Justice (Care and Protection of Children) Act, 2015, on the date of the incident.

9. Now, since the appellant was a Juvenile in conflict with law, on the date of incident, and presently he has crossed 63 years age, and further no other ground of appeal having been raised before us, therefore, at this stage the Court has to take into consideration provisions of Section 18 and 21 of Juvenile Justice (Care and Protection of Children) Act, 2015 and to pass appropriate orders.

10. For ready reference section 18 of Juvenile Justice (Care and Protection of Children) Act, 2015 is extracted below.

"18. Orders regarding child found to be in conflict with law.-

(1). Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,-

a. allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

b. direct the child to participate in group counselling and similar activities;

c. order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

d. order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

e. direct the child to be released on probation of good conduct and placed under the care of any parent, guardian

or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

f. direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

g. direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

2. If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to-

i. attend school; or

ii. attend a vocational training centre; or

iii. attend a therapeutic centre; or

iv. prohibit the child from visiting, frequenting or appearing at a specified place; or

v. undergo a de-addiction programme.

3. Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

11. It is also relevant to quote section 21 of the Act.

"21. Order that may be passed against a child in conflict with law:

No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force."

12. From the perusal of the aforesaid provisions it is noticed that a juvenile in conflict with law cannot be sentenced to undergo life

imprisonment, and further the maximum period for which a juvenile may be sent to a special home is only three years.

13. Further, the accused appellant because of his age, as on today cannot be sent to special home. However, as is evident from record that the appellant has already undergone about 9 months of imprisonment as un under trial and partly as convict.

14. At this juncture, it would be appropriate to look into the ratio laid down by Apex Court while dealing with the similar situation like in the case in hand.

15. The Hon'ble Supreme Court in ***Mahesh and others vs. State of Rajasthan and others***, reported in 2019(3) Crimes 60 (SC) has held as follows:

“5. The position in law in this regard is somewhat unsettled as has been noticed and dealt with by this Court in Jitendra Singh alias Babboo Singh and another versus State of Uttar Pradesh¹ wherein in paragraphs 24 to 27 four categories of cases have been culled out where apparently different approaches had been adopted by this Court. The net result is summed up in paragraph 28 of the aforesaid report which explains the details of the categorization made in the earlier paragraphs of the said report. Paragraph 28 of the said report, therefore, would require a specific notice and is reproduced below:

“28. The sum and substance of the above discussion is that in one set of cases this Court has found the juvenile guilty of the crime alleged to have been committed by him but he has gone virtually unpunished since this Court quashed the sentence awarded to him. In another set of cases, this Court has taken the view, on the facts of the case that the juvenile is adequately punished for the offence committed by him by serving out some period in detention. In the third set of cases, this Court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty. In the fourth set of cases, this Court has examined the case on merits and after having found the juvenile guilty of the offence, remitted the matter to the jurisdictional Juvenile Justice Board on the award of sentence.”

6. *The validity of the conviction in respect of the incident which occurred almost two decades back, in our considered view, ought to be decided in these appeals and the entire of the proceedings including the punishment/sentence awarded should not be interfered with on the mere ground that the accused appellants were juveniles on the date of commission of the alleged crime. Judicial approaches must always be realistic and have some relation to the ground realities. We, therefore, adopt one of the possible approaches that has been earlier adopted by this Court in the four categories of cases mentioned above to examine the correctness of the conviction of the accused appellants under the provisions of the IPC, as noticed above.*

7. *In this regard, having perused the materials on record we find no ground whatsoever to take a view different from what has been recorded by the learned trial Court and affirmed by the High Court. The conviction of the accused appellants under Sections 323, 324, 325, 427, 455 read with Section 149 IPC accordingly shall stand affirmed.*

8. *This will bring us to a consideration of the sentence to be awarded. Here again, in the four categories of cases that have been noticed in Jitendra Singh (supra) and in several subsequent decisions of this Court in Abdul Razzaq vs. State of Uttar Pradesh, Mohd. Feroz Khan alias Feroz vs. State of Andhra Pradesh, Mumtaz alias Muntyaz vs. State of Uttar Pradesh and Mahendra Singh vs. State of Rajasthan different approaches have been adopted. In some cases, the question of punishment has been left to be determined by the Juvenile Justice Board in view of the provisions of Section 20 of the Act of 2000. In other cases, the issue of punishment has been dealt with by the Court having regard to the fact that on the date when the Court had considered the issue the juvenile(s) have advanced in age.*

9. *The present is a case where the accused appellants though juveniles on the date of commission of the alleged crime are, as on today, middle aged persons. The accused appellant - Mahesh in Criminal Appeal arising out of Special Leave Petition (Criminal) No.2934 of 2015 had undergone the custody for a period of nearly one year whereas the accused appellant – Arjun in Criminal Appeal arising out of Special Leave Petition (Criminal) No.5370 of 2015 had suffered custody for about eight (08) months. The maximum sentence, as already noted, is three years. Having regard to the long efflux of time we are of the view that it will not be necessary, in the facts of the present cases, to cause a*

remand of the matter to the Juvenile Justice Board for a decision on the quantum of sentence for the reason even if such a remand is made and the Juvenile Justice Board comes to a decision that in addition to the period of custody suffered by the accused appellants they need to suffer a further period of custody, such custody can only be in a remand home or a protection home to which places the accused appellants, because of their age as on today, cannot be sent.

10. On the contrary, having regard to the period of custody suffered; the age of the accused appellants as on date; the efflux of time since the date of occurrence and all other relevant facts and circumstances we are of the view that while maintaining the conviction of the accused appellants the sentence imposed should be modified to one of the period undergone. We order accordingly."

16. In light of the above legal position and having regard to the facts and circumstances of the case, period of imprisonment, the age of the accused appellant as on date, the efflux of time since the date of occurrence, we are of the view that the while maintaining the conviction of the accused appellant the sentence imposed is modified to the period already undergone.

18. Accordingly, the appeal is allowed in part. The accused appellant is availing the benefit of bail by furnishing adequate sureties and bonds, the same stands discharged.

19. Lower Court record along with a copy of this judgement be sent back immediately to District Court concerned for compliance and further necessary action.

Order Date :- 19.12.2019

Ashish

(Vivek Varma, J.) (Govind Mathur, C.J.)