

Jayendra and Another

Vs

State of Uttar Pradesh

Criminal Appeal No. 551 of 1981

(Y.V. Chandrachud, E.S. Venkataramiah JJ)

24.07.1981

ORDER

1. Heard counsel. Special leave to appeal is granted to appellant 1, Jayendra.
2. We had called for a report from the Doctor in charge of the jail hospital as regards the age of appellant 1, Jayendra. The report of the Chief Medical Officer, Bareilly, Dr. P.D.P. Mathur, dated February 17, 1981 shows that by general appearance, physical examination and radiological findings, the appellant Jayendra was about 23 years of age on the date of the report. That would mean that on June 17, 1974 which is the date of the offence, the appellant was about 16 years and 4 months old. The estimate given by the Chief Medical Officer, Bareilly is a rough estimate by approximation but we have on the record the statement of the appellant himself which is uncontradicted that he was about 15 years of age on the date of the offence.
3. Section 2(4) of the Uttar Pradesh Children Act, 1951 (U.P. Act 1 of 1952) defines a child to mean a person under the age of 16 years. Taking into account the various circumstances on the record of the case we are of the opinion that the appellant Jayendra was a child within the meaning of this provision on the date of the offence. Section 27 of the aforesaid Act says that notwithstanding anything to the contrary in any law, no court shall sentence a child to imprisonment for life or to any term of imprisonment. Section 29 provides, insofar as it is material, that if a child is found to have committed an offence punishable with imprisonment, the court may order him to be sent to an approved school for such period of stay as will not exceed the attainment by the child of the age of 18 years. In the normal course, we would have directed that the appellant Jayendra should be sent to an approved school but in view of the fact that he is now nearly 23 years of age, we cannot do so.
4. For these reasons, though the conviction of the appellant Jayendra has to be upheld, we quash the sentence imposed upon him and direct that he shall be released forthwith. Insofar as the other appellant is concerned, his special leave petition has already been dismissed.

</html