

State of Haryana

Vs

Balwant Singh

Criminal Appeal No. 316 of 1981

(S.R. Pandian, M.M. Punchhi JJ)

(S. Ranganathan, N.D. Ojha, Smt. M.S. Fathima Beevi JJ)

15.01.1992

ORDER

1. This appeal is directed by the State of Haryana on being aggrieved by the judgment of the High Court of Punjab and Haryana rendered in Criminal Appeal No. 584 of 1978 holding that the respondent Balwant Singh was less than 16 years of age on the date of the commission of the offence and as such he was covered by the definition of term "child" as given in Section 2(d) of the Haryana Children Act, 1974 and he, therefore, has to be detained only in a special school up to the age of 18 years. On the above finding the High Court set aside the sentence of imprisonment for life imposed on the respondent by the trial court for the conviction under Section 302 IPC and the sentence of two months' R.I. under Section 323 IPC and ordered that the respondent "shall stand discharged of his bail bonds" and that he could not be sent even to special school as required by law as by the time of the pronouncement of the judgment, he had completed the age of 18 years. The High Court for drawing such inference has placed reliance only on an entry made in the statement of the accused, recorded under Section 313 CrPC wherein the age of the respondent was mentioned as 17 years.

2. We have gone through the records carefully. It appears that the respondent took his trial before the trial court only on being committed by the Magistrate. It may be noticed that the age of the respondent before the trial court even at the stage of framing the charge was given at 17 years. Evidently, the Magistrate before whom the respondent was brought, was not satisfied that the respondent was a child within the definition of the word 'child' under the Haryana Children Act. Admittedly, neither before the committal court nor before the trial court, no plea was raised on behalf of the respondent that he was a child and that he should not have been committed by the Magistrate and thereafter tried by the sessions court and that he ought to have been dealt with only by the court of Juveniles. When it is not the case of the respondent that he was a child both before the committal court as well as before the trial court, it is very surprising that the High Court, based merely on the entry made in Section 313 statement mentioning the age of the respondent as 17 has concluded that the respondent was a 'child' within the definition of the Act on the date of the occurrence though there was no other material for that conclusion. This observation of the High Court, in our considered view, cannot be sustained either in law or on facts. Hence, we set aside that finding of the High Court that the respondent was a 'child'.

3. After going through the judgment of the High Court, we find that the High Court has not decided the case on its merits, but had proceeded only on this question as to whether the respondent was a child or not.

4. Under these circumstances, we fell, in the interest of justice that the entire case has to be examined on its merits and disposed of. Hence, while setting aside the judgment of the High Court holding that he was a child, we remit the matter to the file of the High Court which has to examine the appeal on its merits, and decide it according to law.

5. The appeal is allowed subject to the above order of remittal.

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