

Pradeep Kumar

Vs

State of U.P.

Criminal Appeal Nos. 461 with 476 and 477 of 1981

(Kuldip Singh, R. M. Sahai, R. C. Patnaik JJ)

14.02.1992

JUDGMENT :-

1. The only question for consideration in these appeals by Special Leave is whether each of the appellants in these appeals was a child within the meaning of Section 2(4) of the U.P. Children Act, 1951 and as such on conviction under Section 302/ 34, I.P.C. should have been sent to an approved school for detention till the age of 18 years. Under the provisions of the said Act, persons who come within the definition of 'child' could not be sentenced to undergo imprisonment in jail. The High Court in its judgment under appeal has stated regarding the age of the appellant as under :

"At the time of the occurrence Pradeep Kumar appellant, aged about 15 years, was resident of Railway Colony, Naini, Krishan Kant and Jagdish appellants, aged about 15 years and 14 years respectively, were residents of Village Chaka P.S. Naini."

2. At the time of granting Special Leave, Jagdish appellant produced High School Certificate, according to which he was about 15 years of age at the time of occurrence. Appellant Krishan Kant produced horoscope which showed that he was 13 years of age at the time of occurrence. So far as appellant Pradeep is concerned a medical report was called for by this Court which disclosed that his date of birth as January 7, 1959 was acceptable on the basis of various tests conducted by the medical authorities.

3. It is thus proved to the satisfaction of this Court that on the date of occurrence, the appellants had not completed 16 years of age and as such they should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment on conviction under Section 302/34 of the Act.

4. Since the appellants are now aged more than 30 years, there is no question of sending them to an approved school under the U. P. Children Act for detention. Accordingly, while sustaining the conviction of the appellants under all the charges framed against them, we quash the sentences awarded to them and direct their release forthwith. The appeals are partly allowed in the above terms. Appeals partly allowed.

</html