

SUPREME COURT OF INDIA

Upendra Kumar

Vs.

State of Bihar

C.A.No.No.370 of 2003

(Y.K. Sabharwal and B.N. Agrawal, JJ.)

31.03.2004

ORDER

Y.K. Sabharwal, J.

1. This appeal is directed against the impugned judgment of the High Court dated 17-5-2002, whereby the criminal appeal filed by the appellant ^ challenging his conviction and sentence under Section 302 IPC has been dismissed. The appellant was convicted for the offence under Section 302 IPC for murder of one Chandeshwar Prasad in terms of the judgment of the Court of Session, Muzaffarpur dated 3-10-1996. By order dated 4-10-1996, life imprisonment was imposed on him. Other minor punishments under the provisions of the Arms Act were also imposed on him for the offences for gf which too he had been found guilty.

2. Mr A. Sharan, learned Senior Counsel appearing for the appellant, rightly did not challenge the conviction of the appellant for the offences aforementioned. Learned counsel, however, submits that the appellant is entitled to the benefit of the Juvenile Justice (Care and Protection of Children) Act, 2000 since he was a juvenile both on the date of the occurrence and the date ^ of his production before the court since both the dates in the present case were the same, namely, 10-3-1995. Section 2{k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short “the Act”) provides that a “juvenile” or “child” means a person who has not completed eighteenth year of age. The fact that on the date in question, the appellant had not completed 18 years of age cannot be doubted as the aspect of age stands fully established on the record. As per the report of the Medical Board, placed as Annexure A to the appeal, the appellant was between the age of 17 and 18 years on the date of the report, namely, 28-6-1995. Even the order of b sentence records the age of the appellant as 17 years.

3. Section 16 of the Act, inter alia, provides that no juvenile shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security. A juvenile, under the provisions of the Act, can be referred to the (2005) 3 SCC 592

Juvenile Board for such orders to be passed by the Board as it thinks fit in terms of Section 15 of the Act. Section 20 provides for special provision in respect of pending cases. It provides that notwithstanding anything containing in the Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which the Act came into force in that area shall be continued in that court as if the 1-U • Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in ^ respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of the Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence. The Act came into force on 1-4-2001. Therefore, PS when the High Court decided the criminal appeal filed by the appellant, the Act had already been in force and the appellant was entitled to the benefit thereof.

4. Mr Sharan has cited various decisions but reference may be made only Beian brr to the case of *Bhola Bhagat v. State of Bihar*¹ since earlier decisions on the issue in question have been noticed therein. In *Bhola Bhagat* case¹ referring to the decisions in the case of *Gopinath Ghosh v. State of W.B.*², *Bhoop Ram v. State of U.P.*³ and *Pradeep Kumar v. State of U.P.*⁴ this Court came to the conclusion that the accused who were juvenile could not be denied the benefit of the provisions of the Act then in force, namely, the Juvenile Justice Act, 1986.
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5. The course this Court adopted in *Gopinath Ghosh* case² as also in *Bhola Bhagat* case¹ was to sustain the conviction but, at the same time, quash the sentence awarded to the convict. In the present case, at this distant time, the question of referring the appellant to the Juvenile Board does not arise, ir : ^ Following the aforesaid decisions, we would sustain the conviction of the appellant for the offences for which he has been found guilty by the Court of ■c., Session, as affirmed by the High Court, at the same time, however, theec sentence awarded to the appellant is quashed and the appeal is allowed to this extent. Resultantly, the appellant is directed to be released forthwith if not required in any other case.

¹ (1997) 8 SCC 720 : 1998 SCC (Cri) 125

³(1989) 3 SCC 1 : 1989 SCC (Cri) 486

²1984 Supp SCC 228 : 1984 SCC (Cri) 478

⁴1995 Supp (4) SCC 419 : 1995 SCC (Cri) 395