

SUPREME COURT OF INDIA

Dharmbir

Vs.

State(NCT of Delhi)

Crl.A.No.860 of 2010

(D.K. Jain and J.M. Panchal JJ.)

23.04.2010

JUDGEMENT

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 6th November, 2009, delivered by the High Court of Delhi at New Delhi, in Criminal Appeal No.140 of 1994. By the impugned judgment, while acquitting one of the co-convicts, the High Court has upheld the conviction of the appellant for offences punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code, 1860 (for short "the IPC"), for committing murder of one of their close relative and for attempting to murder his brother. The appellant has been sentenced to imprisonment for life under Sections 302/34 IPC and to pay a fine of Rs.500/-. For offence under Section 307/34 IPC, he has been sentenced to undergo rigorous imprisonment for a term of seven years and to pay a fine of Rs.500/-, with default stipulation.

3. When the matter came up for motion hearing, Mr. K. Parasaran, learned senior counsel, appearing for the appellant, submitted at the very outset that since at the time of commission of the said

offences, the appellant had not completed eighteen years of age, he was a juvenile within the meaning of Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "the Act of 2000"), an inquiry in terms of Section 7A of the Act of 2000 has to be made so as to determine the age of the appellant. In support of the submission, learned counsel relied on the appellant's school leaving certificate dated 2nd December, 2009.

4. In view of the said claim, while issuing notice to the State, a Registrar of this Court was directed to make an inquiry and determine the age of the appellant on the date of commission of the offences. Pursuant to the said order, the Registrar (Judicial) of this Court has conducted a detailed inquiry by recording the statements of the Principal and other office bearers of three schools where the appellant had studied and has reported that as on the date when the offences were committed, i.e., 25th August, 1991, the appellant was of the age of 16 years, 9 months and 8 days. The matter has now been placed before us along with the report.

5. We have heard learned senior counsel appearing on behalf of the appellant and Mr. H.P. Raval, learned Additional Solicitor General on behalf of the State.

6. The question for determination is whether or not the appellant, who was admittedly not a juvenile within the meaning of the Juvenile Justice Act, 1986 (for short "the 1986 Act") when the offences were committed but had not completed 18 years of age on that date, will be governed by the Act of 2000 and be declared as a juvenile in relation to the offences alleged to have been committed by him?

7. Before advertng to the question, we may note that the issue with regard to the date, relevant for determining the applicability of either of the two Acts, insofar as the age of the accused, who claims to be a juvenile/child, is concerned, is no longer *res integra*. On account of Affirming the view taken by a Bench of three Judges in Umesh Chandra's case (*supra*), the Constitution Bench held that the relevant date for determining the age of the accused, who claims to be a juvenile/child, would be the date on which the offence has been committed and not the date when he is produced before the authority or in the court.

1 (1982) 2 SCC 202 2 (2000) 5 SCC 488 3 (2005) 3 SCC 551

8. In the same judgment, the Bench also dealt with the question as to whether the Act of 2000 will be applicable in a case where proceedings were initiated under the 1986 Act and were pending when the Act of 2000 was enacted with effect from 1st April, 2001. Taking into consideration the provisions of Sections 3 and 20 along with the definition of "juvenile" in Section 2(k) of the Act of 2000, as contrasted with the definition of a male juvenile in Section 2(h) of the 1986 Act, by majority, it was held that the Act of 2000 would be applicable in a pending proceeding in any Court/Authority initiated under the 1986 Act and is pending when the Act of 2000 came into force

and the person concerned had not completed 18 years of age as on 1st April, 2001. In other words, it was held that a male offender, against whom proceedings had been initiated under the 1986 Act in any Court/Authority and had not completed the age of 18 years as on 1st April, 2001, would be governed by the provisions of the Act of 2000.

9. The decision in Pratap Singh's case (supra) led to substitution of Section 2(1); the insertion of Section 7A and Proviso and Explanation to Section 20 of the Act of 2000 by Act No.33 of 2006 as also introduction of the Juvenile Justice (Care and Protection of Children) Rules, 2007 containing Rule 12, which lays down the procedure to be followed in determination of age of a child or a juvenile.

10. Section 20 of the Act of 2000, the pivotal provision, as amended, reads as follows:

"20. Special provision in respect of pending cases.-- Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this 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 this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.- In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."

11. It is plain from the language of the Explanation to Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of Clause (1) of Section 2, even if the juvenile ceases to be a juvenile on or before 1st April, 2001, when the Act of 2000 came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. Clause (1) of Section 2 of the Act of 2000 provides that "juvenile in conflict with law" means a "juvenile" who is alleged to have

committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Section 20 also enables the Court to consider and determine the juvenility of a person even after conviction by the regular Court and also empowers the Court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Act of 2000.

12. At this juncture, it will be profitable to take note of Section 7A, inserted in the Act of 2000 with effect from 22nd August, 2006. It reads as follows:

"7A. Procedure to be followed when claim of juvenility is raised before any court.-- (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act 7 (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect."

Proviso to sub-section (1) of Section 7A contemplates that a claim of juvenility can be raised before any court and has to be recognised at any stage even after disposal of the case and such claim is required to be determined in terms of the provisions contained in the Act of 2000 and the rules framed thereunder, even if the juvenile has ceased to be so on or before the date of the commencement of the Act of 2000. The effect of the proviso is that a juvenile who had not completed eighteen years of age on the date of commission of the offence would also be entitled to the benefit of the Act of 2000 as if the provisions of Section 2(k) of the said Act, which defines "juvenile" or "child" to mean a person who has not completed eighteenth year of age, had always been in existence even during the operation of the 1986 Act. It is, thus, manifest from a conjoint reading of Sections 2(k), 2(1), 7A, 20 and 49 of the Act of 2000, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence even prior to 1st April, 2001 would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of the commencement of the Act of 2000 and were undergoing sentences upon being convicted.

13. In the view we have taken, we are fortified by the dictum of this Another⁴.

14. In the present case, as per the report of the Registrar submitted in terms of Section 7A of the Act of 2000, the age of appellant as on the date of commission of offences, i.e., 25th August, 1991, was 16 years, 9 months and 8 days. The correctness of the estimate of age by the Registrar is not questioned by the State. The parties have, therefore, accepted the correctness of the age determined by the learned Registrar. In our considered opinion, in the light of the afore-stated legal position, the appellant has to be held to be a juvenile as on the date of the Commission of the offences for which he has been convicted and is to be governed by the provisions of the Act of 2000.

15. Having held so, the next question for consideration is as to what order on sentence is to be passed against the appellant for the offences committed by him under Sections 302 and 307 read with Section 34 IPC, correctness whereof has not been put in issue before us. Section 15 of the Act of 2000 provides for various orders which the Juvenile Justice Board (for short "the Board") may pass against a juvenile when it is satisfied that 4 (2009) 13 SCC 211 the juvenile has committed an offence, which includes an order directing the juvenile to be sent to a special home for a period of three years. Section 16 of the Act of 2000 stipulates that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is so serious in nature that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under the Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. Proviso to sub-section (2) of Section 16 of the Act of 2000 provides that the period of detention so ordered shall not exceed in any case the maximum period provided under Section 15 of the said Act, i.e., for three years. In the instant case, as per the information furnished to us, the appellant has undergone an actual period of sentence of 2 years, 4 months and 4 days and is now aged about thirty five years. We feel that, keeping in view the age of the appellant, it may not be conducive to the environment in the special home and to the interest of other juveniles housed in the special home, to refer him to the Board for passing orders for sending the appellant to special home or for keeping him at some other place of safety for the remaining period of less than eight months, the maximum period for which he can now be kept in either of the two places.

16. Accordingly, while sustaining the conviction of the appellant for the afore-stated offences, we quash the sentences awarded to him and direct his release forthwith, if not required in any other case. The appeal succeeds partly to the extent indicated above.