

SUPREME COURT OF INDIA

Mohan Mali

Vs.

State of M.P.

Crl.A.No.1305 of 2009

(Altamas Kabir and Cyriac Joseph JJ.)

28.04.2010

ORDER

Altamas Kabir, J.

1. This Appeal, which arises out of Special Leave Petition (Crl.) No.6276 of 2007, is directed against the judgment and order of the Indore Bench of the Madhya Pradesh High Court in Criminal Appeal No.898 of 1997, challenging the judgment and order of conviction passed by the Addl. Sessions Judge, Dhar, in Sessions Trial No.366 of 1994. By virtue of the said judgment, the Appellants, along with two other co-accused, were convicted under Sections 302/34, 326/34 and 324/34 of Indian Penal Code and sentenced to life imprisonment along with fine of Rs.5,000/- for the offence under Section 302/34 IPC, three years' rigorous imprisonment along with fine of Rs.500/ for the offence under Section 326/34 IPC and one year's rigorous imprisonment along with fine of Rs.500/- for the offence under Section 324/34 IPC along with further sentence in default of payment of fine. It may be mentioned that the Special Leave Petition filed by one of the other co-accused, Bhagwan, being S.L.P.(Crl.)No.540 of 2008, was rejected on 16th April, 2008, when notice was issued on S.L.P.(Crl.) No.6276 of 2007.

2. On 17thJuly,2009 when the Special Leave Petition came up for admission, leave was granted and the hearing of the appeal was expedited. However, the Appellants' prayer for bail was rejected at that stage. When the matter was being heard for grant of leave, a plea of juvenility was made on behalf of Appellant No.2, Dhanna Lal, and this Court observed that in the event Dhanna Lal was able to provide proof of his claim that he was a juvenile on the date of the incident, he would be at liberty to apply afresh for grant of bail with such supporting evidence. Pursuant thereto, a fresh bail application was filed on behalf of Dhanna Lal on 27th January, 2010, annexing a copy of the Birth Certificate of Dhanna Lal issued by the Chief Registrar (Birth and Death), Municipal Corporation, Dhar, under Section 12 of the Birth and Death Registration Act, 1969, maintained by the Corporation. From the said certificate it appears that Dhanna Lal's date of birth was recorded as 12th November, 1976 and was registered on 17th November, 1976, making it a document

which was contemporaneous with his birth. Upon due verification, it was confirmed on behalf of the State of Madhya Pradesh that the Appellant No.2, Dhanna Lal, was a juvenile on the date of commission of the offence. Appearing for the State, Mr.Pramod Swarup, Senior Advocate, very fairly submitted that Dhanna Lal was, therefore, entitled to the benefit of Section 7A read with Section 64 of the Juvenile Justice (Care and Protection of Children) Act,2000, hereinafter referred to as `the 2000 Act'.

3. Mr. S.K. Dubey, learned senior counsel appearing for the Appellants, submitted that the Appellant No.2, Dhanna Lal, although a minor, within the meaning of the 2000 Act, had not only been tried along with other co-accused, who were not juveniles, in violation of Section 18 of the 2000 Act, but had also undergone 9 years of imprisonment, despite a maximum sentence of three years which could have been imposed on him under Section 15 of the 2000 Act.

4. Among other questions, this question also fell for determination of this Court in the case of *Hari Ram vs. State of Rajasthan & Anr.*¹. This Court while considering the various provisions of the 2000 Act, as amended in 2006, and, in particular, Section 7A which was introduced in the parent Act by the amending Act of 2006, held that Section 7A would have to be read in tandem with Section 20 of the 2000 Act and Rule 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, hereinafter referred to as `the 2007 Rules', which deal with disposed of cases of juveniles in conflict with law. Since all the three provisions are of relevance to this Appeal, the same are being separately dealt with hereinbelow.

5. Section 7A of the 2000 Act, which provides the procedure to be followed when claim of juvenility is raised before any Court, 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. (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 order, and the sentence if any, passed by a court shall be deemed to have no effect."

What is of relevance is the fact that Section 7A of the 2000 Act allows a claim of juvenility to be raised before any Court at any stage even after final disposal of the case and speaks of the procedure which the Court is required to adopt when such claim of juvenility is raised.”

6. Section 20 of the 2000 Act specially provides for the procedure to be followed in pending cases and 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.]” What is to be noticed in the aforesaid Section is that it makes provision for continuance of trials which had been commenced prior to the coming into operation of the 2000 Act. While providing that the trial could continue before the Court, if it was found that the juvenile had committed an offence, the Court would be required to record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Juvenile Justice Board, which could then pass orders in respect of that juvenile in accordance with the provisions of the 2000 Act.”

7. Section 64 of the 2000 Act deals with a situation where a juvenile in conflict with law is already undergoing sentence at the commencement of the Act, and the same reads as follows :-

“64. Juvenile in conflict with law undergoing sentence at commencement of this Act.-In any area in which this Act is brought into force, the State Government shall direct that a juvenile in conflict with law who is undergoing any sentence of

imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of section 16 of this Act."

The said provision has to be read along with Sections 7A and 20 of the 2000 Act, together with Rule 98 of the 2007 Rules, which deals with disposed of cases of juveniles in conflict with law, and provides as follows:

"98. Disposed of cases of juveniles in conflict with law. - The State Government or as the case may be the Board may, either suo motu or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the provisions contained in the Act and Rule 12 of these rules and pass an appropriate order in the interest of the juvenile in conflict with law under Section 64 of the Act, for the immediate release of the juvenile in conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in Section 15 of the said Act."

8. In the facts of this case, we are faced with a situation where the juvenile, Dhanna Lal, had already been tried along with adults and had been convicted under Sections 302/34, 326/34 and 324/34 IPC and was sentenced to life imprisonment, out of which he has already undergone about 9 years of the sentence. Rule 98 of the 2007 Rules, in our view, squarely applies to Appellant No.2 Dhanna Lal's case. His case is to be considered not only for grant of bail, but also for release in terms of the said Rule, since he has completed more than the maximum period of sentence as provided under Section 15 of the 2000 Act.

9. The legal position has been clearly explained in Hari Ram's case (*supra*) and does not, therefore, require any further elucidation in this case.

10. Having regard to the fact that the Appellant No.2, Dhanna Lal, was a minor on the date of commission of the offence, and has already undergone more than the maximum sentence provided under Section 15 of the 2000 Act, by applying the provisions of Rule 98 of the 2007 Rules read with Sections 15 and 64 of the 2000 Act, we allow the appeal as far as he is concerned and direct that he be released forth with. The bail application filed on his behalf is also disposed of, accordingly.

11. Let the appeal, as far as the other accused, Mohan Mali, is concerned, be listed for hearing separately.

¹(2009) 13 SCC 211