

SUPREME COURT OF INDIA

Lakhan Lal

Vs.

State of Bihar

Crl.A.No.573 of 2005

(B.Sudershan Reddy and Surinder Singh Nijjar,JJ.,)

14.01.2011

JUDGMENT

B.Sudershan Reddy,J.,

1. Criminal Miscellaneous Petition in Special Leave Petition (Crl.) No. 4724 of 2004 has been taken up and allowed. The Special Leave Petition shall stand restored to the file. Leave granted.

2. These appeals are directed against the common judgment and order dated 27th April, 2004 of the High Court of Judicature at Patna in Criminal Appeal Nos. 649 of 1987 and 14 of 1988 whereby the High Court dismissed the Criminal Appeals filed by the appellants, confirmed their conviction for the offence punishable under Section 302 read with Section 34 of I.P.C. for committing murder of one Surender Choudhary and accordingly sentenced them to undergo life imprisonment.

3. When the matter came up for hearing, Shri K.V. Vishwanathan, learned senior counsel appearing for the appellant Lakhan Lal, submitted that since at the time of commission of the said offence, the appellant had not completed 18 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 (hereinafter referred to as "the 2000 Act") and therefore, the order of sentence passed against the appellant for the offence committed by him under Section 302 read with Section 34, IPC is to be set aside.

4. We find that the conviction of the appellants is based upon the evidence of Malti Devi (PW1), wife, Sumitra Devi (PW2), mother and Lakhan Choudhary (informant) (PW3), father of the deceased Surender Choudhary who were all eyewitnesses to the incident and there is absolutely no reason to disbelieve their evidence. Dr. R.P. Jaiswal (PW5) who conducted the postmortem examination over the dead body of Surender Choudhary found ante mortem injuries on his person and according to him, the cause of death was shock and hemorrhage as a result of the injuries caused by sharp cutting penetrating substance such as churra (dagger). Those injuries were attributed to have been caused by the appellants Pappu Lal who was

armed with a churra and Lakhan Lal who was armed with a country made pistol. These facts need not detain us any further since the conviction of the appellants for the offence punishable under Section 302 read with Section 34, IPC is not in issue.

5. Sofaras Pappu Lal @ Manoj Kumar Srivastava, the appellant in SLP (crl) No. 4724 of 2004 is concerned, the special leave petition preferred by him was dismissed by this Court on 8th April, 2005 with the following order:

"It is admitted that neither The Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) nor the Juvenile Justice Act, 1986 nor the Bihar Childrens Act would apply as on the date of the occurrence the appellant was 16 years and 10 months old. On merits we see no reason to interfere. Accordingly, the petition shall stand dismissed".

In fact, on the date of occurrence, that is to say 9.5.1985, the appellant was aged about 16 years and 5 months as the same is evident from the certificate dated 6.8.1983 of the Bihar School Education Board wherein the date of birth of Pappu Lal is recorded as 9.12.1968. This certificate is made available for the perusal of the court.

6. The appellant Pappu Lal, relying on the judgment of this Court in *Dharambir Vs. State (NCT of Delhi) & Anr.*¹ filed a application to recall the order dated 8th April, 2005 passed by this Court dismissing his Special Leave Petition and to restore the special leave petition to its original number. The application is ordered accordingly and that is how we have taken up both the appeals for hearing.

7. There is no dispute whatsoever before us as it is fairly conceded by the learned counsel Shri Manish Kumar, appearing for Shri Gopal Singh, learned counsel for the State of Bihar that both the appellants were minors as on the date of incident i.e., 9th May, 1985. The appellant Lakhan Lal was aged about 16 years 10 months and the other appellant Pappu Lal was aged about 16 years 5 months as on the date of occurrence of the crime. Thus the claim made by the appellants that they were 'juveniles' as on the date of occurrence of the crime remains free from any controversy.

8. The question that arises for our consideration is whether or not the appellants who were admittedly not '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 are entitled for the benefit and protection under the provisions of the 2000 Act? Whether they are entitled to be declared as 'juvenile' in relation to the offences committed by them?

9. The issue with regard to the date, relevant for determining the applicability of either of the two Acts is no longer res integra. A Constitution Bench of this Court in *Pratap Singh Vs. State of Jharkhand & Anr.*² in its authoritative pronouncement held that the relevant date for determining the age of a person 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.

10. The Act that was in operation as on the date of the incident was Bihar Children's Act. The Act of 1986 came into operation on 3rd December, 1986. The said Act which defines a 'juvenile' as a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. Section 63 of the 1986 Act provides "Repeal and savings" that, if immediately before the date on which the Act comes into force in any State, there is in force in that State, any law corresponding to the Act, that law shall stand repealed on the said date. The said provision further states that any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; and the legal proceedings in respect of any such right, privilege, obligation will continue as if the 1986 Act had not been passed.

11. The fact remains neither in the decision of the Sessions Court dated 9.12.1987 which noted that the appellants were aged about 20 years which could imply that they were under the age of 18 at the time of commission of the offence, nor in the High Court judgment as to the plea of 'juvenile' has been discussed.

12. The 2000 Act came into force w.e.f. 1st April, 2001. It is an act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereto. It will be useful to have a look at the Statement of Objects and Reasons:

“A review of the working of the Juvenile Act, 1986 (53 of 1986) would indicate that much greater attention is required to be given to children in conflict with law or those in need of care and protection. The justice system as available for adults is not considered suitable for being applied to a juvenile or the child or any one on their behalf including the police, voluntary organizations, social workers, or parents and guardians, throughout the country. There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of informal systems specially the family, the voluntary organizations and the community. In this context, the following further proposals have been made—

- (i) to lay down the basic principles for administering justice to a juvenile or the child in the Bill;
- (ii) to make the juvenile system meant for a juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults;

(iii) to bring the juvenile law in conformity with the United Convention on the Rights of the Child;

(iv) to prescribe a uniform age of eighteen years for both boys and girls;

(v) to ensure speedy disposal of cases by the authorities envisaged under this Bill regarding juvenile or the child within a time limit of four months;

(vi) to spell out the role of the State as a facilitator rather than doer by involving voluntary organizations and local bodies in the implementation of the proposed legislation;

(vii) to create special juvenile police units with a humane approach through sensitization and training of police personnel;

(viii) to enable increased accessibility to a juvenile or the child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district or group of districts;

(ix) to minimize the stigma and in keeping with the developmental needs of the juvenile or the child, to separate the Bill into two parts--one for juveniles in conflict with law and the other for the juvenile or the child in need of care and protection;

(x) to provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juvenile and child. The Bill seeks to repeal and re-enact the Juvenile Justice Act, 1986 with a view to achieving the above objects.”

13. Section 2(k) of the 2000 Act provides that 'juvenile' or 'child' means a person who has not completed eighteenth year of age and Section 2(l) says 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.

14. In *Pratap Singh* (supra), the Constitution Bench taking into consideration the provisions of Sections 3 and 20 and the relevant definitions of 'juvenile' in Section 2(k) of the 2000 Act, held that the 2000 Act would be applicable in a pending proceeding in any Court/Authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person concerned has not completed 18 years of age as on 1.4.2001. It is further held "...even where an inquiry has been initiated and the juvenile ceases to be a juvenile i.e. crosses the age of 18 years, the inquiry must be continued and orders made in respect of such person as if such person had continued to be a juvenile".

15. In the present case, when the inquiry has been initiated against the appellants herein, they were admittedly 'juvenile' even under the provisions of 1986 Act but this issue has been ignored by the trial Court and as well as the appellate Court. There is no dispute whatsoever that both the appellants have crossed the age of 18 years, yet both the appellants, for the purposes of hearing of this appeal continued as if they were to be 'juvenile'. In Dharambir (supra) this Court took the view:

"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". It is further held:

"It is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 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. In the view we have taken, we are fortified by the dictum of this Court in a recent decision in Hari Ram v. State of Rajasthan and Anr. (2009) 13 SCC 211".

16. Thus this is the complete answer for the determination of the issues that have arisen for our consideration.

17. The fact remains that the issue as to whether the appellants were juvenile did not come up for consideration for whatever reason, before the Courts below. The question is whether the same could be considered by this Court at this stage of the proceedings. A somewhat similar situation had arisen in *Umesh Singh & Anr. Vs. State of Bihar*³ wherein this Court relying upon the earlier decisions in *Bhola Bhagat Vs. State of Bihar*⁴, *Gopinath Ghosh Vs. State of W.B.*⁵ and *Bhoop Ram Vs. State of U.P.*⁶ while sustaining the conviction of the appellant therein under all the charges, held that the sentences awarded to them need to be set aside. It was also a case where the appellant therein was aged below 18 years and was a child for the purposes of the Bihar Children Act, 1970 on the date of the occurrence. The relevant paragraph reads as under:

"So far as Arvind Singh, appellant in CrI.A.No.659/99, is concerned, his case stands on a different footing. On the evidence on record, the learned counsel for the appellant, was not in a position to point out any infirmity in the conviction recorded by the trial court as affirmed by the appellate court. The only contention put forward before the court is that the appellant is born on 1.1.67 while the date of the incident is and on that date he was hardly 13 years old. We called for report of experts being

placed before the court as to the age of the appellant, Arvind Singh. The report made to the court clearly indicates that on the date of the incident he may be 13 years old. This fact is also supported by the school certificate as well as matriculation certificate produced before this court which indicate that his date of birth is 1.1.67. On this basis, the contention put forward before the court is that although the appellant is aged below 18 years and is a child for the purpose of the Bihar Children Act, 1970 on the date of the occurrence, his trial having been conducted along with other accused who are not children is not in accordance with law. However, this contention had not been raised either before the trial court or before the High Court. In such circumstances, this Court in *Bhola Bhagat vs. State of Bihar*, 1997(8) SCC 720, following the earlier decisions in *Gopinath Ghosh vs. State of West Bengal*, 1984 Supp.SCC 228 and *Bhoop Ram vs. State of U.P.* 1989(3) SCC 1 and *Pradeep Kumar vs. State of U.P.*, 1995 Supp(4) SCC 419, while sustaining the conviction of the appellant under all the charges, held that the sentences awarded to them need to be set aside. In view of the exhaustive discussion of the law on the matter in *Bhola Bhagat* case [supra], we are obviated of the duty to examine the same but following the same, with respect, we pass similar orders in the present case. Conviction of the appellant, Arvind Singh, is confirmed but the sentence imposed upon him stand set aside. He is, therefore, set at liberty, if not required in any other case".

18. The next question for our consideration is as to what order and sentence is to be passed against the appellants for the offences committed by them under Section 302 read with Section 34 of the IPC? Both the appellants have crossed the age of 40 years as at present and therefore it will not be conducive to the environment in the special home and at any rate, they have undergone an actual period of sentence of more than three years the maximum period provided under Section 15 of the 2000 Act. In the circumstances, while sustaining the conviction of the appellants for the offences punishable under Section 302 read with Section 34 of the IPC, the sentences awarded to them are set aside. They are accordingly directed to be released forthwith. This view of ours to set aside the sentence is supported by the decision of this Court in *Dharambir* (supra).

19. The appellants are directed to be released forthwith if not required in any other case. The appeals are partly allowed accordingly.

20. We place on record our appreciation for the invaluable and dispassionate assistance rendered by Shri Manish Kumar, Advocate, appearing for Shri Gopal Singh, learned counsel for the State of Bihar.

¹(2010) 5 SCC 0344

²(2005) 3 SCC 0551

³(2000) 6 SCC 0089

⁴(1997) 8 SCC 0720

⁵(1984) Supp SCC 0228

⁶(1989) 3 SCC 0001