SUPREME COURT OF INDIA

Vijay Singh

Vs.

State of Delhi

Crl.A.No.1322 of 2012

(T.S.Thakur and Fakkir Mohamed Ibrahim Kalifulla,JJ.)

29.08.2012

JUDGMENT

Fakkir Mohamed Ibrahim Kalifulla,J.

1. Leave granted.

The sole accused is the appellant herein. The challenge is to the judgment of the High Court of Delhi in Crl.A.669/1999 dated 07.01.2011 by which the conviction and sentence of rigorous imprisonment for a period of five years imposed on the appellant for an offence punishable under Section 307, IPC and a fine of Rs.200/- with a default sentence of further rigorous imprisonment for 15 days came to be confirmed.

2. At the time of filing of the Special Leave Petition in this matter, the point raised was that the petitioner (appellant) was a juvenile on the date of commission of the offence and reliance was placed upon the School Leaving Certificate issued by the Principal/Head Master of Primary School, Chitayan, Distt. Mainpuri, Uttar Pradesh. The date of birth of the petitioner was noted as 01.12.1981. The alleged offence was stated to have been committed on 11.03.1998 and if the date of birth noted in the certificate is found to be true, the petitioner would have been 16 years 3 months and 10 days on the date of incident, namely, 11.03.1998.

3. On hearing the learned counsel for the appellant, by an order dated 01.08.2011, while taking the said certificate on record, since for the first time such a claim was raised, the District and Sessions Judge, Itawa, Uttar Pradesh was directed to summon the Principal along with the original admission/School Leaving Registers and was directed to submit a report. Thereafter a report was received from the District and Sessions Judge, Itawa stating that prima facie the date of birth of the appellant appeared to be 01.12.1981. However, after examining the original records forwarded by the learned District Judge, Itawa, it was noticed that the report was not a full-fledged one.

4. The learned District Judge was, therefore, directed to examine the issue as to whether the appellant was a juvenile on 11.03.1998, by summoning the parties before it and also examine any other document, to adduce and submit a report within a period of six weeks to the Court. The said order was passed on 30.01.2012. Pursuant to the said directions, the learned District Judge has now filed a detailed report dated 26.03.2012. A perusal of the report discloses that the Principal/Head Master of Primary School, Chitayan, Distt. Mainpuri, Uttar Pradesh was examined as CW-1 on 05.03.2012, who is stated to have produced the counter foil of the School Leaving Certificate relating to the appellant marked as Exhibit CW-1/A according to which the date of birth of the appellant was 01.12.1981. The document also disclosed that the appellant was admitted to the school on 01.08.1989 and relieved from the school on 01.07.1992 after passing 5th standard. According to him, the Admission Register also disclosed that the date of birth of the appellant was noted as 01.12.1981.

5. The learned District Judge, apart from ascertaining the said facts from the records, stated to have referred the appellant for examination by the Medical Board consisting of Dr. Sunil Kakkar (CW- 2), Dr. Akansha (CW-3), Dr. Sameer Dhari (CW-4) and Dr. Kumar Narender Mohan (CW-5). Dr. Sunil Kakkar (CW-2), HOD Radiology, Chairman, Standing Committee Age Determination Record stated before the learned District Judge that the appellant was examined by the Board on 01.03.2012by the members of the Board consisting of a Physician, Dentist and another radiologist. On such examination, as per the bone age report (Exhibit CW2/A), the Board opined that the age of the appellant was above 22 years and below 25 years as on the date of his examination, namely, on 01.03.2012. The other members of the Medical Board also confirmed the said view of the Medical Board.

6. Based on the above factors, the District Judge has returned a finding that as on the date of the incident, namely, 11.03.1998, the age of the appellant was less than 18 years and, therefore, he was a 'juvenile' on that date. The offence alleged against the appellant was that on 11.03.1998, he gave knife blows on the person of Shiv Shankar (PW-4) who demanded repayment of the money (Rs.3,000/-) lent to the appellant; that immediately after the occurrence since the injured was not fit for giving any statement, based on the statement of Subhash (PW-2), the FIR was registered and after the completion of investigation, the charge sheet was filed.

7. Having regard to the overwhelming evidence led before the trial Court and on being convinced of the proof of guilt against the appellant, the appellant was convicted for the offence under Section 307, IPC imposing a sentence of five years' rigorous imprisonment with a fine of Rs.200/- with a default sentence of 15 days' rigorous imprisonment. The High Court, on a detailed analysis of the evidence available on record and the injuries sustained by the vicitim-PW-4, which was supported by medical evidence, dismissed the appeal. In such

circumstances, we do not find any scope to interfere with the order of conviction imposed on the appellant.

8. In fact, as stated earlier this Special Leave Petition was entertained on 30.09.2011 since it was for the first time argued before this Court that the appellant was a juvenile on the date of occurrence as per the date of birth recorded in the School Leaving Certificate. When we consider the said submission in the light of the provisions of the Juvenile Justice Act, 1986 (hereinafter called the Act) as repealed by the Juvenile Justice (Care Protection of Children) Act, 2000, as well as, the subsequent amendment of 2006 read along with the Juvenile Justice (Care and Protection of Children) Rules, 2007, it has now become incumbent upon this Court to consider the said contention raised on behalf of the appellant in order to find out the correctness of the benefit claimed as a 'juvenile'.

9. The relevant provision which is required to be noted is Section 7A of the Act in the present form which came to be inserted by the amendment Act of 33/2006 w.e.f. 22.08.2006. The other provisions are Section 2 (l) the definition of 'juvenile in conflict with law', Section 20 of the Act and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 which prescribe the procedure to be followed in the matter of determination of age.

10. The application of the above provisions in the light of the subsequent amendment to the Act introduced in the year 2006 and the Rules introduced in the year 2007 came to be considered in detail by this Court in the reported decision in *Hari Ram v. State of Rajasthan and Anr*[1]While dealing with Section 7-A, this Court has held as under in paragraph 23:

> "23. Section 7-A makes provision for a claim of juvenility to be raised before any court at any stage, even after final disposal of a case and sets out the procedure which the court is required to adopt, when such claim of juvenility is raised. It provides for an inquiry, taking of evidence as may be necessary (but not affidavit) so as to determine the age of a person and to record a finding whether the person in question is a juvenile or not."

11. By making a reference to Rule 12 vis-à-vis Section 7-A of the Act, Sub- rules^) and (5) of Rule 12 were examined and the position has been set out as under in paragraph 27 of the judgment: "27.Sub-rules (4) and (5) of Rule 12 are of special significance in that they provide that once the age of a juvenile or child in conflict with law is found to be less than 18 years on the date of offence on the basis of any proof specified in sub-rule (3) the court or the Board or as the case may be the Child Welfare Committee appointed under Chapter IV of the Act, has to pass a written order stating the age of the juvenile or stating the status of the juvenile, and no further inquiry is to be conducted by the Court or Board after examining and obtaining any other documentary proof referred to in sub- rule (3) of Rule 12. Rule 12,

therefore, indicates the procedure to be followed to give effect to the provisions of Section 7-A when a claim of juvenility is raised."

12. Again in paragraph 39 by making reference to the explanation to Section 20 which was introduced by Amendment Act 33/2006, the applicability of the benefit of amended definition of Section 2 (l) was considered and the position was clarified as under in the said paragraph:

> "39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 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. In fact, Section 20 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 Juvenile Justice Act, 2000." Ultimately in para 59, the position was set at rest to the following effect.
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> "59. The law as now crystallized on a conjoint reading of Section 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1.4.2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted."

13. In the light of the said legal position, the claim of the appellant had to be necessarily considered and ascertain whether he had been a 'juvenile', as claimed by him, on the date of occurrence, namely, 11.03.1998.

14. Going by Rule 12 of the Rules, in particular, sub-Rule (3), the age determination inquiry should be conducted by the Court or by the Board or the Committee by seeking evidence by obtaining (a) (i) the matriculation or equivalent certificate, if it is available; and in the absence whereof; ii) the date of birth certificate from the School (other than a play school) first attended; and in the absence whereof; iii) the birth certificate given by a corporation or municipal authority or a panchayat; b) and in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done,

the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

15. Going by sub-rule 3(a)(ii) of aforesaid Rule 12, the date of birth certificate from the school (other than a play school) first attended, comes at the second stage in the order of priority for consideration to ascertain the age of accused claiming to be a juvenile. In the case on hand, the appellant does not claim to be a matriculate. Therefore, the question of matriculation or equivalent certificate and its availability does not arise. The present claim as a juvenile is based on the School Leaving Certificate issued by the school in which the appellant stated to have studied up to 5th class, namely, Primary School, Chitayan, Distt. Mainpuri, Uttar Pradesh. As per the said certificate, the date of birth recorded in the school admission register and the corresponding entry in the School Leaving Certificate was 01.12.1981. The appellant stated to have joined the school on 01.08.1989 and left the school after subsequently completing his 5th standard on 01.07.1992. The correctness of the said certificate was examined by the learned District Judge, Itawa as directed by this Court as to be seen from the report dated 26.03.2012. The Principal/Head Master of the School also verified the admission register. The counterfoil of the said School Leaving Certificate is placed before this Court. A perusal of the report also discloses that the certificate was genuine, that the date of birth record therein has been found to be correct and once the said position could be ascertained based on the above report, applying Rule 12 (3) as well as sub-rules (4) and (5) the said Rule read along with Section 7A of the Act the appellant on 11.03.1998 was 16 years 3 months and 10 days old. The appellant, therefore, is covered by the decision of this Court in Hari Ram (supra). Since the appellant was below 18 years of age on the date of commission of the offence, the provisions of the Act would apply in full force in his case.

16. Having regard to the above conclusion, in the normal course we would have remitted the matter to the Juvenile Justice Court, Itawa for disposal in accordance with law. However, since the offence was alleged to have been committed more than 10 years ago and having regard to the course adopted by this Court in certain other cases reported in *Jayendra Anr. v. State of Uttar Pradesh*[2]*Bhoop Ram v. State of U.P*[3]*which were subsequently followed in Bhola Bhagat v. State of Bihar*[4]*Pradeep Kumar v. State of U.P*[5]*Upendra Kumar v. State of Bihar*[6]*and Vaneet Kumar Gupta alias Dharminder v. State of Punjab*[7]we are of the view that at this stage when the appellant would have now crossed the age of 30 years, there is no point in remitting the matter back to the Juvenile Justice Court. Instead, following the above referred to decisions, appropriate orders can be passed by this Court itself.

17. In Jayendra (supra) the challenge arose under Uttar Pradesh Children Act, 1951 which contained Section 27 which mandated that no child shall be sentenced to any term of imprisonment and if a child had been found to have committed an offence punishable with imprisonment then he could be sent to an approved school. However, it had been determined by the Supreme Court through the reports of medical officers taking into account the general appearance, physical examination and radiological findings of the appellant Jayendra, that he had been a 'child' under the definition in the Act at the time of commission of the offence. However, at the time of hearing of the SLP by the Supreme Court, he had already attained the age of 23. In the light of that, the Court upheld the conviction of the appellant Jayendra, but quashed the sentence imposed on him and directed that he be released forthwith. The Court observed as under:-

> "3. Section 2(4) of the *Uttar Pradesh Children Act*[8]defines a child to mean a person under the age of 16 years. Taking into account the various circumstances on the record of the case we are of the opinion that the appellant Jayendra was a child within the meaning of this provision on the date of the offence. Section 27 of the aforesaid Act says that notwithstanding anything to the contrary in any law, no court shall sentence a child to imprisonment for life or to any term of imprisonment. Section 2 provides, insofar as it is material, that if a child is found to have committed an offence punishable with imprisonment, the court may order him to be sent to an approved school for such period of stay as will not exceed the attainment by the child of the age of 18 years. In the normal course, we would have directed that the appellant Jayendra should be sent to an approved school but in view of the fact that he is now nearly 23 years of age, we cannot do so.
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> 4.For these reasons, though the conviction of the appellant Jayendra has to be upheld, we quash the sentence imposed upon him and direct that he shall be released forthwith."

18. In Bhoop Ram (supra) also the case arose under the Uttar Pradesh Children Act, 1951. The controversy there was surrounding the question whether the appellant had actually been a juvenile/child under the definition of the Act at the time of commission of the offence. Although such a plea had been taken before both the trial Court as also the Sessions Court, the trial Court had merely taken into account such a plea for the purpose of awarding a reduced sentence of life imprisonment instead of death penalty for the offences he had been charged with and convicted for. When the appeal reached the Supreme Court, this Court directed an enquiry by the Sessions Judge to determine if the appellant had been actually been a child at the time of the incident. The Sessions Judge conducted an enquiry, taking into account the opinion of the Chief Medical Officer and the school certificate that had been

produced by the appellant, and concluded that the appellant had not been a 'child' at the concerned time. However, the Supreme Court rejected the finding of the Sessions Judge being based on surmises and essentially relying upon the school certificate produced by the appellant to conclude that he indeed had been a 'child' at the time when the offence had been committed. On the question of sentencing, this Court followed the precedent in Jayendra (supra) and quashed the sentence, observing:-

> "8. Since the appellant is now aged more than 28 years of age, there is no question of the appellant now being sent to an approved school under the U.P. Children Act for being detained there. In a somewhat similar situation, this Court held in Jayendra v. State of U.P. that where an accused had been wrongly sentenced to imprisonment instead of being treated as a "child" under Section 2(4) of the U.P. Children Act and sent to an approved school and the accused had crossed the maximum age of detention in an approved school viz. 18 years, the course to be followed is to sustain the conviction but however quash the sentence imposed on the accused and direct his release forthwith. Accordingly, in this case also, we sustain the conviction of the appellant under all the charges framed against him but however quash the sentence awarded to him and direct his release forthwith. The appeal is therefore partly allowed insofar as the sentences imposed upon the appellant are quashed."

19. In Bhola Bhagat (supra) this Court had discussed the present issue at hand at quite some length. Three of the appellants had taken the plea of juvenility in assailing the order of the High Court sentencing them to imprisonment for life for offences under Section 302/149, IPC. The Supreme Court agreed with the findings of the lower Courts as regards the involvement of the appellants in the commission of the offence and held that the same had been established beyond reasonable doubt. However, on the question of sentencing, the Court looked into the plea of juvenility as had been claimed by the appellants. The Court had noted the interplay of the two Acts in question viz. The Bihar Children Act, 1982 and the Juvenile Justice Act, 1986 and that the Bihar Act had already been in force at the time of the commission of the offence. It took note of the decisions of this Court in Bhoop Ram (supra) and Jayendra (supra) and emphasized that in these cases although the conviction was sustained the sentence had been quashed taking into account the fact that the appellants had crossed the age of juvenility and could not be sent to an 'approved school' as had been contemplated under the relevant Children's Act. The Court proceeded to discuss the three Judge Bench decision of this Court in Pradeep Kumar (supra) and quoted the following from that case:-

> "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." At the time of granting special leave, two appellants therein produced school-leaving certificate and horoscope respectively showing their ages as 15 years and 13 years at the time of the commission of the offence and so far as the third appellant is concerned, this Court asked for his medical examination and on the basis thereof concluded that he was also a child at the relevant time. The Court then held: (SCC p. 420, paras 3 and 4)

"It is, thus, proved to the satisfaction of the 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 Sections 302/34 of the Act. 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." (Emphasis supplied)

20. The Court in its final conclusion in Bhola Bhagat (supra), adopted the same course as had been done in the aforementioned cases and observed:-

"15. The correctness of the estimate of age as given by the trial court was neither doubted nor questioned by the State either in the High Court or in this Court. The parties have, therefore, accepted the correctness of the estimate of age of the three appellants as given by the trial court. Therefore, these three appellants should not be denied the benefit of the provisions of a socially progressive statute. In our considered opinion, since the plea had been raised in the High Court and because the correctness of the estimate of their age has not been assailed, it would be fair to assume that on the date of the offence, each one of the appellants squarely fell within the definition of the expression "child". We are under these circumstances reluctant to ignore and overlook the beneficial provisions of the Acts on the technical ground that there is no other supporting material to support the estimate of ages of the appellants as given by the trial court, though the correctness of that estimate has not been put in issue before any forum. Following the course adopted in Gopinath Ghosh, Bhoop Ram and Pradeep Kumar cases while sustaining the conviction of the appellants under all the charges we quash the sentences awarded to them.

16. The appellants Chandra Sen Prasad, Mansen Prasad and Bhola Bhagat, shall, therefore, be released from custody forthwith, if not required in any other case. Their appeals succeed to the extent indicated above and are partly allowed."

21. In Upendra Kumar (supra), this Court reiterated the position that has been adopted in the aforementioned cases. The appellant had been handed down a life imprisonment for his conviction under Section 302 of the IPC. He had been a juvenile, as under the Juvenile Justice (Care Protection of Children) Act, 2000, on the day of the commission of the offence but, however, the protection of the Act had not been afforded to him. Through the report of the Medical Board, it had been fully established that the appellant was between the age of 17 and 18 years on the date of the report which was dated some three months after the day of incident in question. Even the order of sentence recorded the age of the appellant as 17 years. The Court thus concluded that the appellant was liable to be granted the protection of the Juvenile Justice Act, 2000. As regards the course to be adopted as a sequel to such conclusion, this Court referred to the earlier decisions such as in the case of Bhola Bhagat (supra), Bhoop Ram (supra) etc. The Court observed in this regard:-

> "Mr Sharan has cited various decisions but reference may be made only to the case of Bhola Bhagat v. State of Bihar since earlier decisions on the issue in question have been noticed therein. In Bhola Bhagat case referring to the decisions in the case of *Gopinath Ghosh v. State of W.B., Bhoop Ram v. State of U.P. and Pradeep Kumar v. State of U.P.* 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 case as also in Bhola Bhagat case 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. 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 Session, as affirmed by the High Court, at the same time, however, the 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."

22. Similar course of action was taken in a recent decision of this Court in Vaneet Kumar Gupta alias Dharminder (supra). Challenge in that appeal was mainly on the award of sentence of life imprisonment to the appellant and to determine whether adequate material had been available on record to hold that the appellant had not attained the age of 18 years on

the date of commission of the offence. Upon an affidavit filed by the Deputy Superintendent of Police pursuant to inquiries made by him, it was reported that the age of the appellant as on the date of occurrence had been about 15 years. The inquiry report inspired confidence of the Court and the Court held that the appellant cannot be denied the benefits of the Juvenile Justice (Care Protection of Children) Act, 2000. As regards the question of sentence, this Court observed:-

> "The inquiry report, which inspires confidence, unquestionably establishes that as on the date of occurrence, the appellant was below the age of eighteen years; was thus, a "juvenile" in terms of the Juvenile Justice Act and cannot be denied the benefit of the provisions of the said Act. Therefore, having been found to have committed the aforementioned offence, for the purpose of sentencing, he has to be dealt with in accordance with the provisions contained in Section 15 thereof. As per clause (g) of sub-section (1) of Section 15 of the Juvenile Justice Act, the maximum period for which the appellant could be sent to a special home is a period of three years. Under the given circumstances, the question is what relief should be granted to the appellant at this juncture. Indisputably, the appellant has been in prison for the last many years and, therefore, at this distant time, it will neither be desirable nor proper to refer him to the Juvenile Justice Board. Accordingly, we follow the course adopted in Bhola Bhagat v. State of Bihar; sustain the conviction of the appellant for the offence for which he has been found guilty by the Sessions Court, as affirmed by the High Court and at the same time quash the sentence awarded to him. Resultantly, the appeal is partly allowed to the extent indicated above. We direct that the appellant shall be released forthwith, if not required in any other case."

23. Having regard to such a course adopted by this Court in the above reported decisions, and in the case on hand based on the report of the District and Sessions Judge, we are also convinced that the appellant was below 18 years of age on the date of commission of offence and the Juvenile Justice Act would apply in full force in his case also. While upholding the conviction imposed on the appellant, we set aside the sentence imposed on him and direct that he be released forthwith, if not required in any other case. The appeal is partly allowed to the extent indicated above.

Judgment Referred

[1]*2009 (13) SCC 0211*
[2]*1981 4 SCC 0149*
[3]*1989 3 SCC 0001*
[4]*1997 8 SCC 0720*
[5]*1995 Suppl4 SCC0419*

[6]*2005 3 SCC 0592*
[7]*2009 17 SCC 0587*
[8]*1951 U.P. Act 1 of 1952*