

SUPREME COURT OF INDIA

Ketankumar Gopalbhai Tandel

Vs.

State of Gujarat

Crl.A.No.556 of 2004

(K.S. Radhakrishnan and Pinaki Chandra Ghose JJ.)

18.07.2013

JUDGMENT

K.S. RADHAKRISHNAN, J.

1. The question that falls for consideration in this appeal 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 offences were committed but had not completed 18 years of age, on that date, will be governed by the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the 2000 Act') and be declared as a juvenile in relation to the offences alleged to have been committed by him.

2. The appellant herein was convicted by the Additional Sessions Judge, Valsad (trial court) in Sessions Case No. 133 of 1995 for offences punishable under Sections 302 and 324 of the Indian Penal Code, 1860 (for short 'IPC') and was sentenced to undergo imprisonment for life and to pay a fine of Rs1000/- and in default to undergo Simple Imprisonment for 15 days for an offence punishable under Section 302, IPC and to undergo Rigorous Imprisonment for 2 months and to pay a fine of Rs.1000/- and in default to undergo Simple Imprisonment for 7 days for an offence punishable under Section 324, IPC. Both the sentences were ordered to run concurrently. The accused preferred Criminal Appeal No. 366 of 1997 before the High Court of Gujarat, the same was dismissed vide judgment dated 24.07.2003 against which this appeal has been preferred.

3. Shri S.C. Patel, learned counsel appearing for the appellant raised a preliminary contention that the appellant has to be treated as a juvenile on 06.05.1995 i.e. the

date of occurrence, in view of the provision of the 2000 Act, since his date of birth being 01.06.1977. On 06.05.1995, it was pointed out that the appellant was 17 years, 11 months and 5 days, hence less than 18 years and is, therefore, entitled to get the benefit of the 2000 Act.

4. Ms. Hemantika Wahi, learned counsel appearing for the respondent submitted that the appellant is governed by the 1986 Act and under the 1986 Act all persons who were above the age of 16 years on the date of the commission of the offence would not be treated as juveniles and since the appellant was aged more than 16 years on the date of occurrence hence would not get the benefit of juvenility. Learned counsel submitted that the trial court as well as the High Court has rightly convicted and sentenced the appellant and thus calls for no interference by this Court.

5. We have gone through the judgment of the trial court as well as that of the High Court and also the oral and documentary evidences adduced in this case and we find no reason to interfere with the order of conviction passed by the trial court, confirmed by the High Court. Learned counsel for the appellant has also not canvassed the correctness or otherwise of the order of conviction but confined his arguments, as already indicated, on the plea of juvenility. The question posed in this case is no longer *res integra*. On exhaustive survey of the previous judgments on the point this Court in *Dharambir v. State (NCT of Delhi)* and *Another* (2010) 5 SCC 344 held as follows:

“It is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7-A, 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 1-4-2001 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*.”

6. This Court, when the matter came up for hearing, directed the Sessions Judge, Valsad (Gujarat) to find out the age of the appellant on the date of occurrence of the crime. The Sessions Judge vide his report dated 11.04.2011 stated that the appellant was not juvenile on the date of occurrence i.e. 06.05.1995. Such a view was taken by the Sessions Judge on the basis of the 1986 Act. If we apply the

provisions of the 1986 Act then the appellant was not a juvenile on the date of the crime but if we apply Sections 2(k), 2(l), 7-A, 20 and 49 of the 2000 Act read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short 'the Rules') 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 is raised after they have attained the age of 18 years on or before the date of the commencement of the 2000 Act and were undergoing sentences upon being convicted.

7. So far as the present case is concerned, as already indicated, the age of the appellant as on the date of the commission of the offence i.e. 06.05.1995 was 17 years, 11 months and 5 days and hence less than 18 years, and hence when we apply provisions of the 2000 Act, the appellant has to be treated as a juvenile, being less than 18 years of age on the date of the crime and hence entitled to get the benefit of the provisions of the 2000 Act read with Rules.

8. We are therefore inclined to affirm the order of conviction, however, the sentence awarded by the trial court and confirmed by the High Court is set aside and the matter is sent to the concerned Juvenile Justice Court for imposing adequate sentence. Appeal is allowed as above.