SUPREME COURT OF INDIA

Ashok Kumar Mehra

Vs.

State of Punjab ETC.

Crl.A.No.1466-1467 of 2008

(Abhay Manohar Sapre and Dinesh Maheshwari,JJ.,)

15.04.2019

JUDGMENT

Abhay Manohar Sapre,J.,

1. These appeals are directed against the final judgment and order dated 21.07.2008 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No.681-DBA of 2000 and Criminal Revision No.1242 of 2000 whereby the High Court allowed the criminal appeal filed by respondent No.1(State) herein and the criminal revision filed by respondent No.2(Complainant) herein by setting aside the judgment dated 06.06.2000 passed by the Sessions Judge, Rupnagar in Sessions Case No.10 of 1998 and convicted both the appellants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860(hereinafter referred to as "IPC") and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each. In default of payment of fine, they shall undergo further rigorous imprisonment for a period of six months each.

2. A few facts need mention hereinbelow for the disposal of these appeals.

3. Appellant No.1-Ashok Kumar Mehra is the father of appellant No.2-Kushwant@Sukhwant Kumar Mehra. Both the appellants, i.e., father and son were prosecuted for commission of the offence of committing murder of one Inderjit Dhiman. The Sessions Judge by judgment/order dated 06.06.2000 passed in Sessions Case No.10/1998 acquitted both the appellants.

4. The State and the Complainant both felt aggrieved and filed criminal appeal and criminal revision in the High Court. By impugned order, the High Court allowed the criminal appeal as well as the criminal revision and while reversing the judgment of acquittal passed by the Sessions Judge, convicted both the appellants and awarded them life sentence, which has given rise to filing of these appeals by both the accused persons, i.e., father and son.

5. Heard Mr. T.S. Doabia, learned senior counsel for the appellants and Mr. Ankit Swarup & Ms. Jaspreet Gogia, learned counsel for the respondents.

6. Mr. T.S. Doabia, learned senior counsel for the appellants, at the outset, stated that so far as the appellant No.1-Ashok Kumar Mehra, i.e., father is concerned, he has expired during the pendency of these appeals. Learned counsel then brought to our notice that so far as appellant No.2-Kushwant @ Sukhwant Kumar Mehra, i.e., son is concerned, he was juvenile on the date of commission of the offence.

7. In our opinion, so far as appeal filed by appellant No.1-Ashok Kumar Mehra, i.e., father is concerned, the same stands abated on account of his death. In this view of the matter, the appeal filed by appellant No.1 is accordingly dismissed as abated.

8. Now so far as the appeal filed by appellant No.2 - Sukhwant Kumar, i.e., son is concerned, the same, in our view, deserves to be allowed in the light of law laid down by this Court in a recent decision of this Court in *Raju vs. The State of Haryana*[1], wherein a similar question was involved. This is what was held by this Court (Three Judge Bench) in Paras 9, 10, and 25 as under:

> "9. It is by now well-settled, as was held in Hari Ram v. State of Rajasthan, (2009) 13 SCC 211, that in light of Sections 2(k), 2(I), 7A read with Section 20 of the 2000 Act as amended in 2006, a juvenile who had not completed eighteen years on the date of commission of the offence is entitled to the benefit of the 2000 Act (also see Mohan Mali v. State of Madhya Pradesh, (2010) 6 SCC 669; Daya Nand v. State of Haryana, (2011) 2 SCC 224; Dharambir v. State (NCT) of Delhi (supra); Jitendra Singh @ Babboo Singh v. State of Uttar Pradesh, (2013) 11 SCC 193). It is equally well-settled that the claim of juvenility can be raised at any stage before any Court by an accused, including this Court, even after the final disposal of a case, in terms of Section 7A of the 2000 Act (see Dharambir v. State (NCT) of Delhi, (supra), Abuzar Hossain v. State of West Bengal, (2012) 10 SCC 489; Jitendra Singh @ Babboo Singh v. State of UP, (supra); Abdul Razzaq v. State of Uttar Pradesh, (2015) 15 SCC 637).
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> 10. In light of the above legal position, it is evident that the Appellant would be entitled to the benefit of the 2000 Act if his age is determined to be below 18 years on the date of commission of the offence. Moreover, it would be irrelevant that the plea of juvenility was not raised before the Trial Court, in light of Section 7A. As per the report of the inquiry conducted by the Registrar (Judicial) of this Court, in this case, the Appellant was below 18 years of age on the date of commission of the offence. The only question before us that needs to be determined is whether such report may be given precedence over the contrary view taken by the High Court, so that the benefit of the 2000 Act may be given to the Appellant.
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> 25. Criminal Appeal hereby stands allowed and the order of the High Court affirming the conviction and sentence of the Appellant under Section 376(2)(g) of the IPC is set aside. Seeing that the Appellant has already spent 6 years in imprisonment, whereas the maximum period for which a juvenile may be sent to a special home is only 3 years as per Section 15(1)(g) of the 2000 Act, and since the

> Appellant has already been enlarged on bail by virtue of the order of the Court dated 09.05.2014, he need not be taken into custody. His bail bonds stand discharged and all proceedings against him, so far as they relate to the present case, stand terminated."

9. When we examine the facts of the case of appellant No.2 in the light of law laid down in the case of Raju (supra), we find that appellant No.2 was born on 14.06.1980 whereas the date of commission of the offence is 04.01.1998.

10. It is, therefore, an admitted fact that appellant No. 2 was a juvenile (he was below the age of 18 years, i.e., he was 17 years and 5 months) on the date of the commission of the offence (04.01.1998). In other words, appellant No. 2 had not completed the age of 18 years on the date of commission of the offence, i.e., on 04.01.1998.

11. Though this fact was neither brought to the notice of the Sessions Judge and nor the High Court and was brought to the notice of this Court for the first time by appellant No. 2 in this appeal, yet in the light of law laid down by this Court in several decisions referred to in Para 10 of the decision in Raju (supra), appellant No. 2 is entitled to raise this plea even in this appeal.

12. Now, so far as the issue relating to the genuineness of the date of birth of appellant No. 2 is concerned, firstly, it is not in dispute that appellant No.2 had filed his date of birth certificate in the Sessions Court; Secondly, the prosecution did not object to the correctness of the birth certificate before the Sessions Judge; Thirdly, this Court by order dated 11.07.2011 granted bail to appellant No. 2 on this ground observing therein that since he was juvenile at the time of commission of the offence and was below 18 years, which was not disputed by the respondent-State; and lastly, even at the time of hearing of this appeal, learned counsel for the respondent-State did not dispute the date of birth certificate of appellant No.2.

13. In the light of these four reasons, we are of the view that it is not necessary to hold any further inquiry on this question.

14. In view of the foregoing discussion, we are of the considered opinion that since appellant No.2 was a juvenile on the date of commission of the offence and though till date he has already undergone considerable jail sentence partly as an under-trial and partly as a convict, yet the appeal filed by appellant No. 2 has to be allowed as was done in the case of Raju (supra) without going into the merits of the case and passing any other consequential order in that regard.

15. The appeal of appellant No. 2 is accordingly allowed. The impugned order qua appellant No.2 is set aside.