

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 374/2002

Reserved on : 16th April 2009

Decision on : 24th April 2009

IMRAN

..... Appellant

Through Mr. Bhupesh Narula, Advocate

versus

THE STATE

..... Respondent

Through Mr. Jaideep Malik, APP

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be

allowed to see the judgment?

No

2. To be referred to the Reporter or not?

Yes

3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

24.04.2009

Dr. S. MURALIDHAR, J.

1. This appeal is directed against the judgment dated 21st March 2002 passed by the learned Additional Sessions Judge (ASJ), Delhi in Sessions Case No. 3/2001 arising out of the FIR No. 138/2000 registered at P.S: Chadni Mahal holding the appellant guilty of the offence under Section 367/377/506/342/34 IPC. It is also directed against the order on sentence dated 1st April 2002 passed by the learned ASJ, sentencing the appellant and the co-accused to RI for a period of three years with a fine of Rs.1000/- or in default SI for two months under Section 367/34 IPC;

further to RI for five years with a fine of Rs.5000/- and in default SI for three months under Section 377/34 IPC, RI for one year with a fine of Rs.500/- and in default SI for one month for the offence under Section 342/34 IPC, for two years RI and with a fine of Rs.1000/- and in default SI for two months for the offence under Section 506/34 IPC. All the sentences were directed to run concurrently.

2. According to the prosecution, the FIR was registered at the instance of the complainant on 24th August 2000 he along with two friends Bunty and Merathiya had gone to watch the night show of the film at Delite Cinema. While returning at around 11.15 p.m., Merathiya left for his residence. The complainant went to Ganj Meer Khan in order to leave Bunty his cousin at his residence. At around 12 midnight when the complainant was returning to his house and reached the corner of Fasil Road, Rakab Ganj, the appellant Imran and other accused Gulfam @ Ghore accosted him. It is alleged that both were in a drunken state. The accused and the complainant knew each other obviously. The allegation was that the appellant placed a knife on the neck of the complainant and asked him not to raise a noise. Both the accused took the complainant inside Rakab Ganj to a place in front of house. They then made him to lie on his stomach and first Imran committed sodomy on the complainant and this was followed by the co-accused also committing sodomy on him. The complainant returned to his house and narrated the incident to

his father. Thereafter he went to the police along with his father to lodge a report and the FIR was registered on that basis. The appellant was arrested on 28th August 2000, four days after the incident.

3. Seven PWs were examined by the prosecution. The defence examined R.K. Mehrotra working as Manager with Delite Cinema.

4. The learned ASJ found that the evidence of the complainant examined as PW2 was convincing and reliable. It was sought to be suggested by the defence that although the PW2 had stated that the film 'Dhadkan' was being screened on the fateful day at Delite Cinema, the evidence of DW1, who was the Manager of the Delite Cinema showed that on the night of the incident a premier show of the film 'Hamara Dil Apke Paas Hai' was organized. DW1 further stated that this was a premier show and was not meant for viewing by the general public. The witness brought along with him the invitation card and the permission from the Income-tax Deptt. However, the learned ASJ held that he was unable to persuade himself "that only because of the above contradiction in the statement of the complainant, the whole edifice of the prosecution case comes to the ground." Instead the learned ASJ based his opinion on the medical examination of the complainant by PW6 Dr. Parvesh Bansal who noted that there was an acute micoccele tear at 6 O'clock position at the anus with fresh bleeding suggestive of recent trauma. The report further stated

“No other signs unnatural assault seen (like semen etc.).” It was further held by the learned trial court that since there was nothing to suggest false implication of the accused by the complainant, there was no need to disbelieve the story of the prosecution. Consequently the learned ASJ convicted and sentenced the appellant and the co-accused as indicated hereinbefore. The nominal roll of the appellant showed that as on 4th March 2009 he had undergone sentence of one year eight months and 21 days.

5. The appellant has been represented by Mr. Bhupesh Narula, learned Advocate, having been nominated by the Delhi High Court Legal Services Committee. Mr. Narula has filed written submissions and has also addressed arguments.

6. It is first submitted that according to PW4 Dr. Sri Niwas, Junior Resident of JPN Hospital, the appellant was 17 years when he was examined by PW 4 on 29th August 2000. It is submitted that since on the date of the commission of the offence, i.e., 24th August 2000, the appellant was 17 years of age, he was a juvenile in terms of the Juvenile Justice (Care and Protection of Children) Act, 2000 [JJ Act] and should be given the benefit of that statute. Reliance is placed upon the judgment of the Division Bench of this Court in *Charanjeet Singh v. State of NCT of Delhi* (decision dated 24th September 2004 in Crl.A No. 518/2003).

Although this plea may not have been raised before the trial court, the appellant can raise it even before this Court in appeal in terms of the judgments of the Supreme Court in *Gopinath Ghosh v. State of West Bengal* 1984 Crl LJ 168(SC) and *Bhola Bhagat v. State of Bihar* AIR 1998 SC 2.

7. Mr. Jaideep Malik, the learned APP for the State drew the attention of the Court to an age estimation report dated 15th September 2000 prepared by Dr. Anil Aggarwal of the Department of Forensic Medicine, Maulana Azad Medical College, New Delhi. On examining the appellant, Dr. Aggarwal gave his opinion as under:

“In my opinion, based on physical, dental and radiological findings, when taken together, the age of the person examined is **between 17 and 18 years.**”
(emphasis supplied)

8. The JJ Act came into force on 1st April 2001. Prior to the coming into force of the JJ Act, the Juvenile Justice Act, 1996 (‘old Act’) was applicable. As per the old Act the appellant, being more than 16 years of age as on the date of the offence, was not a juvenile. It is plain from the above medical opinion that as on the date of the offence the appellant had not yet completed 18 years of age and therefore if the JJ Act were to apply he was a juvenile on that date.

9. The question that arises is whether the benefit of the JJ Act would be extended to a person who was the juvenile at the time of the commission of the offence in terms of the old Act.

10. This question squarely arose for consideration before this Court in *Charanjeet Singh*. There, on the date of commission of the offence, i.e., 23rd October 1998, the appellant was over 16 years but less than 18 years. This Court held that on a conjoint reading of Section 20, 64 and 69 JJ Act “it is clear that they apply not only to proceedings which may be pending in any Court, they apply to even in those cases where a juvenile is undergoing sentence on the date on which the Juvenile Justice Act came into force i.e. 1st April 2001.” Referring to Section 20, this Court held that the proceedings contemplated therein would mean the “proceedings either at the stage of trial or appeal and pending in any court, either at the stage of trial or in the court of appeal.” This court explained that “the intention behind the said provisions is not only to avoid de novo trial of the juvenile but also to cover him under the Juvenile Justice Act even after his conviction and during the period he is undergoing sentence.” It is further held that “being a piece of social legislation, the provisions of the said Act have to be liberally construed to make them more meaningful to achieve the ultimate object of the legislation set out in the preamble, namely, the social reintegration and rehabilitation of the juveniles in conflict with the law by adopting a child-friendly approach in

the adjudication and disposition of matters involving them.” Reliance was also placed on the judgment of the Supreme Court in *Umesh Chandra v. State of Rajasthan 1982 Crl LJ 994* in support of this conclusion.

11. It may be mentioned that subsequently in *Pratap Singh v. State of Jharkhand (2005) 3 SCC 551*, the Supreme Court also confirmed that the benefit of the JJ Act would also be available in terms of Section 20 JJ Act to persons who are serving sentences after having been convicted by the trial court but who had not completed 18 years as on the date of the coming into force of the JJ Act i.e. 1st April 2001. However, after the said decision was rendered the JJ Act was further amended by Act 33 of 2006 and Section 2 (1) which defined “juvenile in conflict with law” was amended to mean “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. Further an explanation was added to Section 20 JJ Act which reads thus:

“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.”

12. In the considered view of this Court, the appellant in the instant case would get the benefit of the JJ Act since he had not completed 18 years on the date of the commission of the offence. The effect of the insertion of the Explanation to Section 20 is that as long as the appellant was a juvenile on the date of the offence he will get the benefit of the JJ Act, even during the pendency of his appeal, notwithstanding that may have ceased to be a juvenile as on the date of the coming into force of the JJ Act.

13. The consequence of the above finding is that there is no question of now sending the appellant to either face trial or for being sentenced in terms of Section 20 to the Juvenile Justice Board as he is more than 26 years of age as on date. There is also no question of sending him to the Observation Home for boys which is only meant for juveniles. In *Charanjeet Singh* in similar circumstances this Court followed the decision of the Supreme Court in *Bhola Bhagat v. State of Bihar* and quashed the sentence awarded to the appellant while sustaining his conviction.

14. Accordingly, as far as the present case is concerned, this Court while

upholding the conviction of the appellant for the aforementioned offences quashes the sentence awarded to the appellant and directs his release forthwith if he is not required in any other case. The appeal is accordingly allowed and disposed of as such.

15. The Court expresses its appreciation of the assistance rendered by Mr. Bhupesh Narula, learned Advocate appearing for the appellant as a panel lawyer of the Delhi High Court Legal Services Committee.

16. A certified copy of this order be sent forthwith to the Superintendent, Central Jail, Tihar. An additional copy be sent to the appellant through the Superintendent, Central Jail, Tihar.

S. MURALIDHAR, J.

APRIL 24, 2009
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