

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20.05.2009

+ CRL. M. B. 227/2009 & CRL. APPEAL No. 161/2009

ANIL

..... Appellant

versus

THE STATE (GOVT OF NCT DELHI)

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Rakhi Dubey

For the Respondent/State : Mr Sunil Sharma, APP

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the Reporter or not? | YES |
| 3. Whether the judgment should be reported in Digest? | YES |

BADAR DURREZ AHMED, J (ORAL)

1. On 06.05.2009 when the appellant's application for suspension of sentence and grant of bail (Crl. M. B. 227/2009) came up for hearing, the learned counsel appearing on behalf of the appellant submitted that as per her instructions the appellant was only 19 years of age on that date. In this case, since the date of the offence was 11.06.2004, the learned counsel contended that the appellant would have been around 14 years old at that point of time. The learned counsel, however, submitted that there was no birth certificate or school certificate to substantiate the plea with regard to the appellant

being a juvenile as understood under the Juvenile Justice (Care and Protection of Children) Act, 2000. Consequently, an oral prayer was made that an ossification test be conducted for the determination of his age.

2. Section 6 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the said Act') clearly stipulates that the powers conferred on the Juvenile Justice Board under the said Act, may also be exercised by the High Court and the Court of Session when the proceeding comes before them in appeal, revision or otherwise. Consequently, this Court accepted the oral prayer made by the learned counsel for the appellant and directed the Superintendent of the concerned jail to present the appellant before the Medical Superintendent of All India Institute of Medical Sciences for the purposes of conducting the ossification test.

3. Thereafter, the Medical Superintendent, AIIMS constituted a Medical Board comprising of the following members:-

1. Dr Sanjeev Lalwani, Assistant Professor of Forensic Medicine (Chairman);
2. Dr Smriti Hari, Assistant Professor of Radio-diagnosis (Member); and
3. Dr (Lt. Col.) S. K. Patnaik, Department of Hospital Administration (Member Secretary).

The said Board was constituted on 12.05.2009. The medical examination was conducted on 16.05.2009 and the report dated 16.05.2009 has been placed on record. As per the opinion of the Medical Board so constituted, the bone age of the appellant Anil, son of Girdhari Lal is "> 22 years $\pm$ one year".

4. From the above, it is apparent that though the initial contention of the learned counsel for the appellant that the latter was 19 years of age at present, is not correct, yet the appellant would still be a juvenile on the date of the offence, that is, 11.06.2004 in view of the provisions of the said Act. We note that as on 16.05.2009 the Medical Board has given its opinion that the appellant was 22 years of age $\pm$ one year. Even if the benefit of $\pm$ one year is not given to the appellant and the appellant is considered to be 22 years of age as on 16.05.2009, this would mean that on the date of the offence, that is, on 11.06.2004, the appellant would have been approximately 17 years and one month old. In other words, he would have been less than 18 years of age on the date of the commission of the offence.

5. Keeping in mind the recent decision of the Supreme Court in the case of **Hari Ram v. State of Rajasthan and Anr.: Criminal Appeal No. 907/2009** decided on 05.05.2009 as well as a decision of this Court in **Lal Mohammad v. State : Crl. M. B. 1551/2008 in Crl.A.**

1027/2008 decided on 12.05.2009, the mere fact that the appellant was less than 18 years of age on the date of the offence, would entitle him to get the benefit under the said Act inasmuch as he would have to be regarded as a juvenile. We may note that in ***Hari Ram*** (*supra*), the Supreme Court has explained the earlier Constitution Bench decision in the case of **Pratap Singh v. State of Jharkhand and Anr.:** (2005) 3 SCC 551. The earlier decision in ***Pratap Singh*** (*supra*) was rendered prior to the amendments introduced by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (hereinafter referred to as ‘the Amendment Act of 2006’). Of particular importance is the introduction of Section 7A in the said Act which was not there at the time when the decision in ***Pratap Singh*** (*supra*) was rendered. Section 7A reads as under:-

“7A. Procedure to be followed when claim of juvenility is raised before any court.— (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall

forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.”

6. In view of the said insertion of new Section 7A and other amendments, the Supreme Court in ***Hari Ram*** (*supra*) observed that the requirement in ***Pratap Singh*** (*supra*) that the said Act would be applicable in a pending proceeding in any Court/Authority initiated under the 1986 Act and was also pending when the said Act came into force and the person had not completed 18 years of age as on 01.04.2001, had been neutralized by virtue of the amendments to the said Act introduced by the Amendment Act of 2006. Therefore, the only criteria that is necessary for determining the juvenility of a person is whether on the date of the offence he was below the age of 18 years or not. If he was, then he is to be treated as a juvenile and then the benefits of the said Act would accrue to him.

7. Considering the present case in the light of the above principles, it is clear that the appellant was below the age of 18 years on the date of the commission of the offence. He was, therefore, a juvenile and would have to be treated as such. At this juncture, it may be relevant to point out that the learned counsel for the appellant stated that the appeal itself may be disposed of while considering the present application for suspension of sentence / bail. She submitted that she

has instructions from the appellant that he does not wish to challenge the impugned judgment on merits. Considering the circumstances, the only thing that remains for us to see is whether the appellant can be kept in custody any further. The provisions of Section 15 (1) (g) of the said Act make it clear that where a Board is satisfied upon inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it so thinks fit, make an order directing the juvenile to be sent to a special home for a period of three years. It is also provided that the Board may, if it is satisfied that, having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

8. Section 16 of the said Act indicates the orders that may not be passed against a juvenile. Section 16(1) clearly stipulates that notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life, or committed to prison in default of payment of fine or in default of furnishing security. The proviso to Section 16(1) further stipulates that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that

the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juveniles in a special home to send him to such special home and that none of the other measures provided under the Act would be suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. The proviso to Section 16 (2) is also material inasmuch as it clearly mandates that the period of detention so ordered shall not exceed in any case the maximum period provided under Section 15 of the said Act. All these provisions indicate the following:-

1. First of all, a juvenile cannot be sentenced to death or imprisonment for any term which may which may extend to imprisonment for life, or be committed to prison in default of payment of fine or in default of furnishing security;
2. Secondly, a juvenile in conflict with law, who is found to have committed an offence, can only be sent to a special home for a maximum period of three years; and
3. Thirdly, in case it is not appropriate, as provided in Section 16 (1) of the said Act, to send a juvenile to a special home, the Board may direct the juvenile in

conflict with law to be kept in a place of safety under protective custody, but that too only for a period up to three years.

9. In the present case, we find that the appellant has already been convicted under Section 302/34 and 392/34 IPC. He has been sentenced to imprisonment for life plus a fine of Rs 2,000/- under Section 302/34 IPC. Insofar as the offence under Section 392/34 is concerned, he was sentenced to imprisonment for a period of seven years plus a fine of Rs 1,000/-. The nominal roll of the appellant indicates that as on 24.12.2008 he has already undergone a period of 4 years 6 months and 11 days in custody. As of now, the said period would be approximately 4 years and 11 months. This, in any event, is in excess of the maximum period of three years for which the appellant, being a juvenile, could have been kept in a special home or under protective custody at a place of safety.

10. Consequently, while we do not disturb the conviction of the appellant as returned by the trial Court, in view of the statement made by the learned counsel for the appellant that the appellant does not wish to contest the conviction on merits, we direct the immediate release of the appellant on the ground that he was a juvenile on the date of the commission of the offence and that he has already been in custody for a

period far in excess of the maximum period of protective custody of three years provided under the said Act. In fact, no order on sentence sending the appellant to prison could have been passed in this case. Consequently, while we uphold the conviction, we set aside the order on sentence and direct the immediate release of the appellant. This application and the appeal itself stands disposed of.

BADAR DURREZ AHMED, J

AJIT BHARIHOKE, J

MAY 20, 2009
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