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HIGH COURT OF DELHI : NEW DELHI**Judgment reserved on : February 10, 2009****Judgment delivered on : March 02, 2009**

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Crl. Appeal No. 45/2006**&****Crl. M.A. 10995/2008**

% Rajesh Kumar Singh ... Appellant
Through: Mr. Alok Lakhanpal, Advocate

versus

State ... Respondent
Through: Mr. Amit Sharma, Additional
Public Prosecutor for State.

CORAM:**HON'BLE MR. JUSTICE SUNIL GAUR**

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

SUNIL GAUR, J.

1. In this appeal, challenge is to impugned judgment/order of 7th and 13th October, 2005, of the learned Sessions Judge, New Delhi, who has convicted the Appellant for the offence of illegal possession of 4 Kgs. of *charas*, which is punishable under Section 20 (b) (ii) (c) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act) and sentenced him to undergo rigorous imprisonment for a period of ten years alongwith a fine of Rs.1,00,000/- (Rupees one lac only), and in default of payment

of fine, he has been sentenced to undergo simple imprisonment for six months.

2. Prosecution case, as emerging from the record of this case, is as under:-

On 10.10.2001, secret information was received stating that a person by the name of Rajesh will be available near Odeon Cinema between 2.30 to 3 PM for supply of charas, who is a regular supplier and who imports charas from Nepal. Upon such information, raiding party was constituted and reached the spot and apprehended the accused. After complying with the provisions of Section 50 of NDPS Act, recovery of 4 Kgs charas was effected. Two samples weighing 25 gms each were separated. Case property and samples were sealed and seized and FIR was got registered. The accused was arrested. The contraband was sent for chemical examination and the report was received. Upon conclusion of investigation, charge-sheet was filed against the appellant/accused. Trial court vide order of 12th April 2002, framed charge against the accused under Section 20(b) (c) NDPS Act for being in possession of 3kg. 950 gms. of charas.

3. Nine witnesses were produced in evidence by the prosecution in this case before the trial court. Inspector Kaushik (PW-1), ASI U.R. Khan (PW-2) and Head Constable Harvinder Singh (PW-9) have deposed about the spot

proceedings i.e. of receiving of secret information and of raiding party apprehending the appellant/accused with a bag containing 4 kgs. of a substance, which was said to be *charas*. Rest of the witnesses have deposed regarding the various stages of investigation of this case. SI Brij Pal (PW-5) had submitted the charge sheet in this case against the appellant/accused, after completing the investigation of this case.

4. Appellant/accused before the trial court denied the prosecution case, in his statement under Section 313 of the Cr.P.C. and claimed that he was a minor at the time of this incident and that he is a poor person and is illiterate and he used to drive a *rickshaw* and the main accused was let off who was sitting in the *rickshaw* and the contraband was planted upon him. Appellant had got examined two witnesses in his defence before the trial court. Sagar Mandal (DW-2) claimed to be the owner of the *rickshaw* which was plied by the appellant and he claimed that B K Malhotra (DW-1) had informed him on the day of the incident, that appellant had been apprehended by the police and he had left his *rickshaw* near Odeon Cinema. B K Malhotra (DW-1) claims to have seen appellant driving the *rickshaw* with a passenger who was sitting with a black colour bag and according to this witness, the police tried to apprehend the said passenger but could not do so and had apprehended the *rickshaw* driver i.e. the appellant with the bag of that passenger.

5. After the trial, appellant/ accused stands convicted and sentenced as noticed in the opening paragraph of this judgment.

6. Counsel for the parties, have been heard in this appeal and the record of this case has been perused.

7. Learned Counsel for the appellant asserted that the appellant was a minor at the time of this incident and the sentence awarded to the appellant deserves to be set aside as the appellant is entitled to the benefit of the benevolent provisions of Juvenile Justice (Care and Protection of Children) Act, 2000. Reliance has been placed upon the decisions of this court reported in **114 (2004) DLT 206 (DB)** to contend that while sustaining the conviction for the offence of murder, the sentence awarded was quashed as the accused was found to be juvenile on the day when the aforesaid Act came into force i.e. on 1st April, 2001.

8. It has been pointed out by learned Counsel for the appellant that as per the Nominal Roll of the appellant, his age on the day of the incident was seventeen years and eleven months and as per his statement under Section 313 of the Cr.P.C., his age was 17.5 years on the day of the incident.

9. On 7th March, 2008, brother Vipin Sanghi, J, had directed the bone age examination of the appellant and, accordingly, bone age report of 26th March, 2008, was submitted to this court, indicating that the appellant was aged above twenty

three years and below twenty five years as on 12th March, 2008.

10. On 7th May, 2008 learned Counsel for the appellant had sought an enquiry to determine the age of the appellant but the record of this case reveals that the request for enquiry was not pursued by learned Counsel for the appellant and when the final arguments in this appeal were heard by this court, no such request was made and even the application Crl.M.A. No.10995/2008 for determination of the percentage of THC in the recovered contraband, was not pressed. As such, this application is disposed of, as not pressed.

11. Learned Counsel for the appellant felt contended by relying upon a decision reported in **(2002) 2 SCC 287** to contend that if two views are possible on the basis of the evidence adduced, the view which is in favour of the juvenile-accused should be adopted. According to learned Counsel for the appellant, even if the age of the appellant as disclosed in the Nominal Roll is taken to be correct, then also, it is clear that he was aged less than eighteen years on the day of the incident. Thus, it is contended that since the appellant was a juvenile on the day of the incident, therefore, even while maintaining the conviction of the appellant, the sentence imposed upon him deserves to be set aside. Lastly, it is submitted that as per the Nominal Roll of the appellant, he has already remained behind bars for more than seven years and

he deserves to be released from jail forthwith. Nothing else has been urged on behalf of the appellant.

12. Learned Additional Public Prosecutor for the State has submitted that the conviction of the appellant is supported by the evidence on record and the sentence awarded to the appellant by the trial court does not deserve to be quashed on the ground of appellant being a juvenile on the date of the incident because the age reflected in the Nominal Roll is the one which is given by the appellant/accused at the time of his admission in jail and the age given by the appellant at the time of recording of his statement under Section 313 of the Cr.P.C., is upon legal advice and same cannot be taken to be the correct age of the appellant. It is pointed out that neither any birth certificate nor school certificate of the appellant was produced either before the trial court or before this court, to claim the benefit of appellant being a juvenile on the day of the incident and plea of the appellant being juvenile was not argued before the trial court. Thus, it is submitted that the bone age report of the appellant alone, cannot be sufficient to extend the benefit as claimed by the appellant and therefore, this appeal deserves to be dismissed straightaway.

13. After having deliberated upon the submissions made by both sides, I find that the age of the appellant as reflected in his Nominal Roll and as given by him in his statement under Section 313 of the Cr.P.C. before the trial court, cannot be the

basis for determination of his age. Thus, the solitary basis to determine the age of the appellant is the bone age test and as per the bone age report of the appellant, he was aged below twenty five years as on 12th March, 2008.

14. The Secretary General of the United Nations writing on 'the World Drug Report 2000' observed:-

"Globalisation offers the human race unprecedented opportunities. Unfortunately, it also enables many anti-social activities to become 'problems without passport'. Among these are drug abuse, which brings misery to millions of families around the world every year, and drug trafficking which cynically promotes and exploits that misery for commercial gain. If the International community is to deserve its name, it must respond to this challenge".

15. 15. The dark under-world of drugs is a bizarre and cruel place increasingly sucking into its vortex successive generations of the young. This indicates the shift in the strategies of the illicit trade. The ruthlessness with which the illicit drug traffic diminishes and destroys its prey is a heart-rending spectacle.

16. Will it be safe to solely rely upon the bone age report of the appellant, when his age as per his Nominal Roll was just one month less than eighteen years on the day of the incident? This is a serious question which requires consideration in view of the fact that during the recent years illicit trafficking in

drugs, is a cause of concern not only to India but is a matter of concern for the whole world. Unfortunately, many teenagers are not only victims of drug abuse but due to poverty, are also inducted by the well organized gang of drug smugglers, as drug peddlers and to give the benefit of the social legislation i.e. of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as Juvenile Justice Act, 2000) would run counter to the spirit of the Narcotic Drug Psychotropic Substances Act, 1985 (as amended in 2006).

17. I am in respectful agreement with the ratio of the two decisions relied upon on behalf of the appellant but I find that both these cases were murder cases and in the decision reported in *Charanjeet Singh vs. State of NCT of Delhi*, **114 (2004) DLT 206 (DB)**, the accused and the deceased were both students of a school and birth certificate of the accused was the basis to extend the benefit of the Juvenile Justice Act, 2000. Similarly, in the decision reported in '*Rajinder Chandra vs. State of Chhattisgarh and another*', **(2002) 2 SCC 287**, the school certificate was the basis for extending the benefit of the provisions of the Juvenile Justice Act, 1986, as the age of the accused was found to be just less than sixteen years by few months only and in the facts of the above cited case, it was observed that a hyper-technical approach should not be adopted and if two views are possible regarding the age of the juvenile, then benefit should accrue to the accused.

18. In the case of '*Megh Singh vs. State of Punjab*' **2003 (3) JCC 1513**, it has been highlighted by the Apex Court that in criminal law, there are no precedents and the pertinent observations made are as under:-

"Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect. It is more pronounced in criminal cases where the backbone of adjudication is fact based."

19. In the instant case, there can be no view formation on the basis of the age as orally disclosed by the appellant before the jail authorities as reflected in his Nominal Roll or on the basis of the age given by him at the time of recording of the statement under Section 313 of the Cr.P.C. by the trial court. The solitary evidence is the bone age report, on the basis of which, no definite opinion regarding the age of the appellant can be formed. No other evidence is forthcoming to enable this court to declare that the appellant was a juvenile on the day of this incident. Thus, the challenge of the appellant to the impugned sentence on the ground of his being a juvenile cannot succeed and is hereby repelled.

20. On merits, the grounds taken in this appeal are the very same grounds, which were taken before the trial court. A bare

perusal of the impugned judgment reveals that the contention of the appellant of non-compliance of Section 50 of the NDPS Act, has been rightly rejected by trial court, as the recovery of the *charas* was not from the person of the appellant/accused but was from his bag. Likewise other contentions of the appellant have been dealt with by the trial court in the impugned judgment in the correct perspective and no fault can be found with the reasoning adopted by the trial court in rejecting the contentions of the appellant regarding non compliance of Section 55 and 57 of the NDPS Act. The contention of non-joining of independent witnesses has been also adequately dealt with in the impugned judgment by relying upon a decision of the Apex Court reported in **2003 (3 JCC) 1631**. Trial court was right in discarding the plea/evidence of appellant of false implication, as it not all plausible on the face of it. It is not shown as what animosity Raiding Team had with the appellant to falsely implicate him in the case.

21. After having appreciated evidence on record, I am of the considered view that the conviction and the sentence imposed upon the appellant by the trial court is well merited and it calls for no interference by this court in this appeal.

22. This appeal lacks merits and deserves to be dismissed. Accordingly, it is dismissed.

23. This appeal and pending application stands disposed of accordingly.

Sunil Gaur, J.

March 02, 2009
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