

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 13.09.2011

+ **W.P.(CRL) No. 173/2011**

RAJU

..... Petitioner

versus

STATE (GOVT OF NCT) OF DELHI

..... Respondent

Advocates who appeared in this case:-

For the Petitioner : Mr A.J. Bhambhani with Mrs Nisha along with
petitioner in person

For the Respondent : Mr Rajesh Mahajan, ASC
SI Parveen Ahlawat P.S. Kotwali

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MS JUSTICE VEENA BIRBAL

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

BADAR DURREZ AHMED, J (ORAL)

1. Although this petition has been filed under Article 226 of the Constitution of India, it is essentially in the nature of an application under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the said Act').
2. The petitioner (Raju) was an accused in connection with FIR No. 541/1995 registered at Police Station Kotwali, Daryaganj under

Sections 147/148/149/307/302/34 IPC. Initially, there were five accused which included the petitioner and his parents Birbal and Omwati. The other two accused were the brothers of the present petitioner, namely, Sunil and Pramod. The latter two were straightaway considered to be juveniles and were dealt with by the Juvenile Court.

3. Insofar as the present petitioner and his parents Birbal and Omwati are concerned, they faced trial which culminated in the judgment passed by the learned Addl Sessions Judge on 29.01.2001 whereby they were convicted under Sections 147/148/149/307/302/34 IPC. By a separate order on the point of sentence dated 30.01.2001, the learned Addl Sessions Judge sentenced the present petitioner as also the other co-accused, *inter alia*, to life imprisonment.

4. It is pertinent to note for the purposes of the present case that the order on point of sentence had itself recorded the age of the petitioner as 22 years. It is further relevant to note that if the petitioner was 22 years old on the date on which the order on sentence was passed i.e., on 30.01.2001, the petitioner would have been about 16 ½ years old on the date of the incident i.e., 16.06.1995. However, it must be remembered that the said Act had not come into force by then and, therefore, the definition of child/juvenile whereby the age was enhanced from 16 to 18 years had not come into force and it is for this reason that the petitioner was not treated to be a child/juvenile. The said Act came into force on 01.04.2001.

5. Being aggrieved by the judgment dated 29.01.2001 and the order on sentence dated 30.01.2001, the petitioner as well as the other co-convicts, namely, his father Birbal and mother Omwati preferred

an appeal before a Division Bench of this court being CrI A. No. 115/2001. That appeal came to be dismissed by a Division Bench of this Court on 02.03.2009. On 27.10.2009, an Inspecting Judge/Special Judge – IV (PC Act) CBI had, on receipt of a complaint, directed that the bone age of the petitioner be medically determined. Pursuant to that, Dr Rakesh Kumar of Deen Dayal Upadhyay Hospital submitted a report that the bone age of the petitioner Raju as on 05.11.2009 was between 25 and 30 years. This would mean that the age of the petitioner Raju would be between 11 and 16 years as on the date of incident i.e., 16.06.1995.

6. In the meanwhile, the present petitioner and his father Birbal filed a Special Leave Petition being SLP (CrI) No. 879/2010 and the petitioner's mother Omwati filed a separate Special Leave Petition being SLP (CrI) No. 4633/2010 before the Supreme Court of India. Both the Special Leave Petitions were delayed and, therefore, condonation of delay applications were filed along with the said petitions. Insofar as SLP (CrI) No. 879/2010 is concerned, the Supreme Court, after condoning delay, dismissed the same. A similar fate was suffered by SLP (CrI) No. 4633/2010. The orders of dismissal were dated 29.01.2010 and 10.05.2010, respectively.

7. It is thereafter that the present petition has been filed. The matter first came up before a learned Single Judge who then proposed that the matter be placed before a Division Bench, subject to orders of Hon'ble the Chief Justice and that is how the matter is before us. By virtue of our order dated 01.08.2011, we had directed that since Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as 'the said Rules') requires that

the medical opinion as to age should be rendered by a duly constituted Medical Board, the same ought to have been done. But, as the medical opinion on record was only that of a single doctor of Deen Dayal Hospital, this court directed that a Medical Board be constituted and the age of the petitioner be determined.

8. The Superintendent of All India Institute of Medical Sciences constituted a Medical Board and the petitioner was examined. The report of the Medical Board indicates the age of the petitioner (Raju) as being 33-35 years as on 05.08.2011. The report itself is dated 11.08.2011. If this report is to be accepted, the age of the petitioner would be between 17 years and 19 years as on the date of incident.

9. Thus, we find that whether we take the earlier report of Deen Dayal Upadhyay Hospital or the more recent report of the Medical Board of All India Institute of Medical Sciences, in either eventuality the petitioner would have to be regarded as a juvenile as the lower end of the range of ages is to be taken. Consequently, we hold that the petitioner was a 'juvenile' within the meaning of Section 2(k) of the said Act inasmuch as the petitioner, on the date of the incident, was less than 18 years of age. It is relevant to note that resort to Rule 12(3)(b) of the said Rules is being taken as there is no other evidence as contemplated under Rule 12(3)(a).

10. The fact that the petitioner had not raised the plea of juvenility before the trial court or before the Division Bench at the stage of the appeal or even before the Supreme Court would not come in his way of seeking the remedy and relief that is sought by virtue of this petition in view of the clear and express provisions of Section 7-A of the said Act. Once we have determined that the petitioner was a

‘juvenile’ as on the date of the incident, he has to be given the benefit thereof under the said Act. Sections 15 and 16 of the said Act clearly indicate that no juvenile can be kept in custody or detained for a period in excess of 3 years. In the present case, the appellant has already been in custody for over 10 years and 4 months as per the nominal roll on record. Therefore, it is clear that the petitioner has been in custody for a period far in excess of the maximum period of 3 years that is contemplated under the said Act. In these circumstances, he is eligible to be released forthwith. Insofar as the sentence is concerned, the same is deemed to have no effect in view of the provision of Section 7-A(2) of the said Act.

11. In view of the foregoing, this petition is disposed of with the direction that the petitioner be released forthwith if he is not required in any other case.

12. A copy of this order be sent to the Superintendent of the concerned Jail through Special Messenger.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

SEPTEMBER 13, 2011
kks