

THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Appeal no.321 of 2016

JUDGMENT

(per Hon'ble Sri Justice M. Seetharama Murti)

In this appeal under Section 374(2) CrPC, the appellant/A4, Appagouni Nikhil Goud, son of Nandagopal, impugned the judgment dated 08.03.2016 in S.C.No.456 of 2012 on the file of the Court of the IX Additional Sessions Judge, Ranga Reddy District at L.B. Nagar.

By the aforesaid judgment, the learned VIII Additional Sessions Judge holding Full Additional Charge of the post of the learned IX Additional Sessions Judge found the appellant/A4, along with five other accused/A1 to A3, A5 and A6, guilty of the offence punishable under Section 302 read with Section 34 IPC and sentenced him to suffer imprisonment for life and pay a fine of Rs.1,000/- and suffer simple imprisonment for six months in default thereof.

We have heard the submissions of *Sri Khaja Manjoor Ali*, learned counsel for the appellant/A4 and the learned Public Prosecutor appearing for the respondent/State. We have perused the material on record.

During pendency of the appeal, the appellant/A4 filed CrI.A.M.P.No.1153 of 2016 under Rule 12(3) (B) of Juvenile Justice (Care and Protection of Children) Rules, 2007 requesting to direct the Osmania General Hospital to constitute a Board of Directors for his medical

examination for determination of his age as on 27.02.2012, the date of the commission of the alleged offence. In the grounds urged in support of the said request, it is stated as follows:

‘The date of commission of the alleged offence is 27.02.2012. The petitioner is a minor aged 17 years, 10 months and 21 days on the said date. In proof whereof, copy of his certificate of birth, dated 27.01.1997, issued by the Registrar of Births, Municipal Corporation of Hyderabad; copy of VII Class Common Examination Certificate with Roll No.127987 issued by the Head Mistress, Loyola Convent High School, Saroornagar, Hyderabad; copy of Secondary School Certificate with Roll No.0937101138 issued by Board of Secondary Education, Andhra Pradesh; and copy of Transfer Certificate with Admission No.1186 issued by Narayana Junior College, Hasthinapuram, Ranga Reddy District, in which A4 was said to have studied Intermediate First Year, are filed. The said documents disclose that the date of birth of A4 is 07.04.1994. He is prepared to produce the originals of the said documents as and when directed by the Court. In a catena of cases, the Supreme Court of India set aside the convictions recorded and sentences imposed upon the juveniles after obtaining opinions from competent authority in cases where documentary evidences are not available. In the case on hand there is sufficient documentary evidence to show that the appellant, A4, is a child as on the date of the alleged offence. However, obtaining opinion of the Medical Board would help in ascertaining the correct age of A4. Hence, a direction may be given to the Osmania General Hospital to constitute Board of Directors for medical examination of A4.

The plea that A4 is a minor can be raised at any stage and even during the pendency of the appeal against conviction.'

Upon filing of the aforementioned petition, since A4 claimed before this Court that he was a child as on the date of the commission of the alleged offence for which he was convicted and sentenced, this Court on 08.08.2016 passed the following order:

The Superintendent, Central Prison, Cherlapally, is therefore directed to refer the petitioner/accused No.4 to the Medical Board of Osmania General Hospital for determination of his age as on the date of the alleged commission of the offence i.e., 27.02.2012. The Osmania General Hospital shall ensure that the Medical Board comprises a member who is qualified to look into the aspect of age determination and after conducting the age determination test in accordance with the scientific norms, submit a report to this Court certifying the age of the petitioner as on 27.02.2012. The report in this regard shall be submitted by the next date of hearing.

Acting on the said orders of this Court, the Superintendent of Central Prison, Cherlapally, along with his letter in Lr.No.CPCh/RC-1/11875/2016, dated 17.08.2016, submitted to this Court the Age Certificate, dated 17.08.2016, of A4 issued by Dr. K. Parvathi, Associate Professor, Department of Forensic Medicine, Osmania Medical College/Osmania General Hospital, Hyderabad.

The correctness of the said report is not disputed and no objections are filed to the said report by either side.

Perusal of the said report would show that after ensuring the identity of A4 and on his general and physical examination, as well as, dental and radiological examinations, it was opined by the Doctor concerned that A4 is of 20 years of age as on the date of his examination, 17.08.2016. Since the date of the commission of the alleged offence is 27.02.2012, it follows that the contention of the appellant/A4 that he is a child/minor as on the date of the alleged commission of offence emerges to be true. Going by the copies of the certificates produced by A4, which are referred to supra, and the report submitted by the Doctor we find that A4, who was alleged to have committed the offence with which he is charged in S.C.No.456 of 2012 on the file of the Court of the IX Additional Sessions Judge, Ranga Reddy District, was a juvenile or a child in conflict with law within the meaning of Section 2(13) of the Juvenile Justice (Care and Protection of Children) Act, 2015 as on the date of the alleged commission of the alleged offence.

The law permits a person to claim that he is a child and that such claim can be raised at any stage and even before the Court of appeal. It is undeniable that when a person alleged to have committed an offence claims before a Court other than a Board that the said person is a child on the date of the commission of the alleged offence and if the said claim is found to be true on such enquiry as may be necessary in regard to determination of the age of such person, such Court shall forward the child to the Board concerned for passing appropriate orders and sentence in accordance with law applicable to the case of such child. That being the legal position, given the facts and the report of the Doctor coupled with the reliable documents produced by A4, we find that the appellant, A4, is a child as on the date of

the commission of the alleged offence and that his age is 20 years as on the date of his examination, 17.08.2016, and that he is a minor or child as on the date of the commission of the alleged offence.

In view of the said finding we hold that the conviction recorded and the sentence imposed against the appellant, A4, by the learned VIII Additional Sessions Judge in S.C.No.456 of 2012 have no effect in the eye of law.

In the result, we set aside the conviction recorded and the sentence imposed against Appagouni Nikhil Goud, son of Nandagopal, Accused No.4, in S.C.No.456 of 2012 for the offence punishable under Section 302 read with Section 34 IPC and allow the appeal of A4 accordingly. The fine amount, if paid already shall be refunded. As a sequel to the above findings, we direct the State to take appropriate steps for production of A4 forthwith before the Board constituted for Ranga Reddy District under the Juvenile Justice (Care and Protection of Children) Act, 2015, for proceeding against A4 in accordance with law and passing appropriate orders after due enquiry as per law applicable to the case against him.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

29.08.2016

Vjl