

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE M.S.K.JAISWAL

CrlAMP(SR)No.27641 of 2015
In/and
CRIMINAL APPEAL No.823 of 2010

Date:25.04.2016

Between:

Sanjib Deb Barma,
S/o Budrai Deb Barma and two others.

**.....Appellants/
Accused
Nos.1 to 3**

And:

The State of Telangana, repled.,
by the Public Prosecutor

.....Respondent

Counsel for the Appellants: Mrs. A.Gayathri Reddy

Counsel for the Respondent: Public Prosecutor (TS)

The Court made the following:

COMMON ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Criminal Appeal arises out of judgment, dated 13.5.2010 in Sessions Case No.472 of 2009 on the file of the learned II Additional Metropolitan Sessions Judge, Hyderabad, whereby she has convicted the

appellants for the offence under Section-302 of the Indian Penal Code and sentenced them to suffer simple imprisonment for life and to pay a fine of Rs.100/- each, in default, to suffer simple imprisonment for one week.

On behalf of appellant Nos.1 and 3, Crl.A.M.P. (SR) No.27641 of 2015 was filed for declaring them as juveniles. By order, dated 09.09.2015, this Court directed the II Additional Metropolitan Sessions Judge, Hyderabad to conduct a detailed enquiry into the age of the said appellants and submit a report. Accordingly, the II Additional Metropolitan Sessions Judge, Hyderabad submitted his report, wherein it is stated that during the course of enquiry, appellant Nos.1 and 3 were forwarded to the Department of Forensic Medicine and Toxicology, Osmania Medical College/Osmania General Hospital, Hyderabad for their age determination and that, Dr. K.Laxman, M.D., Assistant Professor, Osmania Medical College/Osmania General Hospital, Hyderabad examined appellant Nos.1 and 3 and issued age certificates, dated 13.01.2016, to the effect that they were aged about 21 to 22 years and 20 to 21 years, respectively, as on the date of his examination. While declining to place reliance on the educational certificates, the II Additional Metropolitan Sessions Judge, Hyderabad has relied upon the age determination certificates of appellant Nos.1 and 3 issued by the said doctor and reported that both appellant Nos.1 and 3 were juveniles as on the date of commission of offence.

When the report of the II Additional Metropolitan Sessions Judge, Hyderabad was placed before us, we felt that the age of appellant No.2, who was also described as 20 years of age by the prosecution, needs

to be determined. As he did not possess any educational certificates, we have directed the Superintendent, Central Jail, Cherlapalli to get appellant No.2 also examined by the same doctor *i.e.*, Dr.K.Laxman, M.D. Assistant Professor, Osmania General Hospital, Hyderabad and determine his age. Accordingly, appellant No.2 was referred to the said doctor by the Superintendent, Central Prison, Cherlapalli and the doctor's report was submitted, a perusal of which shows that as per his examination, appellant No.2 is aged around 21 years as on the date of his examination.

Learned Public Prosecutor appearing for the State of Telangana has not disputed the correctness of the opinion of the said doctor in case of all the appellants.

As the offence has taken place on 24.4.2009 and the doctor, who examined all the appellants, has found that they are aged around 20 to 21 years as on the date of his examination, it is evident that all the appellants were below 15 years of age as on the date of commission of offence. Therefore, they fall within the definition of 'juvenile' in Section-2(k) of Juvenile Justice (Care and Protection of Children) Act, 2015.

Having regard to the fact that the appellants were found to be juveniles as on the date of commission of the offence and applying the ratio laid down by the Supreme Court in ***Abdul Razzaq vs. State of U.P***^[1] and ***Mahendra Singh vs. State of Rajasthan***^[2], while not disturbing the conviction of the appellants, the sentence recorded against them in the judgment, dated 13.5.2010 in Sessions Case No.472 of 2009, on the file of the learned II Additional Metropolitan Sessions Judge,

Hyderabad for the offence punishable under Section 302 IPC alone is set aside. Consequently, the appellants shall be set at liberty forthwith, if they are not required in any other case or crime and the fine amount, if any, paid by them shall be refunded to them.

The Criminal Miscellaneous Petition and the Criminal Appeal are, accordingly, allowed to the extent indicated above.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE M.S.K.JAISWAL

*25th April 2016
DR*

[\[1\]](#) 2015 (2) ALD (CrI.) 933 (SC)

[\[2\]](#) 2016 (1) ALD (CrI) 228 (SC)