

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice M.S.K.Jaiswal

Crl.A.M.P.No.953 of 2014

in/and

Criminal Appeal No.895 of 2013

Date: 11.04.2016

Between:

Nenavath Raju

.. Petitioner

and

The State of A.P.

Rep. by its Public Prosecutor

High Court of Andhra Pradesh,

Hyderabad

.. Respondents

Counsel for the petitioner :

Mr.R.V.Mallikarjuna Rao

Counsel for respondent:

Public Prosecutor

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The Court made the following:

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Common Order : (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The sole accused in Sessions Case No.516 of 2009 filed this Criminal Appeal against Judgment, dated 26-07-2013, of the learned Additional District and Sessions Judge, Wanaparthy, whereby he was convicted for the offence under Section 302 IPC and sentenced to suffer Rigorous Imprisonment for life and also to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for six months.

The appellant has filed Crl.A.M.P.No.953 of 2014 seeking to set aside judgment under Appeal, as the appellant was a juvenile as on the date of the offence. By Order, dated 28.07.2014, this Court has called for a report from the Additional District and Sessions Judge, Wanaparthy, after holding an enquiry into the age of the appellant as on the date of commission of the offence. Accordingly, the learned IX Additional District and Sessions Judge, Wanaparthy, sent his report, dated 24-03-2016, a perusal of which shows that he has held a detailed enquiry by examining as many as seven witnesses and perusing Exs.D.1 to D.8 and Exs.X.1 and X.2. After a detailed enquiry, the learned IX Additional

District Judge, in his report has *inter alia* concluded as under:

“I have perused the entire statements of the said witnesses and also the documents marked through the said witnesses very carefully and noted the contents. Only two documents have attracted my attention to confirm the age of the accused in this case. Ex.X.2 is the relevant entry in the school register brought by the 6th witness disclosing the date of birth of the accused as 21st January, 1992. Another important document which has also attracted my attention is Ex.X3, which is the marks list of the accused of his SSC Education disclosing his date of birth as 21st January, 1992. Moreover, Ex.D3 also has been duly attested by the S.I. of Police, Rural Police Station, Wanaparthy. On perusal of Exs.X2 and Ex.D3, it is very clear that the date of birth of the accused is 21st January, 1992 when we calculate the age of the accused as on the date of alleged offence dated 9th June, 2009 based on the said entries made in Exs.D2 and Ex.D3, his age accurately was 17 years and 139 days. Therefore, the accused was a juvenile as on the date of the offence.”

The learned Public Prosecutor for the State of Telangana placed before the Court, judgments of the Supreme Court in **Abdul Razzaq vs. State of U.P.**^[1], and **Mahendra Singh vs. State of Rajasthan**^[2] and

fairly submitted that in the light of the law laid down therein, the sentence imposed on the appellant, who was a juvenile as on the date of the offence, is liable to be set aside.

In **Abdul Razzaq vs. State of U.P.** (1 supra), the accused was tried for the offence punishable under Section 302 IPC for causing the death of a person, convicted for the said offence and sentenced to undergo life imprisonment by the Sessions Court, Agra. The conviction and sentence of the accused was confirmed by the Allahabad High Court. The Supreme Court dismissed the Special Leave Petition and also the review petition filed against the said order. Thereafter, the Allahabad High Court directed *suo motu* action under the proviso to Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act'). The U.P.State Legal Services Authority initiated steps for implementation of the said judgment. The Juvenile Justice Board, Agra, examined the case of the convict and held that on the date of the incident, the petitioner was less than 18 years of age. In the above facts, the Supreme Court referred to Sections 7-A, 20, 49 and other relevant provisions of the Act, besides the

relevant case law, and held as under:

“A careful reading of the above would show that although a claim of juvenility can be raised by a person at any stage and before any Court, upon such Court finding the person to be a juvenile on the date of the commission of the offence, it has to forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed shall be deemed to have (sic no) effect. There is no provision suggesting, leave alone making it obligatory for the Court before whom the claim for juvenility is made, to set aside the conviction of the juvenile on the ground that on the date of commission of the offence he was a juvenile, and hence, not triable by an ordinary criminal Court. Applying the maxim *expressio unius est exclusio alterius*, it would be reasonable to hold that the law insofar as it requires a reference to be made to the Board excludes by necessary implication any intention on the part of the Legislature requiring the Courts to set aside the conviction recorded by the lower Court. Parliament, it appears, was content with setting aside the sentence of imprisonment awarded to the juvenile and making of a reference to the Board without specifically or by implication requiring the Court concerned to alter or set aside the conviction. That perhaps is the reason why this Court has in several decisions simply set aside the sentence awarded to the juvenile without interfering with the conviction recorded by the Court concerned and thereby, complied with the mandate of Section 7-A (2) of the Act.”

Similar view was taken by the Supreme Court in **Mahendra Singh vs. State of Rajasthan** (2 supra).

Having regard to the fact that the appellant was found to be a juvenile as on the date of commission of the offence and applying the ratio in **Abdul Razak vs. State of UP** (1 supra), while not disturbing the conviction of the appellant, the sentence recorded against him in Judgment, dated 26-07-2013 in Sessions Case No.516 of 2009, on the file of the learned Additional District & Sessions Judge, Wanaparthi, Mahabubnagar District, for the offence punishable under Section 302 IPC alone is set aside. Consequently, the appellant shall be set at liberty forthwith, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him.

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

As a sequel, Crl.A.M.P.1663 of 2013 is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

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(M.S.K.Jaiswal, J)

Dt: 11th April, 2016
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[\[1\]](#) 2015 (2) ALD (CrI.) 933 (SC)
[\[2\]](#) 2016 (1) ALD (CrI) 228 (SC)