

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR  
AND

HON' BLE MS.JUSTICE J. UMADEVI

CrI.A.MP.No.1925 of 2017  
In/And  
CRIMINAL APPEAL No.50 OF 2017

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

The sole accused in Sessions Case No.49 of 2015 on the file of the VII Additional District and Sessions Judge, Medak, is the appellant herein. He was tried for the offences punishable under Sections 394 and 302 IPC, for causing the death of one Hasaji Prameela (hereinafter referred to as "the deceased"). Vide judgment, dated 23-11-2016, the learned Sessions Judge, convicted the accused and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for a period of six months for the offence punishable under Section 302 IPC and also sentenced to under go Rigorous Imprisonment for a period of ten years and also to pay fine of Rs.500/- in default to suffer simple imprisonment for a period of six months for the offence punishable under Section 394 IPC. Aggrieved by the conviction and sentence, the accused filed the present appeal.

2. Pending appeal, the appellant filed CrI.A.MP.No.1925 of 2017 seeking to set aside the conviction and sentence on the ground that the appellant was a juvenile as on the date of conviction. It is stated that incident in question took place on 17-12-2013 and he was only about 16 years of age at the time of incident. In support of his plea, the appellant placed reliance on the certificate issued by the Headmaster, Zilla Parishath High School, Doultabad, Sanga Reddy

District. In view of the plea taken, this Court by its order dated 27-11-2017 referred the appellant to the Medical Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "the Act") for determining his age. Pursuant thereto, the concerned authorities have sent a report dated 03-02-2018 issued by the Department of Forensic Medicine & Toxicology, Gandhi Medical College, Secunderabad, wherein it was mentioned that the age of the appellant as '20' years. From this, it would be clear that as on the date of incident, the appellant would be around '16' years.

3. Therefore, the case of appellant would fall within the definition of 'Juvenile' as defined under the Act and that he 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 commission of offence.

4. In a catena of cases, the Apex Court *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 not only documentary evidence to show that the appellant was a juvenile as on the date of the alleged offence, but also report of the Board supports the certificate.

5. 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 is alleged to have

committed an offence comes before a Court that he was 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.

6. That being the legal position, given the facts coupled with the documents produced by the appellant, we find that the appellant was a minor or child as on the date of the commission of the alleged offence.

7. In view of the above, the conviction and the sentence imposed against the appellant, by the VII Additional District and Sessions Judge, Medak in S.C.No.49 of 2015, are set-aside.

8. Accordingly, CrI.A.MP.No.1925 of 2017 is allowed and consequently, the Criminal Appeal is allowed, setting aside the conviction recorded and the sentence imposed against the appellant, Gooda Kanaiah @ Kanni @ Shiva accused in S.C.No.49 of 2015 for the offences punishable under sections 394 and 302 IPC. 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 the appellant forthwith before the Board constituted for Medak District, under the Juvenile Justice (Care and Protection of Children) Act, 2015, for proceeding against the appellant/accused in accordance with law and for passing of 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.

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C.PRAVEEN KUMAR, J

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MS. J. UMA DEVI, J

28-02-2018  
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