

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS.JUSTICE J. UMADEVI

CRIMINAL APPEAL No.1486 OF 2017

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

1) The sole accused in Sessions Case No.119 of 2015 on the file of the IX Additional District and Sessions Judge, Wanaparthy, is the appellant herein. He was tried for the offences punishable under Section 302 IPC, for causing the death of one Pasupula Laxmidevi (hereinafter referred to as "the deceased") on 13.03.2014 by hacking her with an axe. Vide judgment, dated 08.11.2017, the learned Sessions Judge, convicted the accused and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for a period of three months for the offence punishable under Section 302 IPC.

2) We have heard the submissions of Sri Raja Gopallavan Tayi, learned counsel for the appellant and the learned Public Prosecutor appearing for the respondent/ State. We have perused the material on record.

3) During pendency of the appeal, the appellant filed I.A.No.1 of 2018, under Section 482 of Cr.P.C., to remand the matter to the Juvenile Justice Board, on the ground that the appellant was minor as on the date of offence. The grounds urged in support of the said request, are as under:

The date of commission of the alleged offence is 13.03.2014. The petitioner was a minor, aged 17 years, 10 months and 5 days on the said date. In proof whereof, copy of a Bonafide Certificate dated 12.10.2017 issued by Sri Venkateswara Industrial Training Centre, Kothakota, Mahabubnagar District and copy of Secondary School Certificate with Roll No.1140113498 issued by Board of Secondary Education, Andhra Pradesh are filed. The said documents disclose that the date of birth of the appellant is 08.05.1996.

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 there is sufficient documentary evidence to show that the appellant is a juvenile as on the date of the alleged offence. As per the documents filed by the appellants, the date of birth of the appellant is 08.05.1996. Since, the date of the commission of the alleged offence is 13.03.2014, the contention of the appellant that he is a minor aged about 17 years 10 months and 5 days, appears to be true. Going by the copies of the documents produced by the appellant, which are referred to above, we find that the appellant, who was alleged to have committed the offence with which he is charged in S.C.No.119 of 2015 on the file of the Court of the IX Additional District and Sessions Judge, Wanaparthi, 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 the alleged offence.

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 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.

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

7) In view of the said finding we hold that the conviction and the sentence imposed against the appellant, by the learned IX Additional District and Sessions Judge, Wanaparthi, in S.C.No.119 of 2015, have no effect in the eye of law.

8) Accordingly, the Criminal Appeal is allowed, setting aside the conviction recorded and the sentence imposed against the appellant, P.Chandra Sekhar, accused in S.C.No.119 of 2015 for the offence punishable under section 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 Mahabubnagar District, under the Juvenile Justice (Care and Protection of Children) Act, 2015, for proceeding against the appellant/ accused in accordance with law and passing appropriate orders after due enquiry as per law applicable to the case against him.

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

16.02.2018
gkv



C.PRAVEEN KUMAR, J

MS. J. UMA DEVI, J