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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 219/2003**

SAT PAL alias RAJU ... Appellant

Through: None

versus

THE STATE Respondent

Through: Mr. Hirein Sharma, APP for State.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

JUDGMENT
10.08.2018

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Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 7th February, 2003 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi in Sessions Case No. 29/01 arising out of FIR No. 563/1996 registered at Police Station (PS) Bhajanpura, Delhi convicting the Appellant for the offence under Sections 392/34, 302/34 and 411 of the Indian Penal Code ('IPC') and the order on sentence dated 11th February, 2003 whereby for the offence under Section 302/34 IPC, the Appellant was sentenced to rigorous imprisonment ('RI') for life along with a fine of Rs.1,000/-, and in default of payment of fine to undergo RI for six months; for the offence under Section 392/34 IPC to undergo RI for seven years along with a fine of Rs.500/-, and in default of payment to undergo RI for three months; and for the offence under Section 411 IPC, to undergo RI for two years. All the sentences were directed to run concurrently.

2. At the outset, it requires to be noticed that the Appellant Satpal (Accused No.1:A-1) was charged with the aforementioned offences along with three co-accused (A-2 to A-4), who were, however, held to be juvenile i.e. below 16 years of age on the date of the commission of the offence and, therefore, their trial was separated and proceeded separately before the Juvenile Justice Board ('JJB'). It was the Appellant alone, therefore, who faced trial before the learned ASJ in the aforementioned Sessions Case No.29/01.

3. The relevant date for determination of juvenility was the date of the offence which was 24th September, 1996. To begin with, it appears that the cases of all the accused were before the JJB and the matter before the trial Court kept getting adjourned awaiting the report of the JJB.

4. An order dated 27th October, 1997 passed by the trial Court refers to two applications filed – one by the present Appellant Satpal and the other by the co-accused Suresh Kumar. As far as the present Appellant is concerned, he stated in his application that his name as recorded in the school record was Narender Pal Singh and he is also known as Satpal @ Raju and according to the school leaving certificate, he was below 16 years of age. On the above applications, the trial Court ordered a regular enquiry.

5. The next relevant order is dated 23rd December, 1998. On that date, the trial Court noted that the report from the JJB had been received which stated that the age of the co-accused Suresh was less than 16 years on the date of the commission of the offence and therefore he had to be tried before the JJB. The order of the trial Court further noted “however, accused Satpal is more than 16 years on the date of alleged crime”.

6. This Court has perused the order/report dated 3rd December, 1998 of the JJB (comprising the learned Principal Judge and the learned Metropolitan Magistrate) on the point of age of the present Appellant. The school record showed his date of birth to be 27th February, 1982. The Appellant's father Dharam Pal (examined as CW-4 before the JJB) also stated that he was born on 27th February, 1982. However, JJB had doubts and went by the medical evidence in terms of which the age of the present Appellant was found to be around 18 years. The JJB then stated "after giving the margin the error of two years in age, ascertained by the radiologist, the age of accused Suresh comes to around 14 years and 9 months and of accused Satpal is more than 16 years and 9 months on the date of commission of the offence." It is on that basis that the benefit of juvenility was denied to the present Appellant.

7. However, since then, the Supreme Court has in *Abdul Razzaq v. State of U.P. AIR 2015 SC 1770* clarified that the benefit of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('JJ Act, 2000') (which came into effect from 1st April, 2001), can be extended to a person below 18 years of age on the date of commission of the offence notwithstanding that such date may be prior to 1st April 2001. The Supreme Court in the aforementioned decision discussed Section 7A and 20 of the JJ Act 2000 as well as the Juvenile Justice (Care and Protection of Children) Rules 2007 ('JJ Rules') and concluded as under:

"The above provisions clearly show that even if a person was not entitled to the benefit of juvenility under the 1986 Act or the present Act prior to its amendment in 2006, such benefit is available to a person undergoing sentence if he was below 18 on the date of the occurrence. Such relief can be claimed even if

a matter has been finally decided, as in the present case.”

8. Subsequently, in *Jitender Singh @ Babboo Singh v. State of Uttar Pradesh (2013) 11 SCC 193*, the Supreme Court took note of the different approaches adopted after granting an accused the benefit of the JJ Act, 2000 where an accused had already undergone several years of incarceration, i.e. beyond the maximum permissible sentence under the JJ Act, 2000. In that case, the Supreme Court did not remand the matter to the JJB for a fresh trial and confined the sentence to the period already undergone, which was in any event beyond the maximum permissible sentence under the JJ Act 2000. This was the approach adopted by the Supreme Court again in *Mahesh v. State of Rajasthan 2018 (2) RCR (Crl.) 687*.

9. In view of the above legal position and considering the fact that even the trial Court proceeded on the basis that the present Appellant was above 16 years and 9 months on the date of the commission of the offence, but in terms of the school record, he was definitely below 18 years of age as of that date, the Court considers it appropriate to extend the benefit of the JJ Act, 2000 to the Appellant. Further, considering the approach of the Supreme Court in such matters, as spelt out in the above decisions, this Court does not consider it appropriate to send the case of the present Appellant to the JJB. The Court takes note of the fact that he has already undergone nine years and two months of incarceration.

10. Consequently, the sentence awarded to the Appellant for the aforementioned offences under Sections 302/34, 394/34 and 411 IPC, including the default sentences for non-payment of fine, is confined to the

period already undergone by him, which is, in any event, far beyond the maximum sentence that could be awarded to him under the JJ Act 2000. The bails bonds and surety bonds furnished by the Appellant stand discharged.

11. The appeal is disposed of in above terms. The trial Court record be returned forthwith together with a certified copy of this order.

S. MURALIDHAR, J.

VINOD GOEL, J.

AUGUST 10, 2018

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