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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 364/2003**

NEERAJ

..... Appellant

Through: None

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. K. S. Ahuja, 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 an order dated 4th April, 2003 passed by the learned Additional Sessions Judge, Delhi in Sessions Case No.81/2000 arising out of FIR No.416/2000 registered at Police Station ('PS') Nangloi convicting the Appellant for the offence under Section 302/34 IPC and Section 25/27 of the Arms Act and the order on sentence dated 7th April, 2003 whereby for the offence punishable under Section 302/34 IPC he was sentenced to Rigorous Imprisonment ('RI') for life along with a fine of Rs.10,000/-, and in default of payment of fine to undergo further RI for ten months; for the offence under Section 25 of the Arms Act to undergo RI for one year along with a fine of Rs.1000/-, and in default of payment of fine to undergo RI for one month; and under Section 27 of Arms Act RI for two years along with a fine of Rs.2000/-, and in default in default of payment of fine to undergo RI for two months.

2. At the outset, it requires to be noticed that the Appellant Neeraj (Accused No.2: 'A-2'), was sent up for trial along with co-accused Sudesh Kumar (A-1). By the impugned judgment and order of sentence, both of them were convicted and sentenced in a similar fashion. Both of them were charged with having committed the murder of one Ajit Singh (deceased) at 3.30 pm on 24th May, 2000 at Laghu Udyog Nagar, Railway Crossing, Mundka in Delhi with a country made pistol and were also, therefore, charged with the offence punishable under Section 25/27/54/59 of the Arms Act.

3. While suspending the sentence of the present Appellant on 15th February 2005, this Court noted the fact that on the date of commission of the offence the present Appellant was below 18 years of age. It was pleaded before this Court that the present Appellant would therefore be entitled to the beneficial provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('JJ Act, 2000'). In support of that submission, reliance was placed on the decision of this Court in *Charanjeet Singh v. State of NCT of Delhi 2004 (3) JCC 1620*.

4. However, on the side of the Respondents, it was pointed out at the hearing on 15th February 2005 that the aforementioned decision at that stage was under challenge before the Supreme Court of India. What is significant is that in the said order dated 15th February, 2005, this Court took note of the fact that the Appellant had placed on record "a certificate from the school, Vice Principal, Mundka, Delhi certifying the age of the Appellant". The verification report regarding the age of the Appellant confirmed that he was

below 18 years on the date of the commission of the offence.

5. It may also be noted that on the date of suspension of the sentence of the Appellant by this Court, the nominal roll produced before the Court showed that he had already undergone over four years and eight months of imprisonment.

6. Since then, the Supreme Court in *Abdul Razzaq v. State of U.P.* AIR 2015 SC 1770 has clarified that the benefit of the 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 Sections 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.”

7. In *Jitender Singh @ Babboo Singh v. State of Uttar Pradesh* (2013) 11 SCC 193, the Supreme Court noted that different approaches have been adopted by the Supreme Court while extending the benefit of the JJ Act, 2000 to those convicts who were below 18 years of age on the date of commission of offence notwithstanding that such date may be prior to 1st April, 2001 i.e. the date on which the JJ Act, 2000 came into force. In para 28 of the abovementioned decision the Supreme Court observed as

under:-

“28. The sum and substance of the above discussion is that in one set of cases this Court has found the juvenile guilty of the crime alleged to have been committed by him but he has gone virtually unpunished since this Court quashed the sentence awarded to him. In another set of cases, this Court has taken the view, on the facts of the case that the juvenile is adequately punished for the offence committed by him by serving out some period in detention. In the third set of cases, this Court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty. In the fourth set of cases, this Court has examined the case on merits and after having found the juvenile guilty of the offence, remitted the matter to the jurisdictional Juvenile Justice Board on the award of sentence.”

8. Having regard to the efflux of time and the period of sentence already undergone by the convict in the above case, the Supreme Court considered it appropriate not to remand the matter to the Juvenile Justice Board (‘JJB’) for a fresh decision. This was also the approach by the Supreme Court in *Mahesh v. State of Rajasthan 2018 (2) RCR (Criminal) 687* where on account of the efflux of time, the sentence awarded to the Appellant therein to whom the benefit of the JJ Act, 2000 was extended was modified to the period already undergone. The same approach was adopted by this Court very recently in *Rakesh v. State* (decision dated 26th July, 2018 in Crl.A.125/2003).

9. Consequently, in the present appeal as well, with there being no dispute that the Appellant Neeraj was below 18 years of age on the date of commission of the offence, he is extended the benefit of JJ Act, 2000.

Further, considering the fact that he has already undergone over four years and ten months of incarceration, which is beyond the maximum sentence that could be awarded to him under the JJ Act 2000, this Court is of the view that no purpose will be served in remanding this case to the JJB for a fresh adjudication. Following the approach of the Supreme Court in the above decisions, while maintaining his conviction for the above offences, the sentence awarded to the Appellant, inclusive of the default sentence for non-payment of fine, is confined to the period already undergone by him.

10. The appeal is disposed of in the above terms. The bail bond and surety bond furnished by the Appellant stand discharged.

S. MURALIDHAR, J.

VINOD GOEL, J.

AUGUST 10, 2018

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