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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 3rd December, 2018

+ CRL.A. 823/2004

SHUKLA RAM

..... Appellant

Through: Mr. Roshan Lal Saini, Adv.
with Ms. Kavita Saini, Adv.

versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP for the
State with Insp. Hira Lal, PS
Naraina.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellant was tried by the court of sessions in Sessions Case No.19/2003 arising out of FIR No.235/2002 of Police Station Naraina on the charge for the offence punishable under Section 307 of Indian Penal Code, 1860 (IPC), the incident statedly having occurred on 25.10.2002. By judgment dated 14.05.2004, he was held guilty as charged. By order dated 14.07.2004, he was sentenced to rigorous imprisonment for fourteen years with fine of Rs.5,000/- and in case of default, to further undergo rigorous imprisonment for one more year.

2. The said judgment and order on sentence were challenged by the appeal at hand, the appellant having also taken the plea in the

course of these proceedings that he was a juvenile on the date of commission of offence, he having placed reliance on school leaving certificate (SLC) issued on 09.06.2006 by a District Primary School of his native place in Dinajpur Karnjora, Raiganj (West Bengal).

3. By order dated 05.06.2018, a learned Single Judge, then *in seisin* of the matter called for verification. A report under the signature of Station House Officer of Police Station Naraina it being, in turn, based on certificate dated 25.08.2018 of the concerned school has come on record. The same confirms that the date of birth of the appellant, as per school record, is 17.01.1986. This establishes the fact that the appellant was less than eighteen years old on the date of commission of the offence.

4. The learned counsel for the appellant submits that he does not press the appeal to question the judgment on merits or as to the findings recorded regarding his complicity, his only prayer being that the sentence may be set aside. He places reliance on a decision of the Supreme Court in *Abdul Razzaq vs. State of U.P.*, (2015) 15 SCC 637.

5. The offence which is the subject matter of the present case was committed on 25.10.2002. At that point of time, the Juvenile Justice (Care and Protection of Children), Act 2000 governed the field. The said law has since been replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015. Be that as it may, in terms of the law then in force, the expression “*juvenile*” would mean a person who had not completed eighteen years of age and the expression “*juvenile in conflict with law*” would similarly mean a juvenile who is alleged to

have committed an offence and had not completed eighteen years of age as on the date of commission of such offence. By virtue of Section 7A, which was inserted in the Act of 2000, by amendment introduced with effect from 22.08.2006, the claim of juvenility could be raised before any court for the benefit of the amended law to be taken at any time, there being inclusion of a special provision to take care of pending cases, including at the stage of appeal (Section 20 of the Act of 2000).

6. In *Abdul Razzaq* (supra), the petitioner had been found guilty of the offences under Section 302 IPC and sentenced to life imprisonment by the court of Sessions. The conviction and sentence was confirmed by the High Court in appeal and the special leave petition, followed by a review petition was dismissed by the Supreme Court, the last order having been rendered on 20.07.2010. The claim of the said person being a juvenile on the date of commission of the offence, upon inquiry, was found to be correct.

7. Against the above said backdrop, the Supreme Court noted the ruling in an earlier decision reported as *Jitendra Singh alias Babboo Singh and Anr. vs. State of Uttar Pradesh*, (2013) 11 SCC 193 laying down as under :-

“80. The settled legal position, therefore, is that in all such cases where the accused was above 16 years but below 18 years of age on the date of occurrence, the proceedings pending in the court concerned will continue and be taken to their logical end except that the court upon finding the juvenile guilty would not pass an order of sentence against him. Instead he shall be

referred to the Board for appropriate orders under the 2000 Act. Applying that proposition to the case at hand the trial court and the High Court could and indeed were legally required to record a finding as to the guilt or otherwise of the appellant. All that the courts could not have done was to pass an order of sentence, for which purpose, they ought to have referred the case to the Juvenile Justice Board.

81. The matter can be examined from another angle. Section 7-A(2) of the Act prescribes the procedure to be followed when a claim of juvenility is made before any court. Section 7-A(2) is as under:

“7-A.Procedure to be followed when claim of juvenility is raised before any court.—

*(1)****

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.”

*82. 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.

8. It was also noted that in *Union of India Vs. Ex-GNR Ajeet Singh*, (2013) 4 SCC 186 it was held that :-

19. The provisions of the JJ Act have been interpreted by this Court time and again, and it has been clearly explained that raising the age of "juvenile" to 18 years from 16 years would apply retrospectively. It is also clear that the plea of juvenility can be raised at any time, even after the relevant judgment/order has attained finality and even if no such plea had been raised earlier. Furthermore, it is the date of the commission of the offence, and not the date of taking cognizance or of framing of charges or of the conviction, that is to be taken into consideration. Moreover, where the plea of juvenility has not been raised at the initial stage of trial and has been taken only on the appellate stage, this Court has consistently maintained the conviction, but has set aside the sentence.

9. Following the said rulings, in case of *Abdul Razzaq* (supra) while leaving the conviction undisturbed, the sentence awarded against him was set aside.

10. On being asked, the learned Additional Public Prosecutor submitted that he leaves the matter to the discretion of the court as he has nothing to say in the face of the ruling in *Abdul Razzaq* (supra).

11. The facts and circumstances being similar to the case of *Abdul Razzaq* (supra), the same dispensation is followed in the present case. The benefit of amended benevolent law on juvenility has to be accorded. Thus, while maintaining the conviction, the sentence of the appellant is set aside.

12. The appeal stands disposed of accordingly.

R.K.GAUBA, J.

DECEMBER 03, 2018

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