

\$~R-81

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd January, 2019

+ CRL.A. 737/2002

AMIT KUMAR

..... Appellant

Through: Mr. Ashutosh Mishra, Advocate
for Dr. Surat Singh, Advocate
with Appellant in person.

Versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the
State with SI Manish Kumar,
PS Delhi Cantt.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellant was arrested on 10.06.1998 (vide Ex.PW-7/A) during the course of investigation into first information report (FIR) No.194/1998 registered by Police Station Delhi Cantt., for offence under Section 364 of the Indian Penal Code, 1860 (IPC). The FIR (Ex.PW-5/A) had been registered on the basis of complaint (Ex.PW-3/A) made by his sister Meenakshi (PW-3) on which the Station House Officer (SHO) of Police Station had made endorsement (Ex.PW-12/A). In the FIR, the first informant (PW-3) had reported that her daughter, then aged six years, had gone missing, she raising suspicion about complicity in the kidnapping on part of her brother,

the appellant, on account of his past conduct. During the course of investigation, the girl child was recovered and it was found that she had been stabbed. The evidence gathered during investigation showed the complicity of the appellant in the kidnapping of the said child, the knife injuries inflicted on her being serious and of such nature as were likely to result in her death, the knife used in the process statedly having been recovered at the instance of the appellant.

2. On conclusion of investigation, report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was presented on which cognizance was taken by the Metropolitan Magistrate. Eventually, the case was committed to the court of sessions where it was registered as sessions case No.191/2000.

3. The appellant was put on trial on the charge for offences punishable under Sections 364/307 IPC and Section 25 of the Arms Act. The prosecution led evidence by examining Dr. Rajender Kumar (PW-1), Senior Scientific Officer of FSL; ASI Chet Ram (PW-2), the fingerprint expert; Meenakshi (PW-3), the first informant; Head Constable Arjun Pandit (PW-4), Moharrar malkhana; Head Constable Satbir (PW-5), duty officer; Constable Jaipal (PW-6), who had taken the exhibits to FSL; Head Constable Rajender Kumar (PW-7), who had assisted Inspector S.P. Gupta in the investigation; Head Constable Ram Phool (PW-8), who had got the FIR registered; Lalit Tiwari (PW-9), who joined and assisted in the investigation; Major (Dr.) Harkeerat Singh (PW-10), who proved the report, (Ex.PW-10/A) of medical examination in respect of victim; ASI Hari Shanker (PW-11), the

crime team photographer; and Inspector S.P.Gupta (PW-12), SHO of the Police Station who had conducted the investigation.

4. In the statement under Section 313 Cr.P.C., the appellant denied his involvement or complicity in the crimes disputing evidence as incorrect, though declining to lead any evidence in defence.

5. The Additional Sessions Judge by judgment dated 29.08.2002 found the appellant guilty and convicted him on the charge for the offences under Sections 364 and 307 IPC, he proceeding to award punishment in form of rigorous imprisonment for ten years with fine of Rs.10,000/-, in default simple imprisonment for two years, on each count, by order dated 31.08.2002.

6. The present appeal was filed to assail the above mentioned judgment of conviction and order on sentence. The sentence was suspended and the appellant released on bail, pending hearing on the appeal, initially by order dated 14.10.2004, as confirmed by order dated 17.01.2005.

7. At the hearing, it has been submitted by the appellant, who is present in person with his father and sister Meenakshi (PW-3) that he was a juvenile, *i.e.*, less than 17 years old at the time of commission of the offence, and, therefore, benefit of amended law relating to Juvenile Justice, be accorded to him. He has submitted through counsel that he admits his guilt and complicity in the aforementioned crimes, not disputing the evidence that was adduced on the basis of which the conclusions have been recorded. He places reliance on the view taken

by the Supreme Court in *Abdul Razzaq vs. State of U.P.*, (2015) 15 SCC 637.

8. The trial court record reveals that soon after the arrest, during the period of investigation, it had been brought to the notice of the investigating agency, and the court, that the date of birth of the appellant is 6th September, 1981. A certificate dated 10.09.1997 issued by Central Board of Secondary Education declaring he to have passed the Secondary School Examination (Compartmental Examination August, 1997), it confirming the said date of birth of the appellant, was submitted.

9. Taking note of all these facts, indicating he to be a person less than seventeen years on the relevant date, *i.e.*, 10.06.1998, which is the date of offences being committed, as indeed certain medical condition of the appellant, the Additional Sessions Judge, New Delhi had directed he to be released on bail on 13.08.1998. In view of the said material on record, the learned Additional Public Prosecutor fairly concedes that the appellant was less than 17 years old on the date the offences were committed.

10. The offence which is the subject matter of the present case was committed on 10.06.1998. At that point of time, Juvenile Justice Act, 1986 governed the field. The Juvenile Justice (Care and Protection of Children), Act 2000 came to be enacted and brought into force with effect from 28.02.2001. The said law was subsequently amended at least twice and has since been replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015. Be that as it may, immediately

after the appeal at hand had been presented, the Act of 2000 had come to be enforced. In terms of the amended law, as introduced in February 2001, 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 7-A, 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 benefit of the amended law to be taken any time, there being inclusion of a special provision to take care of pending cases, including at the stage of appeal (Section 20).

11. 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.

12. 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.”

13. It was also noted that in *Union of India & Ors. vs. Ex-GNR Ajeet Singh*, (2013) 4 SCC 186 had 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.”

14. Following the said rulings, in case of *Abdul Razzaq* (supra) while leaving the conviction undisturbed, the sentence awarded against him was set aside. On being asked, the learned Additional Public Prosecutor submitted that he had nothing to say in the face of the ratio and result in *Abdul Razzaq* (supra).

15. 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.

16. The appeal is disposed of in above terms.

JANUARY 23, 2019

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R.K.GAUBA, J.