



Crl.A.No.787 of 2017
and Crl.M.P.No.868 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 08.07.2022

Pronounced on: 15.07.2022

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.787 of 2017

and

Crl.M.P.No.868 of 2019

Rakesh

.. Appellant

/versus/

State Rep., by
The Inspector of Police,
D-1, Triplicane Police Station,
Chennai.
Crime No.512 of 2016

.. Respondent

Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code praying to call for the records in connection with the Special C.C.No.1 of 2016 on the file of the Mahila Court/Special Court for cases under POCSO Act /Children's Court, Chennai 104 and set aside the judgment dated 08.10.2017.

For Appellant : Mr.K.Shanmugam

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

J U D G M E N T



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On 16.03.2016, the Inspector of Police attached to D1-Triplicane Police Station, Chennai has registered a complaint in Crime No.512 of 2016 for the offence under Sections 341, 324 and 302 of I.P.C.

2. The *defacto* complainant is one Silambarasan. According to the written complaint, on 15.03.2016 at about 9.00 p.m., he went to the house of Arupulakshmi to buy liquor. There Rakesh, Daya, Velu and others voluntarily provoked him and attacked him causing bleeding injury. On hearing that, his brother Mugilan aged about 24 years came and questioned them. Daya and Velu caught hold of the hands of his brother, Rakesh pierced a knife at the throat of his brother. Thereafter, they attacked him and his brother on head and other parts of body with a blade. He and his brother were profusely bleeding. Both were taken to Rajaji Government Hospital. His brother Mugilan was declared brought dead. Action against the assailants and protection to him and his family sought.

3. On 16.03.2016, at about 1.00 p.m., Rakesh was arrested. In his confession statement besides disclosing the motive for murdering Mugilan, he also agreed to show the place where he has concealed the knife used for the



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crime. Based on the information disclosed by the Rakesh, a blood stained knife was recovered. On completion of investigation, final report against Rakesh and Velu was filed.

4.The XII Metropolitan Magistrate Court on perusing the records, considering the age of the accused split up the case against the 2nd accused Velu aged about 16 years and transferred the case to the Juvenile Justice Board, Kellys, Chennai. After the preliminary assessment as per Section 15 (1) of the Juvenile Justice Act, 2015, this appellant (who was then 17 years old) was transferred to Mahila Court/Special Court for Case under POCSO Act, Chennai to be tried as an adult. However, the Special Court after discussing with the psychologist, has decided that there is no need for trial of the Juvenile as an adult, an enquiry is sufficient.

5. The copies were furnished to the appellant and enquiry was conducted. 10 witnesses were examined on the side of the prosecution. 20 Exhibits and five Material Objects were marked.

6. The Court below pointing out that the occurrence took place on



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15.03.2016 at about 9.00 p.m. The complaint was given on the next day i.e., on 16.03.2016 at 8.15 a.m., PW.1, who sustained injury got admitted in the hospital on 15.03.2016 at 9.30 p.m., and the intimation to the hospital authorities received by the concerned police station. Though they recorded complaint on the next day, since PW.1 was admitted in the hospital, the delay is not fatal to the prosecution case and further held that the evidence of PW.1, PW.4 and PW.5 are in harmony with each other and had clearly establish the guilt of the appellant, in respect of the offence under Section 302 of IPC. However, acquitted his for the offence under Section 341 of IPC. The Court ordered to send him to the Special Home as per Section 18(i)(g) of Juvenile Justice Act.

7. The Learned Judge had recorded his reasons for the said order as below:-

“Alter completion of trial, this Court requested the District Child Protection Officer to give Counselling to the CCL Vide D.No.8972/2017 dt 21.07.2017. As such, District Child Protection Officer insisted the Social Worker to give Counselling to the CCL. Further given Report on 18. 8.2017 as follows:

"Later, Social Worker went to Child Rakesh House



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located at SM Nagar, for Social investigation but he was not found there. So, the Social Worker approached the neighbours house regarding any information about Rakesh. But, they have said that he shifted his house to Near Central. Other than that no details given by neighbors. Only with the help of his phone number we have reached child Rakesh and informed him to be present for Counselling sitting. But, so far he has not come for the sitting. Whenever we contact him he said that he will come for the sitting. Hence I submit this report for your kind information.”

36. Thereafter, this Court call for Report of the Probation Officer. As such, the Probation Officer submitted Report on 11.8.2017. In his Report, the Probation Officer has stated that the CCL permanently residing at No.18, S.M. Nagar, Pallavan Salai, Chennai-2 and suggested to release the CCL on probation of good conduct and placed under the care of his parents for ensuring the good behaviour and CCL well being,

37. Apart from that, this Court also call for Psychological Report from the Expert, as such, addressed a letter to the Director, Institute of Mental Health, Kilpauk, Chennai. In this regard, Dr. B. Sudhakaran, Clinical Psychologist given Report as follows:

“The general psychopathological assessment



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showed that he has below average intellectual function (IQ - 78%) and has poor personality make-up i.e. Psychopathic deviancy. This has to be cautiously accounted on the patients social environment and inter personal circle has strong influence over the individual over all shaping of as a person in his social environment."

38. Thus, on perusal of the Probation Officer's Report dt. 11.8.2017 and District Child Protection Officer's Report dt. 18.8.2017 and Psychological Report dt. 19.9.2017, this Court found that there is a discrepancy with regard to the permanent residence of the CCL in the Reports of Probation Officer and District child Protection Officer. Further, it is found that the suggested cause for the problem is due to his bad friendship and addicted to drugs. Further, the CCL spends most of the day with friends and used to roam. The family of CCL suffers without regular income and depends only on the earnings of his mother.

39. Hence, considering the age, character, family circumstances, antecedents and also keeping in mind the future of the CCL, this Court is of the considered opinion that in view of giving an opportunity rehabilitate it would be just and essential to order him to be sent to the Special Home as per 18(1)(g) of Juvenile Justice (Care and Protraction) Act 2015 for a period of 3 years for providing reformatory services including education, skill development, counselling, behaviour modification therapy



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*and psychiatric support during the period of stay in the
Special Home.”*

8. Aggrieved by this, the present appeal is filed on the ground that the Court below has not properly appreciated the evidence and had arrived at an erroneous conclusion holding the appellant guilty for the offence under Section 302 of IPC.

9. The learned counsel for the appellant submitted that the appellant ought not to have been convicted based on the evidence of sole witness viz. PW.1. The contradiction in the Accident Register - Ex.P5 and F.I.R.- Ex.P.15 regarding number of persons attacked the deceased, not properly appreciated by the Court below.

10. According to the Learned Counsel for the appellant, it was an act done under sudden provocation and not with any pre-motive. As per PW.1 evidence, the deceased went to the appellant along with his friends and picked quarrel. Therefore, the act of the appellant will not attract the punishment under Section 302 of IPC.

11. The learned Government Advocate (Crl.Side) for the State



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after referring the evidence of PW.1 - brother of the deceased and one of the injured person and the Post Mortem certificate - Ex.P2, would submit that the overt act of the appellant is vividly deposed by the eye-witness, who got injured at the hands of the appellant and his associates during the same transaction. The weapon recovered on the information given by the accused and the injury found on the body of the deceased Mugilan will speak for itself. The seat of the attack on the vital part of the deceased would show the clear intention of the accused to cause death and submitted that in fact the Court below ought to have tried the accused as an adult instead of treating him as Juvenile in Conflict with Law (JCL). The reasons stated by the Court below for treating him as JCL and imposing a lessor punishment of three years in fact has caused grave injustice to the victim's family as well as to the Society. Besides P.W.1, the other witnesses to the occurrence have corroborated the evidence of P.W.1. Therefore, the fining of the Court below is to be confirmed.

12. The learned Government Advocate (Crl.Side) for the State further submitted that after the order of three years for reformatory services at Special Home as per Section 18(1)(g) of Juvenile Justice Act, this appellant sought for suspension of sentence pending disposal of the appeal. This Court



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earlier on 18.09.2018, considering the facts of the case opined that if the sentence imposed upon the appellant is suspended, there is a danger of repeating the crime in future. This view was expressed by the Court based on the opinion given by the clinical psychologist. However, subsequently this Court granted suspension of sentence to this appellant.

13. The learned Government Advocate (Crl.Side) beside canvassing the merit of the case of the prosecution would also submit that after suspending the sentence and release of the appellant from Special home, so far he has involved in 11 heinous crimes. He had been once detained under Goondas Act and has become a hard core criminal. He further relying upon the following judgments and submit that though the appellant was enquired as JCL, the sentence of three years has to be completed by him and he may be sent to a regular prison to complete the remaining period of sentence.

(i) Amit Singh Vs. State of Maharashtra and Ors.

[MANU/SC/0920/2011]

(ii) Rishipal Singh Solanki Versus State of Uttar Pradesh and Others

[2021 SCC OnLine SC 1079]

(iii) N. Gowthaman Vs. The Government of Tamil Nadu and Ors.



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[MANU/TN/1918/2016]

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(iv) Hari Ram Versus State of Rajasthan and another [(2009) 13

Supreme Court Cases 211]

14. The learned counsel for the appellant would state that the subsequent conduct of the appellant cannot be taking into account for any purpose. As far as this case is concerned, the prosecution has failed to prove the guilt of the accused for the offence under Section 302 of IPC. Particularly, the prosecution witness itself says that the deceased came to the spot, where there was already a fight and the deceased picked up quarrel with the appellant and his friends. PW.1 evidence also not corroborated by other witnesses. Beside the delay in registering the F.I.R., go strongly against the prosecution case.

15. Heard both sides and the records perused.

16. No doubt, PW.1 is the sole eye witness, who has seen and spoken about the incident and the overt act of the appellant. All other witnesses came to the spot after occurrence. The evidence of PW.1, who is not only witness to the occurrence, but also victim to the occurrence. Hence his



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testimony is wholly reliable Ex.P.6 is the Accident Register of PW.1. Dr.Dinesh Kumar/PW.5, who has recorded the Accident Register [Ex.P6], had deposed that PW.1 was found with injury 1x1x0.5 cm incised wound on the back of his head and contusion on the upper lip. This injured witness P.W.1 has clearly deposed that while the other two accused persons caught hold the hands of his brother (the deceased), this appellant stabbed at his brother's neck and over the body. While perusing the Post Mortem Report - Ex.P2, this Court find that the stab has severed the internal jugular vein. The seat of attack of three major injuries are on the vital part of the body namely head, chest and neck. So by no stretch of imagination one could conclude that the assailant has no intention of cause death or the knowledge that the said injury will cause death.

17. The delay in registering the F.I.R is no significance in this case. While the Accident Register of PW.1 and the evidence of PW.5 proves that the deceased and PW.1 were brought to the hospital on 15.03.2016 at about 9.30 p.m., and the Accident Register recorded immediately on their arrival based on the information given by the attender who brought them i.e., disclosure about the occurrence and the manner in which the injury sustained and the assailants are shown as known persons. Hence the delay in registering



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the F.I.R., cannot be of any advantage to the appellant.

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18. The point remains to answer is a when JCL, held guilty and ordered to be kept in home whether after attaining the age of 21 years, can be detained in prison to undergo the remaining period of imprisonment.

19. The judgments relied by the Learned Government Advocate (Crl.Side) for the respondent are mainly connected with the determination of age of a Juvenile delinquent or in respect of dealing adolescent convict. Particularly, the Division Bench of this Court in ***K.Maruthamuthu v. The Secretary to Government of Tamil Nadu and others*** reported in ***MANU/TN/6372/2021*** and referring the full bench judgment of this Court in ***N.Gowthaman v. The Government of Tamil Nadu and others*** reported in ***MANU/TN/1918/2016***, both relates to dealing of adolescent convict in the light of Borstal Schools.

20. In fact, pursuant to the Full Bench judgment, the Government of Tamil Nadu had recently issued G.O.(Ms).No.328, Home (Pri.IV) Department, dated 29.06.2022 notifying Subsidiary Jails with State to function



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as Borstal Schools. (Meant for adolescent convicts below 23 years)

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21. In *Hari Ram* case cited supra, the Hon'ble Supreme Court while considering a case of a juvenile above 16 years by 13 days on the commission of offence held that after enactment of Juvenile Justice Act 2000, the said juvenile, though the offence committed prior to the amendment and had crossed 16 years he must be dealt under new Act and he can be kept in the custody only for the maximum period prescribed under Juvenile Justice Act 2000 and thereafter, he must be released. In this judgment, the Hon'ble Supreme Court has dealt *in extenso* how a juvenile in conflict with law found guilty to be dealt. For better understanding of the law on this point, the relevant portion of the judgment is extracted below:-

“60. The instant case is covered by the amended provisions of Sections 2(k), 2(l), 7-A and 20 of the Juvenile Justice Act, 2000. However, inasmuch as, the appellant was found to have completed the age of 16 years and 13 days on the date of alleged occurrence, the High Court was of the view that the provisions of the Juvenile Justice Act, 1986, would not apply to the appellant's case. Of course, the High Court, while deciding the matter, did not have the benefit of either the amendment of the Act or the



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introduction of the Juvenile Justice Rules, 2007.

61. Even otherwise, the matter was covered by the decision of this Court in Rajinder Chandra case [(2002) 2 SCC 287 : 2002 SCC (Cri) 333] , wherein this Court, inter alia, held that when a claim of juvenility is raised and on the evidence available two views are possible, the court should lean in favour of holding the offender to be a juvenile in borderline cases.

62. In any event, the statutory provisions have been altered since then and we are now required to consider the question of the claim of the appellant that his date of birth was Kartik Sudi 1, Samvat Year 2039, though no basis has been provided for the fixation of the said date itself in the light of the amended provisions. Often, parents of children, who come from rural backgrounds, are not aware of the actual date of birth of a child, but relate the same to some event which may have taken place simultaneously. In such a situation, the Board and the courts will have to take recourse to the procedure laid down in Rule 12, but such an exercise is not required to be undertaken in the present case since even according to the determination of the appellant's age by the High Court the appellant was below eighteen years of age when the offence was alleged to have been committed.



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63. *Having regard to the views expressed hereinabove, we are unable to sustain the impugned order of the High Court in holding that the provisions of the Juvenile Justice Act, 1986, would not be applicable to the appellant's case since he was allegedly 13 days above the age prescribed.*

64. *In the instant case, the appellant was arrested on 30-11-1998 when the 1986 Act was in force and under clause (h) of Section 2 a juvenile was described to mean a child who had not attained the age of sixteen years or a girl who had not attained the age of eighteen years. It is with the enactment of the Juvenile Justice Act, 2000, that in Section 2(k) a juvenile or child was defined to mean a child who had not completed eighteen years of age which was given prospective prospect (sic effect).*

65. *However, as indicated hereinbefore after the decision in Pratap Singh case [(2005) 3 SCC 551 : 2005 SCC (Cri) 742] , Section 2(l) was amended to define “a juvenile in conflict with law” to mean a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence.*

66. *Section 7-A was introduced in the 2000 Act and Section 20 thereof was amended whereas Rule 12 was*



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included in the Juvenile Justice Rules, 2007, which gave retrospective effect to the provisions of the Juvenile Justice Act, 2000.

67. Section 7-A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act.

68. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.

69. The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the proviso and Explanation were added to Section 20, which made it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of clause (l) of Section 2 of the 2000 Act, and the provisions of the Act would apply as if



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the said provisions had been in force when the alleged offence was committed.

70. In the instant case, there is no controversy that the appellant was about sixteen years of age on the date of commission of the alleged offence and had not completed eighteen years of age. In view of Sections 2(k), 2(l) and 7-A read with Section 20 of the said Act, the provisions thereof would apply to the appellant's case and on the date of the alleged incident it has to be held that he was a juvenile.

71. The appeal has, therefore, to be allowed on the ground that notwithstanding the definition of "juvenile" under the Juvenile Justice Act, 1986, the appellant is covered by the definition of "juvenile" in Section 2(k) and the definition of "juvenile in conflict with law" in Section 2(l) of the Juvenile Justice Act, 2000, as amended.

72. We, therefore, allow the appeal and set aside the order passed by the High Court and in keeping with the provisions of Sections 2(k), 2(l), 7-A and 20 of the Juvenile Justice Act, 2000 and Rules 12 and 98 of the Juvenile Justice Rules, 2007, hold that since the appellant was below 18 years of age at the time of commission of the offence the provisions of the said Act would apply in his case in full force.



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73. The matter is accordingly remitted to the Juvenile Justice Board, Ajmer, for disposal in accordance with law, within three months from the date of receipt of a copy of this order, having regard to the fact that the offence is alleged to have been committed more than ten years ago. If, however, the appellant has been in detention for a period which is more than the maximum period for which a juvenile may be confined to a special home, the Board shall release the appellant from custody forthwith.”(emphasis added)

22. The above said judgment is about the custody of the convict tried as juvenile in the home beyond maximum period prescribed under the Juvenile Justice Act. The facts on record indicates that JCL after release is indulging in criminal activities or associating with people with criminal antecedents and has become hard core criminal. The procedure contemplated under Rule 13 of the Juvenile Justice (Care and Protection of Children Act, 2015) cannot be applied in his case, in view of the above said reasons.

23. In this case, the juvenile in conflict with law was in home only for a period about one year and six months and thereafter, his sentence has been suspended. Therefore, the remaining period of sentence cannot be waived for



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the reason he has attained majority and cannot be sent to home. The harmonious way of reading the provisions of law, the spirit of the Juvenile Justice Act which emphasis the care and protection of the juvenile in conflict with law *qua* the public interest in case of offence of grave nature, the JCL who has now attained majority and crossed 23 years is to be detained in prison. Neither the home nor the Subsidiary Jail is meant for this appellant. Therefore, this Court confirms the order of the trial Court and thereby dismissed this Criminal Appeal. The respondent is directed to secure the appellant and commit him to Central Prison to undergo the remaining period of sentence. The period already undergone by the appellant shall be set off under Section 428 of Cr.P.C.

24. Accordingly, this Criminal Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed.

15.07.2022

Index : Yes.
Internet : Yes.
Speaking order/Non-speaking order
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Dr.G.JAYACHANDRAN,J.

rpl/bsm

To,

1. The Mahila Court/Special Court for Case under POCSO Act/Children's Court, Chennai 104.
- 2.The Inspector of Police, D-1, Triplicane Police Station, Chennai.
- 3.The Public Prosecutor, High Court, Madras.

Pre-delivery Judgment made in
Criminal Appeal No.787 of 2017
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15.07.2022