

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY, THE ELEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE K. SUJANA**

CRIMINAL APPEAL NO: 167 OF 2014

Criminal Appeal Under Section 374 (2) of Cr.P.C against the Judgment dated 31-12-2013 in S.C.No.242 of 2013 on the file of the Court of the Sessions, Nizamabad Division Nizamabad

Between:

Kotagiri Ganga Prasad, S/o Nadipi Gangadhar, occ Coolie, R/o Kupkal Village of Bheemgal Mandal, Nizamabad District.

...Apellant/Accused

AND

The State of Telangana, Rep by its Public Prosecutor, through Inspector of Police, Bheemgal, Nizamabad District.

...Complainant/Respodents

Counsel for the Appellant : SRI. K VASANTH RAO

**Counsel for the Respondent: SRI. MUTHYALA MURALIDHAR, ADDITIONAL
PUBLIC PROSECUTOR**

The Court delivered the following: JUDGMENT

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE K. SUJANA

CRIMINAL APPEAL No.167 OF 2014

JUDGMENT: (per Hon'ble Sri Justice K.Lakshman)

Heard Sri K. Vasanth Rao, learned counsel for appellant and Sri Muthyala Muralidhar, learned Additional public Prosecutor appearing on behalf of the respondent.

2. This Criminal Appeal is filed against the judgment dated 31.12.2013 in S.C.No.242 of 2013 passed by learned Sessions Judge, Nizamabad Division, Nizamabad. He was convicted for the offence under Section - 302 of IPC and sentenced him to undergo life imprisonment. He is in jail from 31.12.2013.

3. It is relevant to note that one Sri Chilaka Satyam had filed writ petition No.39592 of 2017 seeking to declare the appellant herein - 'adolescent offender' confined in the 3rd respondent jail is entitled to be transferred to the 4th respondent Borstal School, Nizamabad, and to direct respondent No.1 therein to forthwith transfer the 'adolescent offender' from the 3rd respondent jail to the

4th respondent Borstal School in accordance with section 10-A of the Andhra Pradesh Borstal School Act, 1925/Corresponding Telangana Act.

4. According to him, the appellant is an adolescent offender as on the date of incident and he has filed copy of S.S.C. Marks Memo issued by the Andhra Pradesh Open School Society, Hyderabad, through its Coordinator, Z.P.H.S. (G), Bheemgal, Nizamabad. Considering the said aspects and also the provisions of the Telangana Borstal School Act, more particularly, Sections - 2 (1), 8 and 10-A of the Act, we have considered the age of the appellant herein as on the date of conviction as 20 years 6 months and 11 days, as on the date of representation dated 17.07.2017, he was 24 years 7 days, as on the date of filing writ petition, he was 24 years, 5 months one day and as on the date of deciding writ petition, he was 30 years 6 months.

5. Considering the said aspects and also Section 8 of the Act and principle laid down in several judgments referred therein, we have dismissed the writ petition on the ground that, the appellant herein - adolescent offender is not entitled for benefit under the

provisions of the Act. However, we have held that as on the date of conviction, he was 20 years 6 months and 11 days.

6. In **Jayendra v. State of U.P.**¹, the Apex Court considered the provisions of the U.P. Children Act and also the age of the accused therein as 18 years, sustained the conviction against the accused therein and quashed the sentence imposed by the trial Court. The Apex Court also directed the accused therein to release forthwith.

7. In **Pradeep Kumar v. State of U.P.**², a Three-Judge Bench of the Apex Court considering the age of the adolescent offender therein as on the date of conviction judgment as 30 years held that there is no question of sending the adolescent offender to an approved school under the U.P. Children Act for detention. Thus, the Apex Court while confirming the conviction of the appellant therein under all the charges framed against him quashed the sentences awarded against him and directed to release him forthwith.

¹. (1981) 4 SCC 149

². 1995 Supp. (4) SCC 419

8. In **Manda Raju @ Mandula Raju v. State of A.P.**³ a Division Bench of the combined High Court of Andhra Pradesh at Hyderabad considering the age of the appellant therein which was less than 18 years as on the date of commission of offences held that accused therein is entitled to be released from the Central Prison, kept under protection of his mother in accordance with Section - 15 of Juvenile Justice Act, 2000. But, the facts of the present case are slightly different. The appellant herein - adolescent offender was 20 years 6 months and 11 days as on the date of conviction.

9. In **Bhoop Ram v. State of U.P.**⁴ the Apex Court considered the question whether the appellant who had been convicted and sentenced along with certain adult accused should have been treated as a child within the meaning of Section 2(4) of the U.P. Children Act, 1951 and sent to the approved school for detention therein till he attained the age of 18 years instead of being sentenced to undergo imprisonment in jail. The Court after considering the material on record, the appellant therein could not

³. 2011 (2) ALD (Crl.) 669 AP (DB)

⁴. (1989) 3 SCC 1

have completed 16 years age as on the date when the offence was committed and held that the appellant should have been dealt under the UP Children Act instead of being sentenced to imprisonment when he was convicted by the Sessions Judge under various grounds. Since, the appellant had by the time the appeal was heard by the Apex Court, reached the age of more than 28 years, the Apex Court sustained the conviction of the appellant therein under all the charges framed against him, but however quashed the sentence awarded to him and direct his release forthwith.

10. In **R. Krishna v. Govt. of A.P.**⁵, learned Single Judge of Andhra Pradesh High Court relying on a Division Bench judgment in **Public Prosecutor (AP) v. Mohan Rao**⁶ and also Division Bench Judgment of A.P. High Court in **State of Andhra Pradesh v. Komalla Krishnaiah**⁷, **Bhola Bhagat v. State of Bihar**⁸, **Jayendra**¹ and **Bhoop Ram**⁴ held in paragraph Nos.19 and 20 considered the scope of Sections - 8 and 10 of the Act and the same are extracted below:

⁵. 2006 (1) ALD (Crl.) 834 (AP)

⁶. 1963 (2) An.W.R. 479

⁷. MANU/AP/0098

⁸. (1997) 8 SCC 720

“It is true that under Section 8 of the Act while passing a sentence of detention in a Borstal School, the term of detention shall not be extended beyond the date on which the adolescent offender will attain the age of 23 years. However, Section 10-A of the Act does not contain any such restriction and there is no other provision under the Act which either expressly or by way of implication extends the restriction under Section 8 of the Act to the power conferred on the Government to transfer an offender to a Borstal School under Section 10-A of the Act. On the other hand, Sub section (2) of Section 10-A of the Act which was inserted under A.P. Borstal Schools (Amendment) Act, 2001 (Act No.3 of 2001) mandates that an offender who is transferred to the Borstal School under Sub-section (1) of Section 10-A of the Act shall be detained for a minimum period of two years. Sub-section (2) of Section 10-A of the Act which starts with a non-obstante clause makes it clear that notwithstanding the restriction imposed under Section 8 of the Act the term of detention of an offender who is transferred to a Borstal School under Section 10-A of the Act shall be for a minimum period of two years. Even the Statement of Objects and Reasons to the

Amendment Act, 2001 (Act No.3 of 2001) show that the insertion of Sub-section (2) is only for the purpose of making it clear that the term of detention of an offender who is transferred to a Borstal School under Section 10-A of the Act shall be for a minimum period of two years notwithstanding the requirement of Section 8 of the Act that no inmate can be detained in a Borstal School after attaining the age of 23 years. Hence, it cannot be said that there is any embargo to order transfer of the offender to a Borstal School under Section 10-A of the Act even where the offender has crossed the age of 23 years.

For the aforesaid reasons and since admittedly the petitioner's son was less than 21 years of age by the date of the offence as well as the date of conviction, as observed by the Supreme Court in BHOLA BHAGAT'S case (3 supra), it would be appropriate to extend the benefit of Socially Oriented Legislation to him thereby affording him an opportunity to reform himself and to reclaim as useful member of the society. Hence, in my considered opinion, instead of compelling the son of the petitioner to undergo remaining sentence in a regular prison in the company of hardened criminals, it would be just and proper to transfer him to a Borstal

School for detention for a period of two years
for reformation.

11. In **Komalla Krishnaiah**⁷, the Division Bench considering the age of the adolescent offender therein i.e., 20 years 03 months as on the date of conviction, the State Government rejected his request twice and that he is going to attain age of 23 years shortly, in the interest of justice directed the State Government to transfer the offender to Borstal School in exercise of its power under Article - 226 of the Constitution of India. But, in the present case, the facts are slightly different. As discussed supra, as on the date of making representation dated 17.07.2017 and as on the date of filing writ petition, the adolescent offender crossed 23 years.

12. In **Superintendent, Central Prison, Chenchalguda, Hyderabad v. C. Narasimhulu**⁹, the Division Bench relying on the principle laid down in **Komalla Krishnaiah**⁷ and also considering the age of the adolescent offender therein was 20 years, directed to transfer the adolescent offender to Borstal

⁹. 1999 (1) ALT 107 DB

School. As discussed supra, in the present case, the facts are slightly different and the adolescent offender crossed 23 years as on the date of making representation and filing writ petition.

13. In **Krishna Bhagwan v. State of Bihar**¹⁰, the Full Bench of Patna High Court held that the question relating to the determination of the age of the accused and the belated raising of that plea and opined that though the normal rule is that a plea unless it goes to the very root of the jurisdiction should not be allowed to be taken at the appellate stage especially when it requires investigation into a question of fact but a plea that the accused in question was a "child" within the meaning of the Act can be entertained at the appellate stage also and should not be overlooked on technical grounds.

14. Relying on the said principle, in **Bhola Bhagat**⁸ also considering the age of the adolescent offender therein was 18 years, that they were children and also on examination of the provisions of the Bihar Children Act, 1970, the Apex Court held

¹⁰. AIR 1989 Pat 217

that they shall be given benefit under Bihar Children Act, 1970 which is social beneficial enactment.

15. Considering the principles laid down in the aforesaid judgments and also the fact that the appellant herein - adolescent offender was aged 20 years 6 months 11 months as on the date of conviction i.e. 31.12.2013, that he was 24 years 17 days as on the date of submission of representation requesting the State to send him to Borstal School and that he has already crossed 23 years, we have dismissed the writ petition.

16. The allegation against the appellant herein is that he has killed his father. PW.1, who is his mother, specifically deposed that the appellant herein has killed her husband who was deaf and dumb. She is an eye witness. She has narrated the entire incident. Nothing contra was elicited from her during cross-examination. PW.2, neighbor, also supported the prosecution. PW.4 is the *panch* witness for recovery of MOs.1 to 4. PW.5, cousin of the accused, deposed that appellant herein made extra judicial confession before him and nothing contra was elicited from him. Thus, relying on the depositions of the said witnesses including medical evidence,

Ex.P6 - PME report and Ex.P7 - FSL Report, the trial Court recorded conviction against the appellant herein vide impugned judgment dated 31.12.2023.

17. Thus, the prosecution proved the motive and guilt of the accused beyond reasonable doubt by producing cogent evidence. It is a reasoned order and well-founded. Therefore, we are not inclined to set aside the conviction recorded against the appellant herein - accused vide impugned judgment.

18. However, as discussed above, the appellant herein - adolescent offender was aged 20 years 6 months 11 months as on the date of conviction i.e., 31.12.2013. As discussed above, as on the date of making representation dated 17.07.2017, he was 24 years 17 days and as on the date of filing of the aforesaid writ petition he was 24 years 5 months 1 day and as on the date of pronouncement of the order in the said writ petition he was 30 years 6 months, we have dismissed the said writ petition as we were not inclined to send the appellant herein to Borstal School. We gave a specific finding that he was 20 years 6 months 11 days as on the date of conviction. In view of the principle laid down in

the aforesaid judgments and discussion supra, we are inclined to set aside the sentence imposed on him.

19. Thus, this appeal is allowed in part confirming the conviction recorded against the appellant herein, and setting aside the sentence imposed on him. He is in jail from 07.02.2013 to 12.11.2013 and from 31.12.2013 onwards. Therefore, the Superintendent, District Jail, Nizamabad, is directed to set the appellant herein - accused free forthwith if he is no longer required in any other criminal case.

As a sequel, the miscellaneous applications, if any, pending in the appeal shall stand closed.

Sd/- B.S.CHIRANJEEVI
JOINT REGISTRAR

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SECTION OFFICER

To,

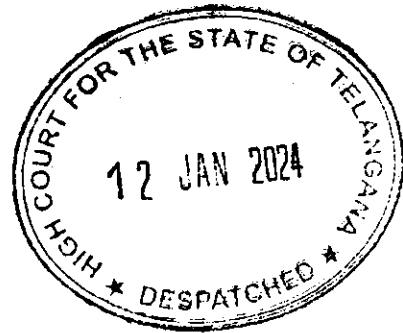
1. The Sessions Judge, Nizamabad Division, Nizamabad (with record)
2. The Additional Judicial First Class Magistrate, Armoor, Nizamabad
3. One CC to SRI. K VASANTH RAO, Advocate [OPUC]
4. The Superintendent, District Jail, Nizamabad (By Speed Post)
5. The Station House Officer, Bheemgal Police station, Nizamabad
6. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad [OUT]
7. Two CD Copies

ADK



HIGH COURT
DATED:11/01/2024

JUDGMENT
CRLA.No.167 of 2014



PARTLY ALLOWING THE CRLA

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K. N. S.
12/1/2024