

(2008) 08 JH CK 0036
In the Jharkhand High Court

Ashok Kumar Singh and Others

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Juvenile Justice (Care and Protection of Children) (Amendment) Act, 2006 — Section 16, 2

Penal Code, 1860 (IPC) — Section 149, 302, 342

Citation : (2008) 4 JCR 373

Hon'ble Judges : D.P. Singh, J; Amareshwar Sahay, J

Bench : Division Bench

Judgement

1. The present two appeals arise out of the same impugned judgment and, as such, both the appeals were taken up and heard together and are being disposed of by this common judgment.

2. Both the appeals are against the impugned judgment of the 2nd Additional Sessions Judge, Dumka in Sessions Case No. 270 of 1984, whereby the appellants of both the appeals have been convicted for the offences u/s 302/149, 342 IPC and they have been sentenced to undergo R.I. for life for the offences u/s 302/149 IPC and also R.I. for one year u/s 342 IPC. However, both the sentences were directed to run concurrently,

3. The prosecution case, in short, is that on 24/11/1983, the informant had gone to witness a film in Amarchitra Mandir Cinema Hall in the town of Dumka in the first show, i.e. from 6.00 p.m. to 9.00 p.m. He came out of the Cinema Hall during the interval and was standing alone just outside the Cinema Hall premises when the accused and other accused persons alongwith 5-6 miscreants suddenly appeared and surrounded the informant and started assaulting him by means of Chhura. Consequent to which he fell down. On alarm being raised by him the witnesses arrived there but by that time the miscreants fled away.

4. The genesis of the occurrence is said to be that on the same day in the

morning there was a quarrel amongst some boys in Zila School, which was pacified with the intervention of the informant on account of which the accused persons had threatened the informant of dire consequences.

5. Immediately after the occurrence the informant was rushed to Dumka Sadar Hospital where his Fardbeyan was recorded on 24/11/1983 at 9.30 hours. On the basis of which formal FIR was drawn and investigation was taken up. In the hospital the dying declaration of the informant was recorded, which has been marked as Ext.-5 and, thereafter, the informant succumb to the injuries. The Post Mortem examination of the deceased was done by Dr. Bimal Kumar (PW-9) and the following ante mortem injuries were found on the persons of the deceased:

(i) Stitched wound of 1-1/2" long over the right hypochondrial region of abdomen near to the midline.

(ii) Stitched wound 1" over the right hypochondrial region of the abdomen lateral to the injury No. (i).

(iii) Stitched wound 1" long at back of the chest right side of vertebral column at the level of the 9th vertebra.

(iv) Operative stitched wound 8" long over right para-median region of the abdomen.

(v) One bruise of 1" x 1/2" over the right temporal region. On desecation no bone injury was detected.

(vi) On desecation the injury Nos. 1 and 2 were of clear and sharp margin with depth communicating intraperitoneally.

(vii) Injury No. 3 was also of clear and sharp cut margin with depth 1 1/2". On further desecation of abdominal wound, the following intra abdominal injuries were found:

(a) Stitched wound at two places over the right lower of the liver about 1 1/2" long and another one medial to it was about 1" long.

(b) Stitched wound at the greater curvature of stomach near pylon and was about 2" long.

(c) A big haemotoma was found in transverse muscular and retroperitoneal space of right side.

6. In course of investigation blood stained dagger was recovered from the house of the appellants Motilal Yadav and eventually the charge sheet was submitted u/s 302/149, 342 IPC against all the seven accused persons and the case was committed to the Court of Sessions for trial.

7. In course of trial altogether 12 witnesses were examined on behalf of the prosecution to establish the charges against the accused persons.

8. The learned trial court on the basis of the materials on record both oral and documentaiy, found the appellants guilty and, thereby, convicted them for the offences u/s 302/149, 342 IPC as has already been stated herein above.

9. Mr. Rajeeva Sharma, learned senior counsel appearing for the appellants in Criminal Appeal No. 96 of 1990 and Mr. Delip Kumar Prasad, learned Counsel appearing for the appellant in Criminal Appeal No. 99 of 1990 after arguing for a while on merit, submitted that they arc not challenging the conviction of the appellants by the trial Court but they are challenging the sentences imposed on them on the ground that the appellants are entitled to the benefit of Juvenile Justice (Care and Protection of Children) Act in view of the fact that even according to the prosecution; all the appellants were Juvenile on the date of the alleged occurrence took place.

10. It is submitted that the occurrence took place on 24/11/1983 and the statements of the accused persons were recorded u/s 313 Cr. P.C. on 19/07/1989 and on that day their age was found to be as under:

Ashok Kumar Singh to be 22 years

Sapan Kumar Sah to be 21 years

Bimal Kumar Sah to be 24 years

Ranjit Kumar Raut to be 22 years

Delip Kumar Singh to be 23 years and

Motilal Yadav to be 21 years.

11. The age of the present appellants has also been assessed by the learned Sessions Judge in the impugned judgment on 05/03/1990, which has been recorded as follows:

Ashok Kumar Singh aged about 22 years

Prem Kumar Verma aged about 18 years (Since acquitted)

Sapan Kumar Sah aged about 21 years

Bimal Kumar Sah aged about 24 years

Ranjit Kumar Raut aged about 22 years

Delip Kumar Singh aged about 23 years and

Motilal Yadav aged about 21 years.

Therefore, apparently the appellants were below the age of 18 years on the date of alleged occurrence and, therefore, according to Section 2(K) of the Juvenile Justice (Care and Protection of Children) Act, they are juvenile or child and therefore, in view of Section 16 of the Juvenile Justice (Care and Protection of Children) Act interalia provides no juvenile can be sentenced to death or life

imprisonment or committed to prison in default of payment of fine or in default of furnishing security.

12. The fact that on the date of the occurrence in question the appellants had not completed 18 years of age has not been doubted or questioned by the State. The parties have therefore accepted the correctness of the estimate of the age of the appellants as given by the trial Court.

13. In such a situation, all these appellants are entitled to the benefit of the provisions of the Juvenile Justice (Care and Protection of Children) Act. This point has already been settled by several decisions of the Supreme Court. The reference in this regard may be had in the case of Bholu Bhagat Vs. State of Bihar, and in the case of "Upendra Kumar v. State of Bihar reported in (2005) 3 SCC 592."

14. Accordingly, following the aforesaid decisions of the Supreme Court, we sustain the conviction of the appellants for the offences for which they have been found guilty by the Court of Sessions, i.e. trial court. However, the sentences awarded to the appellants are hereby set aside. The appellants, who are on bail, are discharged from the liabilities of their bail bonds.

Both the appeal thus stand disposed of.