

(1994) 10 AP CK 0007

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 259 of 1993

Bandela Ailaiah

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 2, 209, 27, 313, 5

Penal Code, 1860 (IPC) — Section 148, 149, 302, 506

Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3, 6

Citation : (1994) 2 ALT 519 : (1994) 2 AnWR 551 : (1995) 2 RCR(Criminal) 169

Hon'ble Judges : M.N. Rao, J;B.K. Somasekhara, J

Bench : Division Bench

Advocate : I. Aga Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

B.K. Somasekhara, J.—The appellant is the accused No. 3 in SC No. 259/93 on the file of the Sessions Judge, Karimnagar. He along with five other accused were prosecuted for the offences punishable under sections 148, 302, 506 and 149 IPC, Section 27 of Indian Arms Act and Sections 3 and 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the "TADA"). The case abated as against accused Nos. 1 and 2 as they died pending trial. The case was split up as between A4 and others as he was absconding. Thus, only accused Nos. 3, 5 and 6 were tried for the charges as stated above. They pleaded not guilty to the charges and made the prosecution to produce ocular evidence of PW1 to 16, documentary evidence of Exs.P 1 to P 36 and material objects 1 to 19. They were examined u/s 313 Cr.P.C. and called upon to enter defence. The defence evidence did not come in. The learned Sessions Judge after hearing both the sides and on the material mentioned supra, acquitted the accused Nos. 5 and 6 of all the charges, accused No. 3 of the charges u/s 27 of Indian Arms Act and Sections 3 and 6 of the TADA, but convicted Accused No. 3 for the offences punishable under sections 148, 302 r/w 149 and 506 r/w 149 of IPC and sentenced him to undergo imprisonment for life

regarding the offence u/s 302 r/w 149 IPC, two years rigorous imprisonment regarding the offence u/s 148 of IPC and two years rigorous imprisonment regarding the offence u/s 506 r/w 149 IPC. The sentences were directed to run concurrently.

2. The case of the prosecution is that all the accused formed themselves into an unlawful assembly on 30-6-1991 at about 8.15 p.m. armed with deadly weapons with the common object of causing the death of Madireddi Bhaskar Rao son of Paparao, that they were also armed with fire arms without licence and in furtherance of their common object, intentionally caused the death of Madireddi Bhaskara Rao and thus committed the offence as stated above. The accused 1, 3 and 4 were the members of Singareni Karmika Samakhya party affiliated to CPI (M.L.) Peoples War Group. They were expelled from the party. The accused No. 1 formed a new party called as CPI (M.L.) Praja Seva Group and accused 2 to 6 joined him in that party. The deceased Madireddi Bhaskar Rao was a labour leader and was the Deputy General Secretary of AITUC at Godavari Khani. Thus due to rivalry between the two groups, the accused had the motive to murder Madireddi Bhaskar Rao who belonged to the other group. It appears that the deceased was always carrying a pistol, with him. It appears that accused No. 1 wanted to murder the deceased, snatch away the pistol with him and thereby get wide publicity and acquire popularity to his party in the coal belt area and scare away the people there. On 30-6-1991 accused Nos. 1 to 6 were waiting in front of the AITUC office at Godavarikhani. Then the deceased came out of the office at about 8.15 p.m. and went near his car when accused 1 to 3 held him and took him to some distance on the pretext of talking to him when accused No. 2 stabbed the deceased with a knife indiscriminately and caused him injuries leading to his death. The accused 1 to 3 threatened the employees of AITUC with a revolver and a toy-revolver whereas accused 4 to 6 kept watch at the place to facilitate accused 1 to 3 to commit the offences. It appears that PWs 1 and 2 - Shaik Vazeer and Mohammed Yakub, the driver and the office-boy in the AITUC office took the deceased to Singareni Collieries Hospital in a car where the Doctor examined him and pronounced him dead. On the first information report given by PW 1 - Shaik Vazeer, the Inspector of Police, Godavarikhani Town registered a case and investigated and on finding the accused guilty of the alleged offences, filed the charge sheet.

3. The case of the defence is one of total denial. As already pointed out, the learned Sessions Judge found only accused 1 to 3 to be guilty of the charges as stated above and passed the impugned order of conviction and sentence as against them.

4. The judgment of the learned Sessions Judge leading to the impugned order of conviction and sentence is challenged in all respects. While Mr. Aga Reddy, the learned Advocate for the appellant and Shri Bhagiradha Rao, the learned Public Prosecutor for the State addressed elaborate arguments in regard to the controversies and while the matter was so being probed by us on merits, the age

of the accused at the time of offence as suggested to the Investigating Officer and as dealt with by the learned Sessions Judge glared at us to query, if he is a juvenile delinquent and if the provisions of Juvenile Justice Act, 1986 would bear operation on the result of this appeal. So we directed an inquiry into his age by the learned Sessions Judge Shri Ch. S. Krishna Rao who with all promptitude and pains held an inquiry and reported the age of the appellant as 13 years on the date of offence namely 30-6-1991 and a 14 years on the date on which the case was posted for trial. The report of the learned Sessions Judge dated 15-9-94 remains unassailed by both the sides. This court finds no reason to reject the same. With such a report and the findings of the learned Sessions Judge, it may be pertinent to record a finding that the appellant - accused No. 3 had completed the age of 13 years as on 30-6-1991, completed the age of 14 years as on the date when trial was started, he was aged 14 years and 7 months as on 29-1-93 when the impugned judgment and the order of conviction and sentence were passed by the learned Sessions Judge and he completed the age of 15 years when the matter was heard by this court on 30-6-93 and he was aged 16 years and 3 months when we heard the matter again on 30-6-94.

5. We are thus affronted with these questions :

(1) Whether the provisions of Juvenile Justice Act, 1986 are operative in this case ?

a) if so, whether the Sessions Court. Karimnagar had powers and jurisdiction to try the appellant-accused No. 3 under Chapter XVIII of Cr.P.C. and to

b) convict and sentence him for the charges established against him ?

c) If not, whether the impugned Judgment and order or conviction and sentence can be sustained ?

(2) What order to be passed by this Court in this appeal ?

6. Juvenile Justice Act, 1986 (No. 53 of 1986) (hereinafter referred to as "the Act") came into force on 3-12-1986 and has been in operation in the whole country in as much as in all the States including the State of Andhra Pradesh. As the Preamble of the Act and the Statement of Objects and Reasons contemplated and spelt out in the Parliament, this is "an Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of delinquent juveniles". The Statement of Objects and Reasons prefixed to the Act propel the real intention of the legislature to make the Act a self-contained Code in regard to juvenile justice. Section 63 of the Act categorically and in one stroke repeals any law in force in any state corresponding to this Act barring the savings clause in the proviso as hereunder :

"63. Repeal and savings :- If immediately before the date on which this Act comes into force in any State, there is in force in that State, any law corresponding to this Act, that law shall stand repealed on the said date :

Provided that the repeal shall not affect :-

(a) the previous operation of any law so repealed or anything duly done or suffered thereunder; or

(b) any right privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid :

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed."

Since the Act is in force in the State of Andhra Pradesh from the date it came into force, all or any law in force on such date in the State of Andhra Pradesh corresponding to this Act are repealed.

7. Item No. 3 of Statement of Objects and Reasons to the Act itself emphatically declare that "as its various provisions come into force in different parts of the country they would replace the corresponding laws on the subject such as the Children Act, 1960 and other State enactments on the subject "Incidentally, Section 27 of Cr.P.C. which regulates the procedure and jurisdiction of Courts to deal with juveniles only in regard to the offences not punishable with death or imprisonment for life should also be taken as repealed by Section 63 of Act.

8. The Act not only classifies particular class of persons and delinquents called juveniles but also provides independent machinery to deal with them to achieve the object and purpose of the Act in its true spirit. The subject of the Act being the juveniles, they are classified into three categories viz., (1) Neglected juveniles (S. 2(1)). Uncontrollable juveniles (S. 17) and Delinquent juveniles (S. 2(e)). The classification of a person to be called a juvenile is based on age to mean a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years (S. 2(h)). A neglected juvenile is defined in Section 2(1) of the Act to mean : a juvenile who -

i) is found begging or

ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute;

iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or

iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life;

v) who is being or is likely to be abused or exploited for immoral or illegal purpose or unconscionable gain.

Uncontrollable juvenile's is not defined but meant to be such a person upon whom a parent or guardian is not able to exercise proper care and control as explained in Section 17 of the Act. "Delinquent juvenile" means a juvenile who has been found to have committed an offence as defined in Section 2(e) of the Act. The offence is defined in Section 2(1) to mean an offence punishable under any law for the time being in force. Therefore, now a combined reading of sub-clauses (e), (h) and (n) of Section of the Act would clearly classify for the purpose of the Act "delinquent juvenile" as a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years, who has been found to have committed an offence punishable under any law for the time being in force. Therefore, age being the criteria for such classification, the appellant answered the description of a delinquent juvenile since he had not completed the age of 16 years either on the date of commission of the alleged offence on 30-6-91 or when he was found to have been committed an offence punishable u/s 302 read with Section 149 of IPC as on the date of the trial and the date of judgment leading to the impugned order of conviction and sentence passed by the trial court. As already pointed out, he patently continued as such, till 30-6-94 when he completed the age of 16 years. Without reservation in that status, he was entitled to be governed by the provisions of the Act atleast till 30-6-1994.

9. The Act clearly enumerates the competent authorities and the institutions for juveniles under Chapter II namely Juvenile Welfare Boards (S. 4), Juvenile Courts (S. 5), Juvenile Homes (S. 9), Special Homes (S. 10), Observation Homes (S. 11) and After-care Organisations (S. 12), Juvenile Welfare Board will be constituted by the State Government for exercising the powers and discharging the duties conferred or imposed on such Board in relation to neglected juveniles under the Act (S. 4). A Board shall consist of a Chairman and such other members as the State Government thinks fit to appoint (S. 4(2)). Juvenile courts will be constituted for any area by the State Government for exercising the powers and discharging the duties conferred or imposed in such court in relation to the delinquent juveniles under the Act (S. 5(1)). A Juvenile Court shall consist of such number of Metropolitan Magistrates or Judicial Magistrates of the first class, as the case may be, forming a Bench as the State Government thinks fit to appoint (S. 5(2)). Such Juvenile Courts shall be assisted by a panel of two honorary social workers possessing such qualifications as may be prescribed of whom at least one shall be a woman and such panel shall be appointed by the State Government (S. 5(3)). Where no Board or juvenile court has been constituted for any area, the powers conferred on them by or under the Act shall be exercised in the particular area only by (a) the District Magistrate or (b) the Sub Divisional Magistrate, or (c) any Metropolitan Magistrate or Judicial Magistrate of the first Class, as the case may be (S. 7(2)). It may be clarified that exercise of powers of Juvenile Welfare Board will be only by District Magistrate or Sub Divisional Magistrate and exercise of powers of Juvenile Court

will be only by Metropolitan Magistrate or Judicial Magistrate of the First Class and not vice versa. Save as otherwise expressly provided in the Act, Juvenile Welfare Board will have power to deal exclusively with all proceedings under the Act relating to neglected juvenile where as Juvenile Court will have power to deal exclusively with all proceedings under the Act relating to delinquent juveniles (S. 7(1)). By reading Sections 15, 16 and 17 together, the Act appears to deal with uncontrollable juveniles as neglected juveniles by the Welfare Board.

The clear intention of the legislature that no ordinary court constituted u/s 6 of Cr PC could deal with the delinquent juveniles is made emphatic in the Act. Section 5(1) of the Act reads :

"5. Juvenile Courts :- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, by notification in the Official Gazette, constitute for any area specified in the notification, one or more Juvenile Courts for exercising the powers and discharging the duties conferred or imposed on such Court in relation to delinquent juvenile under this Act."

The simple expression therein contemplates a specific class of court called "Juvenile Court". As classified which cannot be one of the classes of criminal courts enumerated under sub clauses (i) to (iv) of Section 6 of Cr.P.C. Section 7(1) of the Act to read thus :

"7. Powers of Board and Juvenile Court :-

(1) Where a Board or a Juvenile Court has been constituted for any area, such Board or Court, shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act have power to deal exclusively with all proceedings under this Act relating to neglected juveniles or delinquent juveniles, as the case may be"

"Exclusively" is synonym to absolute ouster and in pari material with the expression triable "exclusively" used in Section 209 of the Code of Criminal Procedure. A combined reading of Section 5(1) and Section 7(1) of the Act would produce an inevitable result that except the court called "juvenile court" constituted under the Act to exercise the powers and perform the duties, no other court or authority shall have jurisdiction or power to deal with delinquent juveniles in any proceedings under the Act or any other proceedings in any other law for the time being in force. The consequential effect is that none of the courts namely - Court of Sessions, Judicial Magistrate of First Class, Metropolitan Magistrate, Judicial Magistrate of the II Class or Executive Magistrate in the area in which the delinquent is said to have committed an offence, had any power or jurisdiction to deal either with the delinquent juvenile or the proceedings against him in relation to an offence alleged to have committed by him. However, if no Juvenile Court is constituted u/s 5 of Act, the Magistrate of Ist Class in whose jurisdiction the offence was committed by the appellant will be entitled to exercise the powers conferred on the Juvenile Court under the Act. Admittedly,

the appellant who is a juvenile delinquent has been dealt with and the proceedings against him are also dealt with by the Sessions Judge, Karimnagar which is totally repugnant to the provisions of the Act as stated above.

10. The learned Public Prosecutor has raised a serious contention whether there were any proceedings under the Act to be exclusively dealt with by the Juvenile Court as laid down in Section 7(1) of the Act as the case against the appellant and other accused was committed to the Court of Sessions u/s 209 of Cr PC after taking cognizance of the offences and, therefore, the learned Sessions Judge was entitled to try the offences against the appellant under Chapter XXVIII of Cr PC. The contention appears to have no merit in view of the clear provisions in the Act regarding the powers of the Juvenile Court and the procedure laid down therein to deal with the delinquent juveniles by the court constituted u/s 5 of the Act. In the first place, as already pointed out, none of the courts classified u/s 6 of Cr.P.C. would be a juvenile court constituted within the meaning of Section 5 of the Act. Therefore, the Court of Sessions, Karimnagar exercising the powers of deal with the appellant and the proceedings before him either under Chapter XXVIII of Cr.P.C. or under the provisions of the Act would not arise. It cannot be forgotten that when the first information was lodged and registered against the appellant in Crime No. 128/91 of Godavarikhani I Town Police Station and registered the proceedings should be taken as having commenced against him Admittedly, he was brought before the concerned Judicial Magistrate of Ist Class when the was remanded to judicial custody by the Magistrate. At least at that stage, the proceedings against the appellant were commenced before the court. The term "proceeding" is not defined in Section 2 of Cr.P.C. but Section 2(i) of Cr.P.C. defines "judicial proceeding" to include any proceeding in the course of which evidence is or may be legally taken on oath. In that sense the matter in relation to the appellant both before the jurisdictional magistrate and the Sessions Court was definitely a judicial proceeding within the meaning of Section 2(i) of Cr.P.C.. The dictionary meaning of "proceeding" is :

- i) Progress or movement from one thing to another,
- ii) the course of procedure in an action at law; and
- iii) any step or action taken in conducting litigation

(Webstor's New International Dictionary quoted in the right column of page 1908 in Law Lexicon by Venkataramaiya's Vol. 3.)

Further, the meaning of the word "proceeding" as used in legal sense is the step taken in legal action. (Concise Oxford Dictionary, quoted in the left column at page 1909 of Law Lexicon supra). The term "proceeding" is frequently used to denote a step in an action and obviously it has that meaning in such phrases as "proceeding in any cause or matter". When used alone, however, it is in certain statutes to be construed as synonymous with or including an action. (Halsbury Laws of England, Vol. I page 5, para-7 quoted in the same book at page 2909 supra). Therefore, both the jurisdictional Magistrate in as much as the Sessions

Judge, Karimnagar dealt with the proceedings against the appellant throughout within the meaning of the proceedings u/s 7(1) of the Act. Therefore, it is a clear case of surprising into the powers of a juvenile court by other court which was to exclusively deal with the proceedings against the appellant u/s 7(1) of the Act. Even the committal proceedings u/S 209 of Cr.P.C. before the jurisdictional Magistrate which should be the "proceedings" as mentioned supra were dealt with by a court which could not deal with such proceedings u/s 7(1) of the Act.

11. As already pointed out the Act when is a self-contained Code has also regulated the procedure in law to deal with a juvenile delinquent and the proceedings against him. There may be many instances as in the present case that a juvenile delinquent is brought before a Magistrate, or a court to exercise the powers of a Board or a juvenile court under the Act. In such a situation, such a magistrate who is not empowered to afforded to exercise the powers of a juvenile court should have forwarded the juvenile and the record of the proceedings to the competent authority having jurisdiction over the proceedings. That competent authority would be the juvenile court constituted u/s 5 of the Act. In this case when the appellant was produced before the jurisdictional Magistrate, there is nothing on record to show that he had the powers to deal with the appellant by taking cognizance of the offence and pass the order of committal to the Sessions Court much less such a Magistrate has forwarded the appellant and the proceedings to the competent authority having jurisdiction over the proceedings, as per Section 8(1) of the Act. In fact, by virtue of Section 8(2) of the Act, the competent authority to which the proceeding is forwarded under sub-section (1) of Section 8 of the Act, shall hold an inquiry as if the juvenile had originally brought before it. That also indicates that the only authority which was competent to deal with the appellant and the proceedings against him was the juvenile court constituted u/s 5 of the Act or the authorities mentioned u/s 7(2) of the Act to exercise the powers of the juvenile court. Even on that count the powers exercised by the jurisdictional Magistrate would be without jurisdiction as repugnant to the provisions of the Act.

12. Obviously, the appellant must have been produced before the jurisdictional Magistrate who had remanded him to custody and throughout he has been in detention up-till today. As already pointed out Chapter IV of the Act deals with the manner in which the delinquent juveniles and the proceedings against them should be dealt with under the Act. Section 18(1) of the Act mandates that when any person accused of a bailable or non-bailable offence and apparently a juvenile (he need not be found to be a delinquent juvenile) is arrested or detained or appears or is brought before a Juvenile Court, such person shall be released on bail notwithstanding anything contained in the Code of Criminal Procedure or in any other law for the time being in force, unless there appears reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice. If he is not released on bail under sub-section (1) of Section 18, the juvenile delinquent shall be kept in an observation

home or a place of safety by the police officer in charge of the police station concerned. The court rejecting the bail instead of committing him to prison make an order sending him to an observation home or a place of safety (S. 18(2) and (3)). The information of arrest of the juvenile will be reported to the parent or guardian or the Probation Officer (S. 19). Therefore, the law is certain that a juvenile or juvenile delinquent can never be remanded to custody much less committed to prison even from the earliest stage. On the other hand, he should be lodged in an observation home or place of safety pending further proceedings against him.

13. The juvenile justice law appears to be so emphatic and mandatory that no juvenile delinquent shall be tried for any offence charged against him much less he be convicted or sentenced for such an offence and on the other hand a special treatment should be given to him for his care, protection by way of correctional measure. Section 20 of the Act deals with the inquiry by juvenile court regarding delinquent juvenile and reads thus :

"20. Inquiry by juvenile Court regarding delinquent juveniles : Where a juvenile having been charged with an offence appears or is produced before a Juvenile Court, the Juvenile Court shall hold the inquiry in accordance with the provisions of Section 39 and may, subject to the provisions of this Act, make such order in relation to the juvenile as it deems fit."

No provision of the Act uses the word "trial" of the charge or the offence against a delinquent juvenile. On the other hand, both Section 20 and Section 39 of the Act, in particular, use the expression "inquiry". There appears to be a big motto between the true meaning of "inquiry" and "trial" in the legal parlance and expression. "Inquiry" is defined in Section 2(g) of Cr.P.C. but not the "trial". It is said that "trial" is not defined in any law for the time being in force and on the other hand, it is explained by legal precedents. The definition of "inquiry" is : every inquiry other than a trial conducted under this Code by a Magistrate or Court (S. 2(g) of Cr.P.C.). The definitive intent is thus manifesto to exclude "trial" from the expression "inquiry".

14. In *Kali Charan Duary Vs. State*, , it was made emphatic that in view of the definition of "inquiry" u/s 2(g) of the Code of Criminal Procedure, if anything is inquiry, it is not a trial. It appears that the definition of "trial" under Cr.P.C. 1898 has been emphatically deleted in the New Code of 1973. The words "trial" and "inquiry" have been used in various provisions of Cr.P.C.. Therefore, they are to be considered and understood to the particular context in which they are used and with regard to the scheme and purpose of the provisions under consideration. In *The State of Bihar Vs. Ram Naresh Pandey, and Abba's case*, AIR 1965 Mysore 35 : (1965 (1) Cri LJ 187). The judicial precedents in plethora have explained and compressed the meaning and scope of "trial" as distinguished from an "inquiry". It means, according to Wharton's Law Lexicon :

"The hearing of a case civil or criminal before a Judge who has jurisdiction over

it, according to the laws of the land. In the Oxford dictionary the meanings of the word given under the heading "trial" are : (1) the examination and determination of cause by a judicial tribunal; determination of the guilt or innocence of an accused by a court; and (2) the determination of a person's guilt or innocence or the righteousness of his case by a combat between the accuser and the accused etc. It is this idea of the determination of the guilt or innocence of the person who is tried that forms the fundamental conception of the trial that is held in respect of him. When, therefore, some competent authority directs that an accused person shall be tried, the trial that is to take place can end only in one or other of the recognised forms in which the trial can terminate; under this Code such forms are; conviction, acquittal, discharge i.e. finding him guilty or not guilty or finding that there is no case against him or that the charge is groundless. It means the proceeding which commences when the case is called on with the Magistrate on the Bench and the accused on the dock, and the representatives for the prosecution and the accused are present in court for the hearing of the case."

(the extract of the precedents are summarised and quoted at pages 146 and 147 of Cr.P.C. by Mitra Vol. 1 15th Edition.)

Such a definition of the "trial" given in the Stroud's Judicial Dictionary, 3rd Edition Vol. IV at page 3092 is approved by the Supreme Court in Asgarali's case 1957 SCR 678 : (1957 Cri LJ 605). Thus the definition given in clause (g) of Section 2 of Cr.P.C. puts it beyond doubt that "inquiry" and "trial" are different and the following are the points of difference between them :

- a) Trial is a judicial proceeding which ends in conviction or acquittal. All other proceedings are inquiries and they have various endings according to circumstances.
- b) "Trial" presupposes the idea of offence. But "inquiry" relates to (i) offences and (ii) matters which are not offences. The first is illustrated by inquiry into warrant cases prior to charge, e.g. Chapter 19. The second is illustrated by inquiry under Chapter 8, Chapter 9, Chapter 10C (See S. 144) and Chapter 10D.
- c) Inquiry covers the proceedings up to the stage when they can result in a discharge while trial represents the proceedings from the point at which they must result in a conviction or acquittal.
- d) The term "inquiry" is used in the wider sense to include every kind of inquiry "other than trial". But the word "trial" denotes two things - (i) it may mean the trial of a controversy arising from an issue; and (ii) it may also mean the trial of an election petition or a complaint or an action from beginning to end."

(Quoted on page 147 of Cr.P.C. mentioned supra)

Therefore, the de-limitation and distinction between the popular expressions "inquiry" and "trial" are well established. If the result of the judicial proceeding does not or should not end in the results stated above namely - conviction,

acquittal, discharge etc., such proceedings cannot be infested with the concept of trial. That is how at any rate since no part of the Act uses the expression "trial" and as Section 20 of the Act conspicuously and cautiously used the word "inquiry", the intention of the Legislature under the Act must be that the inquiry of such proceedings before the juvenile court in regard to juvenile offender should not result in either conviction, acquittal, discharge etc. That is how Section 21(1) of the Act has restricted the powers of the juvenile court in an inquiry to pass particular orders from (a) to (e) as follows :-

"S. 21. Orders that may be passed regarding delinquent juveniles :- (1) Where a Juvenile Court is satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Juvenile Court may, if it so thinks fit, -

- a) allow the juvenile to go home after advice or admonition;
- b) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety as that Court may require, for the good behavior and well-being of the juvenile for any period not exceeding three years;
- c) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behavior and well-being of the juvenile for any period not exceeding three years;
- d) make an order directing the juvenile to be sent to a special home, -
- i) in the case of boy over fourteen years of age or of a girl over sixteen years of age, for a period of not less than three years;
- (ii) in the case of any other juvenile for the period until he ceases to be juvenile :

Provided that the Juvenile Court may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit :

Provided further that the Juvenile Court may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the juvenile attains the age of eighteen years, in the case of a boy, or twenty years, in the case of a girl;

e) order the juvenile to pay fine if he is over fourteen years of age and earns money."

Section 21(2) of the Act regulates the manner in which the juvenile court will enforce its orders as above. The Legislature did not stop at it, but enumerated the orders which may be passed by the juvenile court u/s 21 of Act. it further mandatorily enumerated the orders which may not be passed against the

delinquent juveniles in Section 22 as follows :

"(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no delinquent juvenile shall be sentenced to death or imprisonment, or committed to prison in default of payment of fine or in default of furnishing security :-

Provided that where a juvenile who has attained the age of fourteen years has committed an offence and the Juvenile Court is satisfied that the offence committed is of so serious a nature or that his conduct and behavior have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Juvenile Court may order the delinquent juvenile to be kept in safe custody in such place and manner as it thinks fit and shall report the case for the orders of the State Government.

(2) On receipt of a report from a Juvenile Court under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such delinquent juvenile to be detained at such place and on which conditions as it thinks fit :

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed."

Throughout the incarceration of a delinquent juvenile in the custody is meant to be a detention in an observation home or a place of safety. Nowhere in the provisions of the Act, there is any contemplation to convict and sentence a delinquent juvenile for the offence committed by him. In fact Section 24 of the Act mandatorily excludes the charging of the juvenile and the trial for any offence along with a person who is not juvenile. This has been totally violated in the case of the appellant because he was charged and tried along with accused Nos. 5 and 6 who are not juveniles. Therefore, a combined reading of Sections 20 - 23 and 39 of the Act totally excludes the trial of a delinquent juvenile for an offence committed by him or her much less an order of conviction or sentence can be passed in the proceedings against him. There is flagrant flouting of these provisions by the trial court, since the sessions trial was held against the appellant under Chapter XVIII of Cr.P.C. ending with the order of conviction and sentence and a long incarceration of the juvenile delinquent in the ordinary jail along with other criminals.

15. The learned Public Prosecutor has pointed out that the trial court had no opportunity to know that the appellant was a juvenile at the relevant time and, therefore, the trial conducted against him may not be held to be illegal. The contention has no merit in view of the clear contemplation in Sections 18 and 32 of the Act. As already pointed out even when a juvenile delinquent is arrested and produced before the court, where such person appears to be a juvenile to

the court, he shall be released on bail. The look of the arrested person appearing to be juvenile is sufficient to pass such an order and nobody need raise the question of age of an arrested person before the court. Section 32 of the Act makes it mandatory that where it appears to a competent authority that a person brought before it under any of the provisions of the Act is a juvenile, the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a juvenile or not, stating his age as nearly as may be (S. 32(1)). No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile, and the age recorded by the competent authority to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person (S. 32(2)). Therefore, the legislature has totally intended that the opinion of the court regarding the age, even an approximate basis or decided after due inquiry, shall be conclusive for all times. Particularly in this case, the age of the appellant was raised as an issue during the cross-examination of the witness for the prosecution. The learned Sessions Judge instead of coming to a clear opinion as to the age of the delinquent juvenile as per the provisions of the Act, went by a cursory probe into his age putting the burden on him to prove his date of birth by producing his school records etc., and without any material, held his age as more than 16 years as on the date of commencement of the trial and spared no pains in totally excluding him from the benefits and protection of the provisions of the Act (para 42 of the judgment of the Sessions Judge). It appears to the mind of this court that there is total lack of a conscious judicial dealing of the question of age of the appellant by the trial court let alone the utter ignorance of the provisions of the Act. It must be impressed on such courts that the burden of proving the age of a delinquent is not on him and it is for the court to hold an inquiry into the age to find out whether such a person would be a delinquent juvenile for the purpose of the Act.

16. A serious question is posed for determination by this court as to what would be the crucial date for determining whether the accused is a juvenile or not for the purpose of the Act. The learned Sessions Judge has given a finding that since accused No. 3 was more than 16 year of age by the date of commencement of the trial, he is not entitled to the benefits of Juvenile Justice Act, 1986. No doubt he was fortified with a precedent of this Court in Vunnam Lakshminarayana Vs. State Inspector of Police, Narasaraopet, . The learned Sessions Judge depended upon the expression in the precedent as follows : (at p. 337 of Cri. LJ.

"A reading of the Act (Juvenile Justice Act) clearly indicates that the crucial date for determining whether the accused is a juvenile or not is the age of the accused on the date of inquiry or trial and not the age at the time of the offence."

But on facts if the learned Sessions Judge had held an inquiry as has been done on directions by this Court, the appellant would have been found as a juvenile as

on the date of inquiry or trial as he was less than 16 years of age and was 14 years and less than 16 years of age when the case was set down for trial. Therefore, even applying the principle laid down as above, the learned Sessions Judge ought to have applied the provisions of the Juvenile Justice Act of the proceedings before him while dealing with the appellant. However, the correctness or otherwise of the principal laid down in the above precedent had to be considered by us in this case in the light of the provisions of the Act as discussed above in view of the clear interpretation of such provisions as above. We feel that the law laid down in Vunnam Lakshminarayana Vs. State Inspector of Police, Narasaraopet, supra may not be correct for various reasons. In the first place all the relevant provisions of the Act are not at all considered in the said precedent as can be made out in paras 6 and 7 in the precedent. Barring an expressions that a reading of the provisions of the Act clearly indicates that the age of the accused at the time of the trial is relevant for applications of the Act, the provisions of the Act are not examined in detail much less interpreted. In fact the case appears to have been disposed of more on a finding of fact that the accused-appellant was 20 years of age as on the date of offence and, therefore, the provisions of the Juvenile Justice Act do not apply to him, and not on the correct interpretation of law as above. The concluding portion of para-7 of the precedent supports such an inference in clear terms, to read : (at pp 337 & 338 of Cri LJ.

"..... Even assuming for a moment that this date of birth is 2-12-72 he is certainly not a juvenile at the time of commencement of the trial and at the time of sentencing him. The provisions of the Juvenile Justice Act do not apply to the accused. I make it clear that in this case there is abundant evidence to show that even at the time of the offence, the accused was aged 20 years and this fact was not disputed by the accused till the last stages to the trial"

In that view of the matter Vunnam Lakshminarayana Vs. State Inspector of Police, Narasaraopet, can neither be taken to have examined the legal position in this regard nor has laid down the correct law.

17. Therefore, now we can examine the question in the light of the provisions of the Act which are already interpreted as above. There cannot be any doubt that Juvenile Justice Act is a special law and not the general law for which the provisions of Cr.P.C. and any other law for the time being in force cannot be operated. Therefore, the operation of the maxim "Generalia specialibus non derogant" excludes the operation of any general law on the appellant and the proceedings against him in regard to the meaning and application in view of the provisions of the Act. Such a maxim finds its expression in Section 5 of Cr.P.C. for saving special law from the operation of the provisions of the Code of Criminal Procedure to read as follows :

"5. Saving :- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of

procedure prescribed, by any other law for the time being in force."

In many provisions of the Probation of Offenders Act, 1958 (for instance Sections 5, 7, 18, 21 - 24 and 39) the operation of the provisions of Cr.P.C. and any other law for the time being in force in regard to the juvenile and the proceedings against him under the Code are either totally excluded or made to be operated as far as may be or as far as practicable (in particular S. 39(1) and (2) of the Act). The fundamental principle of interpretation of the statutes cannot be ignored. The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject, or in the occasion on which they are used, and the object to be attained. Grammatically words may cover a case; but wherever a statute or document is to be construed it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied (Page 76 Chapter 3 of Maxwell on The Interpretation of Statutes 12th Edn.). A simple reading of the provisions of the Act and a harmonise construction of various provisions as has been done above would definitely indicate that the crucial date for determining whether the accused is a juvenile or not, should be the age of the accused on the date of the offence and throughout thereafter, he is dealt with in accordance with the provisions of the Act, and not merely his age on the date of the inquiry or trial. The first opportunity for the court to think doubt, or to form an opinion about the age of the arrested person or a person brought before the court, would be the first look as stated u/s 18(1) of the Act or at any time prior there to when produced before the court. The other stages would be when the question of age of the accused is raised as in the present case. Therefore, an occasion arises to the court to form an opinion regarding the age of the accused at several stages to hold an inquiry, in the normal sense, as a court and in accordance with Section 32 of the Act, as a juvenile court. Therefore, as a first step, the court or a juvenile court would decide the age of the accused to examine whether the provisions of the Act can be applied. Thereafter, necessary orders are to be passed or not to be passed in accordance with Section 21 and 22 of the Act in regard to a juvenile and the delinquent juvenile. The test to find out whether such a person in regard to whom such orders are passed by the court are not be passed by the court, would be on the basis of age mentioned in Section 2(h) of the Act. As already pointed out that would be the completed age of 16 years in case of a boy and 18 years in case of a girl. When that is to be done in regard to the delinquent juvenile, the court has to fall back upon Section 2(e) of the Act which may be repeated again as follows :

"Delinquent juvenile" means a juvenile who has been found to have committed an offence."

After holding an inquiry in accordance with the provisions of the Act, the Court will find out whether a juvenile has committed an offence. It can be said with certainty that the expressions in Section 2(e) of the Act are made in present continuous tense in regard to a fact of past where a juvenile had committed an offence on a particular day. Therefore, the true and correct meaning of the expressions as above should be understood that all that is going to be done under the provisions of the Act would be in relation to a delinquent juvenile in regard to an offence committed by him as on the date of the offence. The proceedings in regard to a delinquent juvenile would not come to an end the moment he or she attains the age of juvenile delinquency as either 16 years or 18 years, as can be gathered from Section 3 of the Act, which reads as follows :

"3. Continuation of inquiry in respect of juvenile who has ceased to be a juvenile :- Where an inquiry has been initiated against a juvenile and during the course of such inquiry the juvenile ceases to be such, then notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile."

This provision read with Section 2(e) of the Act in addition to other provisions stated above, makes it abundantly clear that when once a person accused of an offence is found to be a juvenile as on the date of the commission of the offence, he or she will be treated as a juvenile in law for all purposes in accordance with the provisions of the Act holding that he/she had continued to be a juvenile although he/she ceases to be such during the course of inquiry. Therefore, to think that the provisions of the Act apply to an accused only on the date of inquiry of trial appears to be not correct. In that view of the matter, we are constrained to hold that the law laid down in *Vunnam Lakshminarayana Vs. State Inspector of Police, Narasaraopet*, supra, that the crucial date for determining whether the accused is a juvenile or not is the age of the accused on the date of inquiry of trial and not the age at the time of the offence is not the correct law and consequently we overrule the decision rendered in *Vunnam Lakshminarayana Vs. State Inspector of Police, Narasaraopet*, .

18. The summum bonum of all judicial expressions supra is that the provisions of the Juvenile Justice Act are operative in this case and the courts below have acted without jurisdiction in dealing with the appellant as a juvenile delinquent and have exercised powers which they did not have in dealing with him, both in remanding him to custody, committing him to prison and in convicting and sentencing him to imprisonment for his life. In the legal sense, the whole exercise of power by the said courts was without jurisdiction. No law need be stated nor elaborated to conclude that any exercise of such power without jurisdiction would throw the result into void as void ab initio. That may totally set at naught the whole proceedings conducted by the said Courts as against the appellant including the order of conviction and sentence, to set him at liberty for the moment. Mr. Aga Reddy, the learned Advocate for the appellant has

suggested that having allowed the juvenile delinquent to suffer such consequences repugnant to law and to not in jail for a very long time, it may not be justifiable to merely set aside the impugned judgment and order of conviction and sentence passed by the trial court, but this Court would do well in exercising its powers u/s 482 of Cr.P.C. to quash the proceedings and set the appellant to liberty for all the time to come. The learned Public Prosecutor opposes such a proposal since the result would be to push back the stage of the case before the proceedings were commenced as against the appellant as he was a delinquent juvenile when the enquiry was initiated to deal with him under the provisions of the Act as a result of exercising the power for want of the jurisdiction and in the facts and circumstances in which the offence was said to have been committed and established against him, an inquiry should be conducted by the juvenile court to pass suitable orders under the provisions of the Act for his care, protection and correctional measure, within the true letter and spirit of the intention of the Act. With all anxious considerations of the situation, this court is not persuaded to accept the suggestion of the learned Advocate for the appellant and on the other hand, totally convinced about the stand taken by the learned Public Prosecutor. Notwithstanding the reference to the settled principles regarding interpretation of Statutes stated supra, this court reminds itself in its own way of its duty to think the result in justice and justice alone. Law should be interpreted and not misinterpreted. Interpretation aids justice and misinterpretation defeats it. Interpretation should project the intention of legislation and not reject it. The grammar and composition of legislation are of draftsman and its meaning and purpose are of people, whose will finds an expression through the law making body, the Legislature. That must be given full effect. Already, the courts below have acted in anti-juxta position of such enactment of the Legislature under the Act leading to injustice to a juvenile delinquent instead of administering justice to him under the Justice Juvenile Act. If he is allowed to go scot free in a serious and grave matter, as it is presented from the materials, without subjecting him to the orders under the provisions of the Act, perhaps there would be perpetration of injustice in the administration of justice which is the true intention of justice according to law for all the time to come. The resultant position thus would be to annul all the proceedings against the appellant including the order of conviction and sentences passed against him and send back him before the juvenile court constituted order Section 5 of the Act or before the court which can exercise the powers of the juvenile court u/s 7 of the Act, so that he may be dealt with in accordance with the provisions of the Act by the competent authority viz., the Juvenile Court. As the appellant is confined within the four corners of the prison walls which is inconsistent with the intention of the provisions of the Act and particularly in view of Section 18 of the Act, he is entitled to be released on bail with or without surety and till then he is entitled to be shifted to an observation home located within the jurisdiction. We feel that this case warrants a stipulation of surety in the bail for the appellant.

19. In the result, the judgment, order of conviction and sentence passed against

the appellant by the learned Sessions Judge are set aside. Furthermore all the proceedings conducted so far against the appellant by the courts below are quashed. The matter is remitted back to the learned Sessions Judge to pass appropriate orders to send the appellant and the proceedings, before the competent authority either constituted u/s 5 of the Act or who may exercise powers u/s 7 of the Act and thereafter, the matter shall be disposed of by such authority in accordance with law. The appellant shall be released on bail subject to the condition that he shall furnish security in a sum of Rs. 5,000/- with one surety and shall enter into a personal bond for the like amount, to the satisfaction of the learned Sessions Judge. He shall be immediately shifted from the jail where he is now undergoing the sentence, to the Government Observation Home for Boys, Warangal which is declared as such by the State Government in G.O.Ms. No. 189 Home (Prisons-D) Department dated 10-4-1989 and he shall stay there till he is released on bail. All the disqualifications attached to the appellant due to the order of detention, conviction and sentence, shall be taken as eschewed as contemplated u/s 25 of the Act.

20. Having due regard to be detailed dealing of the Act and invariable omissions to follow the provisions of the Act, by courts we direct that a copy of this judgment shall be circulated among all the Judicial Officers in the State, by name for their guidance immediately.

21. Order accordingly.