

(2004) 09 DEL CK 0145
In the Delhi High Court
Case No : Criminal Appeal No. 518 of 2003

Charanjit Singh

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 24-09-2004

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 16, 2, 2(k), 20, 64

Penal Code, 1860 (IPC) — Section 302

Citation : (2004) CriminalCC 824

Hon'ble Judges : D.K. Jain, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Sunil Kumar, Mr. Vivek Bhardwaj, Mr. A.K. Sharma and Mr. Pramila Kumar Mr. S.S. Gandhi, for the Victim, for the Appellant; Ravinder Chadha, for the Respondent

Final Decision : Allowed

Judgement

D.K. Jain, J.—In Sessions Case No. 104/02, arising out of FIR No.634/98, the appellant faced trial for offence punishable u/s 302 of the Indian Penal Code, 1860 (for short the Code) for allegedly causing homicidal death of his school mate Abhinav Singhal, a student of 9th class in Army Public School, Dhaura Kuan, New Delhi. By the impugned judgment and order, the learned Additional Sessions Judge, Delhi while holding the appellant guilty for the said offence has convicted and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of six months.

2. Since before us learned Counsel for the appellant has not assailed the finding on conviction recorded by the learned trial Court and has confined his arguments only on the competency of the trial Court to award sentence to the appellant, we deem it unnecessary to state the facts. The sole contention urged by learned Counsel for the appellant is that since on the date of incident, the appellant was

less than 18 years of age, he was a juvenile within the meaning of Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "the Juvenile Justice Act"), and, therefore, he could not be sentenced by the learned Additional Sessions Judge. In support of the claim, learned Counsel for the appellant has relied upon the original birth certificate issued by the Indore Municipal Corporation and a copy of the certificate issued by the Central Board of Secondary Education, which show that the date of birth of the appellant is 9 August 1981.

3. Pursuant to a direction by the Court, an inquiry has been conducted by the SHO, Vasant Kunj Police Station, New Delhi in regard to the genuineness of the birth certificate and a verification report dated 22 May, 2004 has been filed in that behalf. As per the report, the birth certificate issued on 15 February, 1982 by the office of the Sub-Registrar, Birth-Death, Municipal Corporation of Indore is genuine. There is, therefore, no dispute with regard to the age of the appellant. According to the birth certificate, the age of the appellant was over 16 years but less than 18 years as on 23 October, 1998, viz.. the date of incident. Thus, as per the provisions of the Juvenile Justice Act, 1986 (hereinafter referred to as the "Old Act") on the date of occurrence, being more than 16 years of age, the appellant was not a juvenile but as per the Juvenile Justice Act, which came into force on 1 April, 2001 he was juvenile within the meaning of Section 2(k) of the said Act having not completed 18 years of age. Hence, the limited controversy, which arises for resolution, is whether the provisions of the Juvenile Justice Act attracted in the instant case?

4. We have heard Mr.Sunil Kumar, learned Counsel for the appellant, Mr.Ravinder Chadha, learned Counsel for the State and Mr.S.S.Gandhi, learned Senior Counsel for the parents of the deceased.

5. Learned Counsel for the appellant has contended that since the trial Court was dealing with a juvenile, after recording the finding that he was guilty of committing an offence, for the purpose of sentence, the appellant ought to have been referred to the Juvenile Justice Board in terms of Section 20 of the Juvenile Justice Act. It is asserted that the Court of Session had no jurisdiction to pass any order of sentence against the appellant and, therefore, the order of sentence is null and void. Per contra, it is submitted by Mr.Gandhi that the provisions of the Juvenile Justice Act cannot be extended to the appellant because he was not a juvenile under the Old Act, which was in vogue at the time of incident.

6. Thus, as noted supra, the main question for consideration is whether a boy who had completed more than 16 years but was less than 18 years of age at the time of commission of the offence before the commencement of the Juvenile Justice Act, would be covered by the provisions of the said Act or he is to be dealt with in accordance with the ordinary law, i.e. the Indian Penal Code? In other words, the issue for resolution is as to which is the material date to determine the applicability of the juvenile Justice Act?

7. In order to appreciate the issue involved, it would be necessary to refer to some of the relevant provisions of the Juvenile Justice Act. Section 2(k) of the said Act defines a juvenile or a child as a person who has not completed eighteenth years of age. Sub-Section 91) of the section defines:

"Juvenile in conflict with law" to mean a juvenile who is alleged to have committed an offence. Sections 20 and 64, the pivotal provisions, read as undergo. Special provision in respect of pending cases-

Notwithstanding anything contained in this Act. all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of th4e juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence."

64. Juvenile in conflict with law undergoing sentence at commencement of this Act-

"In any area in which this Act is brought into force, the State Government or the local authority may direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government or the local authority thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective under sub-Section (2) of Section 16 of this Act."

Repeal and savings clause, contained in Section 69 is in the following terms:

(1) The Juvenile Justice Act, 1986 (53 of 1986 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act."

8. The significant change brought in the Juvenile Justice Act with regard to the definition of a juvenile is that under the Old Act, a boy less than 16 years of age and girl less than 18 years of age were juveniles whereas under the new Act a person who has not completed 18 years of age, irrespective of boy or girl, would be a juvenile and shall be covered by the provisions of the Juvenile Justice Act. Section 20, a non obstante provision, provides that all proceedings in respect of a juvenile pending in any Court in any of a juvenile pending in any Court in any area on the date on which Juvenile Justice Act comes into force in that area shall be continued in the Court as if this Act had not been passed. Nonetheless, if the Court finds that the juvenile has committed an offence, i.e., he is in conflict with

law. it shall record such finding and instead of passing any sentence, forward him to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act. Similarly, Section 64 of the Juvenile Justice Act authorises the State Government, etc. to send the juvenile in conflict with law, who is undergoing any sentence of imprisonment at the commencement, in lieu of undergoing such sentence, to a special home or some other place as the State Government, etc. thinks fit, for the remainder of the period of the sentence.

9. From a conjoint reading of the said provisions it is clear that they apply not only to proceedings which may be pending in any Court, they apply to even in those cases where a juvenile is undergoing sentence on the date on which Juvenile Justice Act came into force i.e. 1 April, 2001. It is also axiomatic that the proceedings contemplated in Section 20 mean proceedings either at the stage of trial or appeal and pending in any Court, either at the stage of trial or in the Court of appeal. Therefore, the intention behind the said provisions is not only to avoid de novo trial of the juvenile but also to cover him under the Juvenile Justice Act even after his conviction and during the period he is undergoing sentence. That being the intention behind the new legislation, we are of the considered view that the relevant date to determine the applicability of the Juvenile Justice Act would be the date of occurrence i.e. the age of the accused as on the date when the crime was committed. If he was below 18 years of age at that time, then he would be juvenile under the Juvenile Justice Act and the provisions of this Act would be applicable, once it is found that the case is covered by Section 20 or Section 64 of this Act. Being a piece of social legislation, the provisions of the said Act have to be liberally construed to make them more meaningful to achieve the ultimate object of the legislation set out in the preamble, namely, the social reintegration and rehabilitation of the juveniles in conflict with law by adopting a child-friendly approach in the adjudication and disposition of matters involving them. It is also of great significance that the Juvenile Justice Act was enacted bearing in mind the standards adopted by the General Assembly of the United Nations in the Convention on the Rights of the Child on 20 November, 1989. The Government of India ratified the Convention on 12 December, 1992.

10. It is well settled that in discerning the correct interpretation, the purpose for which the Legislation is brought cannot be lost sight of. In this context, the following observations in a recent decision of the Apex Court in *D. Saibaba Vs. Bar Council of India and Another*, Apex Court Judgments 06 (S.C.): (2003)6 SCC 186, are apt. Speaking for the Bench, R.C.LahotJ. (as the Hon'ble Chief Justice of India then was) quoted Justice G.P.Singh's *Principles of Statutory Interpretation* (8th Edition), with approval, to the following effect:

"In selecting out of different interpretations the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things, as it may be presumed that the Legislature should have used the word in that interpretation which least offends our sense of justice", (p. 113, *ibid*)

The Courts strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative "on the principle expressed in the maxim: *ut res magis valeat quam pereat*. "(p.36, *ibid*).

11. Viewed in the light of the above observations, we are of the opinion that the legislative intent would be best served if it is held that the relevant date for applicability of the Juvenile Justice Act, so far as the age of the accused, who claims to be child, would be with reference to the date of occurrence and not the date of trial. We hold accordingly.

12. The view we have taken also finds support from a decision of the Supreme Court in *Umesh Chandra Vs. State of Rajasthan*, wherein a three Judges' Bench of the Apex Court, while dealing with the provisions of the "Rajasthan Children Act, 1970, held that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of occurrence and not the date of the trial. Their Lordships observed that the Act being a piece of social legislation is meant for the protection of infants who commit criminal offence and, therefore, its provisions should be liberally and meaningfully construed so as to advance the object of the Act. The relevant provisions of the Juvenile Justice Act being in *pari materia* with the corresponding provisions in the Rajasthan Children Act, the ratio of the said decision is on all fours to the facts in hand.

13. It is true that in *Arnit Das Vs. State of Bihar*, Apex Court Journal 118 (S.C.): (2000)5 SCC 488, their Lordships of the Supreme Court while dealing with the old Act have been pleased to hold that the date of commission of offence is irrelevant for finding out whether a person is juvenile within the meaning of Clause (h) of Section 2 of the Act and the procedure prescribed by the provisions of the Act has to be adopted only when the competent authority finds a person brought before it or appearing before it to be under 16 years of age, if a boy and under 18 years of age, if a girl, on the date of being so Brought or such appearance first before the competent authority. But it is evident that the attention of Their Lordships was not drawn to the earlier decision rendered by a three-Judge Bench of the Supreme Court in *Umesh Chandra's case (supra)*. In view of the fact that *Umesh Chandra's* decision is by a larger Bench and further it has not been referred to in *Amit Das's case (supra)*, we feel bound to follow the view enunciated by the larger Bench, which is precisely on the point at issue [See *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, , Government of Andhra Pradesh and Another Vs. B. Satyanarayana Rao (Dead) by Lrs. and Others*,

14. Therefore, on a conjoint reading of Sections 20 and 64 of the Juvenile Justice Act and in the light of the decision of the Apex Court in *Umesh Chandra's case (supra)*, we have no hesitation in holding that because of the admitted fact that on the date of occurrence he was a juvenile within the meaning of Clause (k) of Section 2 thereof, appellant's case would be covered under the Juvenile Justice

Act and, therefore, after his conviction, he was required to be dealt with in accordance with the Juvenile Justice Act.

15. Our view is also fortified by the decisions of the Punjab & Haryana High Court in Sanjeev Kumar v. State of Haryana, 2003(1) RCR (Cri) ! and Rajasthan High Court in Rafiq Khan v. State of Rajasthan, 2004 (2) CCC 634 (Raj) : 2004(2) Crimes 106 and Mahendra Singh v. State of Rajasthan, 2004 (2) CCC 500 (Raj): 1 (2004) CCR 398 (DB).

16. Having come to the aforementioned conclusion, the next question is what approach is to be adopted at this juncture, particularly when the age of the appellant is not in dispute.-As per the nominal roll the appellant has undergone more than five and half years of actual sentence. The appellant is now aged more than 20 years and therefore there is no question of sending him to the Juvenile Justice Board. Thus, following the decision of the Supreme Court in Bhola Bhagat v. State of Bihar, 1997 (2) ACJ 681 (S.C.) : AIR 1998 SC 236, while sustaining the conviction of the appellant u/s 302 of the Code, we quash the sentence awarded to him and direct his release forthwith, if not required in any other case.

17. The appeal is partly allowed in the above terms.