
(1994) 02 DEL CK 0056

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1998 of 1993

Manoj @ Mannu

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 17-02-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1994) 2 AD 791 : (1994) 2 Crimes 345 : (1994) 54 DLT 23 : (1994) 2 RCR(Criminal) 619 : (1994) RLR 192

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : Mukesh Kalia, for the Appellant;

Judgement

Jaspal Singh, J.

(1) What should the Court do when the accused claims to be a Juvenile and the other side challenges the same? This, in short, is the question. Now ,the facts.

(2) Manoj Kumar is accused of having committed offences under Sections 302,307,120B read with Section 34 of the Indian Penal Code. He moved an application that he being below sixteen years of age at the time of the alleged commission of offence ,the provisions of the Juvenile Justice Act, 1986 were attracted. The learned trial Judge looked into the application and so also at the petitioner and rejected the prayer holding that he appeared to be above the prescribed age. Thus the fate of the application was sealed by what was a mere visual examination.

(3) Should a Judge, in a matter like this straighten his stooping shoulders, lift his head hurried otherwise deep into the mouth-eaten files, adjust his heavy framed looking glasses and peeping through them with his tired eyes adjudge, and proclaim the age of an accused?

(4) There are some on which long years sit lightly while some may wither away in their prime with faces blue and bleak with such strain and ache "As each year

might assign" Thomas Hardy: "He Never Expected Much". making them look "old and grey and full of sleep." Y.B. Yeats: "When You Are Old" Yes, appearances can be deceptive. They quite often are. And a judge is neither a Prophet nor competent to squeeze the universe into a ball and see the unseen. He is not even Lazarus of Bethany competent enough to proclaim:

"I am Lazarus, come from the dead, Come back to tell you all, I shall tell you all"
T.S.Eliot: "The Low Song Of J. Alfred Prufrock"

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If that be so, one may ask, what should he do? The answer is simple. Since he is ill-equipped, let him collect all the tools. Let him hold an enquiry - a regular one ,not an eye-wash, record evidence and then use the tools of his long judicial experience and adjudicate. This would be the right track, for, it was paved by the footprints of the Supreme Court:

"WE are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where special Acts dealing with juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the civil Surgeon, as the case may be, for obtaining credit-worthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter ,the learned Magistrate may proceed in accordance with law."

[Gopinath Ghosh v. State of West Bengal 1984 Cri.L.J. 16Let the trial Judge follow it and I am confident it shall never again cheat him with the mirage of visual satisfaction. [With apology to George Barker: "Turn on Your Side and Bear the Day To Me" wherein the exact words are:

"SHALL never again cheat you with the mirage of sensual satisfaction".]