
(2010) 03 BOM CK 0034

In the Bombay High Court

Case No : Criminal Appeal No. 369 of 2007

Pappu Anant Ghayalkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Arms Act, 1959 — Section 25, 4

Bombay Police Act, 1951 — Section 135, 37(1)

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

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 2(1), 6(2), 7A, 7A(2)

Penal Code, 1860 (IPC) — Section 302, 324, 34, 506(H)

Citation : (2010) 03 BOM CK 0034

Hon'ble Judges : V.K. Tahilramani, J;Ranjana Desai, J

Bench : Division Bench

Advocate : Rohini Dandekar, appointed, for the Appellant; Rajesh More, Assistant Public Prosecutor, for the Respondent

Judgement

Ranjana Desai, J.—The appellant, who is original accused 2, was tried along with one Rajesh Balkrishna Pille in the Court of Ad-hoc Additional Sessions Judge at Pune in Sessions Case No. 158 of 2001, for offences punishable under Sections 302, 324, 506H read with Section 34 of the Indian Penal Code (for short, "the IPC"), u/s 37(1) read with Section 135 of the Bombay Police Act and u/s 4 read with Section 25 of the Arms Act. By judgment and order dated 21/5/2002, the appellant was convicted for offence punishable u/s 302 read with Section 34 of the IPC and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 500/-, in default, to suffer rigorous imprisonment for 3 months. He was also convicted for offence punishable u/s 324 read with Section 34 of the IPC and sentenced to suffer rigorous imprisonment for one month and to pay a fine of Rs. 300/-, in default, to suffer rigorous imprisonment for one month. He was also convicted for offence punishable u/s 506(ii) read with Section 34 of the IPC and was sentenced to suffer rigorous imprisonment for one month and to pay a fine of Rs. 100/-, in default, to suffer rigorous imprisonment for one week.

Substantive sentences were ordered to run concurrently. The appellant was acquitted of the offence punishable under Sections 37(1) read with Section 135 of the Bombay Police Act and u/s 4 read with Section 25 of the Arms Act. In the present appeal, he has challenged the said judgment and order of conviction and sentence.

2. The present appeal was admitted on 16/7/2007. During the pendency of this appeal, the appellant preferred application dated 11/4/2009 through jail, to the Sessions Court, Pune. In that application, he has stated that when the incident took place, he was below 18 years of age. According to him, he was juvenile in conflict with law within the meaning of Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, "the said Act"), and, therefore, he is entitled to be released forthwith as he was in custody for more than 3 years. He claimed the benefit of Section 15(g) of the said Act.

3. The said application was assigned by the then Principal & Sessions Judge, Pune to the District Judge II and Additional Sessions Judge, Pune. After receipt of this application, the Judicial Magistrate, First Class of Kirkee, Pune, was directed to hold an inquiry to ascertain the age of the appellant on the date of commission of offence. The Judicial Magistrate, First Class Mr. R.M. Satav conducted an inquiry. He considered the School Leaving Certificate and Birth Certificate of the appellant. He also took into account the opinion of the medical officer and arrived at a conclusion that on the date of the commission of the crime, the appellant was less than 18 years of age. According to him, on the date of incident i.e. on 9/1/2001, he was aged about 17 years, 1 month and 17 days, the birth date of the appellant being 23/11/1983. On the basis of the report of the Judicial Magistrate, First Class, the Superintendent of Technical Branch of District Court, Pune, sought a direction as to whom the report should be sent for further orders. The said report was then placed before the District Judge III and Additional District Judge, Pune as directed by the then District & Sessions Judge, Pune. The District Judge III considered the report and observed that the appellant was a juvenile in conflict with law. She observed that the appellant was sentenced to suffer imprisonment for life on 24/6/2002. She further observed that since the appellant has undergone the sentence for a period of more than three years, in view of the judgment of this Court in *Suo Motu High Court on its own Motion v. The Chief Secretary. Government of Maharashtra and Ors.* 2009 All. M.R. (Cri.) 685. he was entitled to be released. The Principal District & Sessions Judge, Pune, made an endorsement on the said report that since an appeal is pending in this Court and the record and proceedings are lying in this Court, it is desirable to make a reference to this Court and seek appropriate direction. In view of this endorsement, learned District Judge III has made a reference to this Court for necessary direction.

4. As per Section 7A of the said Act, the plea of juvenility can be raised at any stage even in an appeal. In somewhat similar fact situation, the provisions of the said Act were considered by the Division Bench of this Court to which one of us

(Smt. Ranjana Desai, J.) was a party in Criminal Application No. 1329 of 2008 with Criminal Appeal No. 300 of 2007 (Gangaram Dushanna Dandil v. State of Maharashtra) decided on 4/5/2009. The relevant provisions of the said Act were analyzed by this Court. We may reproduce the analysis of the said Act made in the said judgment.

6. The Juvenile Justice (Care and Protection of Children) Act 2000 (J.J. Act 2000) was enacted by the Parliament inter alia to amend the law relating to juveniles by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children.

7. In Pratap Singh Vs. State of Jharkhand and Another, . the Supreme Court made it clear that the reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court.

8. The J.J. Act, 2000 was amended by the Parliament by enacting Juvenile Justice (Care & Protection of Children) Amendment Act 2006 (Juvenile Justice Amendment Act, 2006 for short).

9. Section 2(k) of the J.J. Act, 2000 as amended by Juvenile Justice Amendment Act, 2006 (for short the said Act) defines a juvenile as a person who has not completed eighteen years of age.

10. Section 2(1) thereof defines Juvenile in conflict with law" as a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such an offence.

11. Section 6 thereof refers to the powers of the Juvenile Justice Board (the Board for short). It states that notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in the said Act, the Juvenile Justice Board shall have power to deal exclusively with all proceedings under the said Act relating to juvenile in conflict with law. Sub-section 2 of Section 6 states that the powers conferred on the Board by or under the said Act may also be exercised by the High Court and the Court of Sessions, when the proceeding comes before them in appeal, revision or otherwise.

12. As per proviso (1) to Section 7A thereof the claim of juvenility can be raised before a Court at any stage even after final disposal of the case and even if the juvenile had ceased to be so on or before the date of this Act.

13. Sub-section (2) of Section 7A states that if the Court finds a person to be a juvenile on the date of commission of the offence under Sub-section (1), it shall forward the juvenile to the Board for passing appropriate order and the sentence, if any passed by a Court shall be deemed to have no effect.

14. Section 15(g) is very important. It states that where a Board is satisfied 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 Board may

make an order directing the juvenile to be sent to a special home for a period of three years.

15. The provisions referred to hereinabove make it clear that a juvenile in conflict with law cannot be tried by an ordinary criminal court. He cannot be sentenced. Even if it is found that he has committed an offence he can be sent to a special home for a period of three years only. These provisions are beneficent provisions. The object of these provisions is obviously to ensure that the juvenile is not treated like an ordinary criminal. Special treatment is introduced to prevent him from becoming a confirmed offender. Considering the tender age of the juvenile in conflict with law, the above provisions seek to rehabilitate him rather than sending him to prison where there will no scope for his reformation.

5. In *Suo Motu High Court Writ Petition No. 1 of 1999*, a Division Bench of this Court dealt with the same issue and issued certain directions. Direction 6 thereof stated that if the court comes to the conclusion that the person is a juvenile in conflict with law and has already undergone sentence of three years or more, then considering that the maximum sentence under the provisions of new Act is three years, such juvenile be released forthwith.

6. A further order was passed in the same matter on 24/3/2009. It appears that a grievance was made that in several instances, the applications are made in the Sessions Court in respect of matters which are pending in appeal before this Court, the Sessions Court are not taking up the applications which causes hardship. This Court, therefore, directed that in respect of those convicts, who have applied to be considered as juveniles in conflict with law, if the applications are pending before the Sessions Court and even if appeal is pending before this Court, considering the power conferred u/s 7A of the Act, the learned Sessions Judge should consider such applications and pass appropriate order according to law and copy of such order will be then forwarded to the Registry of this Court to be placed forthwith in the appeal memo. It appears that pursuant to these directions, though the present appeal was pending in this Court, the appellant made an application before the Sessions Court.

7. We have considered the evidence on record. In our opinion, the impugned judgment and order holding that the appellant has committed the offence cannot be faulted. Besides, learned Counsel for the appellant has not argued the appeal on merits. There is no challenge to the impugned order on merits. However, Section 15(g) of the said Act to which we have made reference hereinabove, forbids the court from sentencing a juvenile in conflict with law and sending him to prison. The maximum period for which he can be sent to a Special Home is three years. The appellant has already undergone more than three years imprisonment. He has undergone 9 years and 2 months of imprisonment. In the circumstances, the impugned judgment and order of conviction and sentence will have to be set aside and is accordingly set aside. The appellant Pappu Anant Ghayalkar is directed to be released forthwith unless required in any other case.

8. While parting, we may only add that if in an appeal which is pending in this Court, any application is received by the Sessions Court claiming that the applicant was a juvenile in conflict with law when the offence was committed and, hence, could not have sentenced and the Sessions Court starts examining the claim of juvenility of the applicant, it must inform the Registrar of this Court about it so that the hearing of the appeal can be adjourned till the report is received. If this is not done, in a given case, the appeal may be heard and disposed of before the report reaches the court. This can be more so in cases where the accused are represented by advocates appointed by the Legal Aid Committee. The Registrar General is directed to take steps to secure compliance of the above direction.

9. Appeal is disposed of in the aforestated terms.