

(1995) 07 AHC CK 0074
In the Allahabad High Court
Case No : Criminal Revision No. 1678 of 1982

Raj Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-07-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Penal Code, 1860 (IPC) — Section 392

Citation : (1995) 07 AHC CK 0074

Hon'ble Judges : S.K.Jain, J

Final Decision : Allowed

Judgement

S. K. Jain, J.

1. On 17.10.75 at 9 P.M. Raj Kumar and Ramesh accused brandished knife and a country made pistol had snatched golden chain from the neck of Shashi Mehrotra who along with her husband Bhagwati Mehrotra was coming on a rickshaw from Railway Station and going to their house in Azad Nagar, Kanpur. On the victims having raised and alarm the accused tried to escape but were apprehended by the Public and the looted chain was recovered from them. They were tried under Section 392 I.P.C. and Section 25 of the Arms Act. The learned Metropolitan Magistrate Kanpur vide his judgment dated 28.4.82 found them guilty and sentenced each one of them to undergo three years R.I. under Section 392 I.P.C. and a fine of Rs. 500/ and in default of payment of fine to further undergo R.I. for three months. However, they were not found guilty under Section 25 of the Arms Act.

2. Feeling aggrieved the two convicts preferred criminal appeal No. 95/M of 1982 which was dismissed by learned VI Additional Sessions Judge, Kanpur.

3. It is judgment dated 29.7.82 of the learned VI Additional Sessions Judge, Kanpur, legality whereof has been challenged in this revision petition.

4. I have heard the learned counsel for the parties and with their help have gone

through the record of the case.

5. Learned counsel for the applicants has not challenged the judgment on merits but has argued that it is evident from the record that on the date on the commission of the crime the two appellants fell within the definition of the term "Child" as defined in the U. P. Children Act, 1952 and therefore they could not be awarded any sentence. Question doing rounds right now is as to whether on the record it is proved that the age of the two appellants on the date of the commission of the crime, i.e. on 17.10.75 was under 16 years.

6. The appellants were arrested on 17.10.75. The application on behalf of Ramesh accused was moved before the VI Additional Munsif Magistrate on 16.12.75. (application is on page 32 of the lower court's record). Para 5 of the said application reads as under:

"That the accused is a minor boy and it shall not be safer for him to get him in jail."

At page 27 of the lower Court's record there is a bail application moved on behalf of Raj Kumar. It is dated 1.11.75. Therein it is not alleged that Raj Kumar was a child as defined in the Act. From both of these applications, it cannot be concluded that on the date of the commission of the crime the two appellants were below 16 years of age. The statements of the applicants, under Section 313 Cr. P.C. recorded by the trial Court on 24.4.82, therein Ramesh had given his age 20 years, whereas Raj Kumar gave his age to be 17 years. This point was pressed into service for the first time before the lower appellate court and he has dealt with it in details. He has also taken into consideration the fact that in the array of the parties in the ground of appeal after the names of both of the appellants word adult which was originally typed was subsequently erased. So on the basis of the record no finding can be recorded that on the day of the occurrence the two applicants were below 16 years of age. In bail application dated 1.11.75 referred to above, it is mentioned that Raj Kumar was student of 9th Class, therefore, there is a definite documentary evidence with regard to the age of Raj Kumar in existence in School records.

7. In order to do substantial justice, it is expedient that the two appellants be allowed an opportunity to establish their age at the time of the commission or crime, i.e. 17.10.75. Since lot of time has already been lost I direct the parties through their counsel to appear before the Chief Metropolitan Magistrate Kanpur Nagar on 7th August, 1995. The C.M.M. will fix two dates in the month of September on which dates he would record the evidence of the applicants on the point as to what was their age on 17.10.75. Thereafter he will fix two dates for the prosecution to lead rebuttal evidence, if any, in the last week of September. Thereafter he will hear the parties and return his report on or before 12th October, 1995. Calendar mentioned above will be faithfully and strictly followed by the Magistrate concerned.

8. This case will be listed for hearing on 13th October, 1995.