

(2023) 06 GUJ CK 0093
In the Gujarat High Court
Case No : R/Criminal Appeal No. 342 Of 1994

Rajurai Bhilarai Jaiswal

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 20-06-2023

Acts Referred:

Juvenile Justice (Care And Protection Of Children) Rules, 2007 — Rule 12(3), 12(3)(a)
(ii)
Indian Penal Code, 1860 — Section 302, 376(2)(g)
Information Technology Act, 2000 — Section 2(k), 2(l), 7A, 15(1)(g), 20

Citation : (2023) 06 GUJ CK 0093

Hon'ble Judges : A.S. Supehia, J;M. R. Mengdey, J

Bench : Division Bench

Advocate : Gajendra P Baghel, Krina Calla

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. The present Appeal is directed against the judgment and order dated 23.2.1994 passed by the Court of learned Additional Sessions Judge, Valsad at Navsari in Sessions Case No. 36 of 1992, wherein and whereby the Appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code.

2. The jail remarks produced on record by the learned APP as well as the the submissions advanced by the learned APP shows that the Appellant had absconded from 31.3.1998 and was apprehended by the Police on 22.9.2019. The jail remarks shows that the Appellant had undergone 9 Years 8 Months and 15 Days of incarceration. The present Appeal was dismissed since the present Appellant convict had absconded and, after he was apprehended, the Appeal is restored to its original file. It is pertinent to note that the Appellant filed Criminal Misc. Application No. 1 of 2023 seeking benefit of Juvenile Justice (Care and Protection of Children) Act 2000 and to treat him as juvenile as per the

provisions of the said Act. By order dated 8.6.2023 this Court allowed the Application, after perusing the report, produced by the learned APP from Police Inspector, Chikli Police Station, Navsari dated 6.5.2023 along with all the relevant documents.

3. It is the case of the Appellant that at the time when the offence so alleged to have been committed by him, he was a juvenile. The report and the documents produced on record in the aforesaid mentioned Civil Application suggest that the Appellant was juvenile and the incident had occurred on 11. 1.1992.

4. Learned Advocate for the Appellant submitted that since on the date of the incident, the Appellant was declared juvenile, as such, he should be released forthwith in view of the decision of the Supreme Court in the case of Raju v. State of Haryana, reported in 2019 (14) SCC 401.

5. Learned Advocate for the Appellant has further submitted that the convict does not wish to proceed with this Criminal Appeal and would not press the same and he would go with the conviction which is held against him. However, in view of the law enunciated by the Apex Court as well as the benefit given under the Juvenile Justice Act, he may be released forthwith.

6. Pursuant to the order passed by this Court dated 19.6.2023, the convict is also produced by the jail authorities before this Court. The present order is dictated in presence of the convict as well as the jail authorities.

7. Learned APP Ms. Krina Calla submitted that in view of the conviction which is held after appreciation of evidence, though the Appellant came to be declared as juvenile, he cannot be released forthwith.

8. At this stage, it would be appropriate to refer to the observations made by the Apex Court in the case of Raju (supra) wherein the Supreme Court in an identical situation has held thus:

"21. The learned Registrar concluded that the school transfer certificates dated 24.03.2012 and 12.12.2000, read along with the relevant entries of school registers of the respective schools, were admissible as evidence under Rule 12(3) (a)(ii) of the 2007 Rules, i.e., they were found to be in the nature of the "date of birth certificate from the school (other than a play school) first attended" as specified in the said clause, and thus accepted the Appellant's claim of juvenility. It was also found that the certificates contained the name of the Appellant as Raj Kumar, son of Rajendar Singh, born on 12.07.1984. This name was found to be the full name of the Appellant and the name Raju appearing on the SLP record taken to be an alias, as affirmed by both his parents by way of separate affidavits.

22. In our opinion, the learned Registrar has duly affirmed the veracity and bona fide nature of the certificates adduced by the schools attended by the Appellant. At the same time, since Rule 12(3)(a)(ii) specifically mentions that the certificate showing the date of birth of the person shall be from the school first attended

(other than a play school), we find that the certificate issued and school records maintained by the Dayanand Arya Middle School, Sohna, where the Appellant studied for four years till class V, as duly affirmed through the examination of a witness from such school, is sufficient to satisfy the requirement of clause (a)(ii) of Rule 12(3). Of course, it goes without saying that the certificate issued by the Government Senior Secondary School (Boys), Sohna and the accompanying school records serve to corroborate the veracity of the records furnished by the former school. It would not be out of place to highlight here that the findings in the inquiry report have also not been controverted by the State.

23. We are also conscious of the limitation envisaged under Section 7A of the 2000 Act that the evidence adduced with respect to the age of the accused cannot be in the form of mere affidavits. Due to this reason, the reliance of the learned Registrar upon affidavits to conclude that the name used in the certificates placed on record (i.e. Raj Kumar) is the full name of the Appellant and the name Raju is merely an alias is not tenable in our view. However, we find that there is sufficient evidence on record in the form of the appearance of the name of the father of the Appellant on the certificate dated 24.03.2012 issued by the Dayanand Arya Middle School, Sohna, to indicate that the name Raj Kumar appearing on such certificate was the full name of the Appellant.

24. In light of the above discussion, we are of the opinion that it has been conclusively established that the date of birth of the Appellant was 12.07.1984 and as such he was aged 16 years, 2 months and 2 days at the time of commission of the offence dated 14.09.2000. In such circumstances, we do not have any doubt that the inquiry conducted by the Registrar (Judicial) upon the direction of this Court in the instant matter amounts to an inquiry conducted by this Court itself, and is conclusive proof of the age of the Appellant as provided in Rule 12(3) of the 2007 Rules. As the Appellant satisfies the requirement of Sections 2(k) and 2(l) of the 2000 Act, the said Act is applicable to him in full force in light of Section 7A and Section 20.

25. Criminal Appeal hereby stands allowed and the order of the High Court affirming the conviction and sentence of the Appellant under Section 376(2)(g) of the IPC is set aside. Seeing that the Appellant has already spent 6 years in imprisonment, whereas the maximum period for which a juvenile may be sent to a special home is only 3 years as per Section 15(1)(g) of the 2000 Act, we direct that the Appellant be released from custody forthwith, if he is not required to be detained in connection with any other case."

9. Thus, the issue raised before this Court is squarely covered in the aforesaid decision. In the present case, the Appellant has been convicted for the offence punishable under Section 302 IPC whereas he has been acquitted for the offence punishable under the Arms Act. The State Appeal against the same is also dismissed as informed by the learned APP. Even if the conviction would have been upheld, since the Appellant is not desirous of proceeding with the Appeal challenging his conviction, the Appellant, who has already undergone

incarceration of 9 Years 8 Months and 15 Days, and is declared as juvenile and, as he has already undergone the sentence more than which is prescribed under the Juvenile Justice Act, he is entitled to be released.

11. Thus, since the convict was juvenile and aged about 14 Years and 12 Days, when the incident had occurred coupled with the fact that he has already undergone 9 Years 8 Months and 15 days of sentence, he is entitled to be released forthwith even if the conviction is affirmed. Thus, we direct that the Appellant be released from the custody forthwith if he is not required to be detained in connection with any other case. The present Appeal is accordingly disposed of as withdrawn.