
(2004) 04 BOM CK 0085
In the Bombay High Court
Case No : Criminal W.P. No. 1922 of 2003

Umesh Dukhan Mandal

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 12-04-2004

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15(6)
Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 3 MhLj 663

Hon'ble Judges : S. Radhakrishnan, J; R.S. Mohite, J

Bench : Division Bench

Advocate : Maharukh Adenwalla and Y.M. Chaudhary, for the Appellant; R.H. Mehta, Assistant Public Prosecutor, for the Respondent

Judgement

S. Radhakrishnan, J.—Rule. Rule is made returnable forthwith. The learned APP waives service. By consent, matter taken up for hearing.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

3. It appears that the petitioner herein was charged with the offence of murder punishable u/s 302 of the Indian Penal Code for an act committed on 10-4-1999. The petitioner has been convicted of the offence of murder punishable u/s 302 of the Indian Penal Code by the learned Sessions Court, Greater Bombay by its judgment and order dated 14-11-2003 and whereby the petitioner has been sentenced to undergo life imprisonment.

4. The petitioner has filed this present petition challenging the aforesaid sentence and not the conviction. The only contention raised in the petition is that on the date of commission of the said offence on 10-4-1999, the petitioner was aged about 15½ years, as such, he was a "juvenile" under the Juvenile Justice (Care and Protection of Children) Act, 2000. The contention of the learned counsel for the petitioner is that if that be so, the benefit of Juvenile Justice (Care and

Protection of Children) Act, 2000, ought to be given to the petitioner.

5. In view of the above dispute about the actual age of the petitioner and after perusal of the record before the Trial Court we had passed an order on 29-3-2004 whereby we had directed that the petitioner be examined by a Radiologist at a Government Hospital at Pune and to submit his detailed report as to the age of the petitioner as on the date of examination. In pursuance of the aforesaid order, the Professor and Head of the Department of Radiology, B.J. Medical College, Sasoon General Hospital, Pune being a Government Hospital has sent a report with regard to the age of the petitioner as on 5-4-2004 when he was physically examined. We have perused the said report. The said report clearly indicates that on the clinical and radiological examination of the petitioner, the age of the petitioner as on 5-4-2004 to be 18 years but less than 20 years which includes marginal error of six months of either side. If that be so, the age of the petitioner on the relevant date i.e. 10-4-1999 would have been 15 years, at the most, i.e. taking the higher age as per the above range.

6. We have perused the provisions of Section 15 and Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and also the Judgment of the Supreme Court in Bholu Bhagat Vs. State of Bihar, and also the recent Judgment of the Division Bench of our High Court in Confirmation Case No. 3 of 2002 read with Criminal Appeal No. 510 of 2002 dated 21-1-2004.

7. Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 makes it abundantly clear that the provisions of the said Act are retrospective in operation. In the instant case, the petitioner has not even challenged the conviction and has only questioned the sentence. In both the aforesaid cases, it has been already held that if the accused were to be a juvenile on the date of commission of the offence, then the said person has to be punished as per the Juvenile Justice (Care and Protection of Children) Act, 2000. In the instant case we have found that the petitioner's age at the most on the relevant date i.e. 10-4-1999 to be 15 years, he would be punishable u/s 15(6)(ii) of the Act i.e. he should be sentenced and detained till he ceases to be a juvenile. As on today he is no longer juvenile. Over and above it may be noted that right from the date i.e. 10-4-1999, the petitioner was arrested has been in custody till this date and he has also completed 5 years in custody.

8. The learned counsel for the petitioner has also brought to our notice that unfortunately in the above matter on twenty seven occasions, the petitioner was not even produced before the Trial Court in spite of production warrants have been issued and notices were issued to the Jail authorities. The learned counsel for the petitioner states that this kind of attitude ought not to be repeated in other cases. In spite of twenty seven opportunities given, the Jail authorities did not bother and care to produce the petitioner before the Trial Court. Had they done so at the right time, the Court would have had the opportunity to ascertain the age of the accused whether he was a juvenile or not. In these circumstances, we do hereby direct the State of Maharashtra that hereinafter if an accused

appears to be a juvenile or if contends that he is a juvenile, then concerned person shall be produced before the Trial Court at the earliest opportunity, to ascertain, whether he is a juvenile or not.

9. The learned counsel for the petitioner has also brought to our notice another Judgment of the Supreme Court in Gopinath Ganesh v. The State of West Bengal, AIR 1994 SC 237 wherein in Paragraph 13 Supreme Court held that Magistrate or the Trial Court to hold an enquiry as to whether the concerned accused is juvenile or not and submit the said report along with case papers to the Sessions Court.

10. Under these circumstances, we direct that the petitioner shall be released forthwith unless he is required in any other criminal case. Rule is made absolute in the above terms. Petition is disposed of accordingly.

11. Parties be given a true copy of this order duly authenticated by the Court Sheristedar/Personal Secretary.