
(2009) 10 DEL CK 0191
In the Delhi High Court
Case No : Criminal A. No. 152 of 1995

Vinod Kumar

APPELLANT

Vs

The State Govt. of NCT of Delhi

RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 2, 20, 7A, 7A(1)
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 10 DEL CK 0191

Hon'ble Judges : Sanjay Kishan Kaul, J;Ajit Bharihoke, J

Bench : Division Bench

Advocate : Salim A. Khan, Ashish Lal, Sophiya Salim and Vineet, for the Appellant; Pawan Sharma, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The appellant Vinod Kumar has been convicted and sentenced in Sessions Case No. 160/94 arising out of FIR No. 50/90 registered at PS Gandhi Nagar for having committed the offence punishable under Sections 302, IPC and sentenced accordingly.

2. Feeling aggrieved by the impugned judgment of conviction dated 30.05.1995 and order on sentence of the even date, the appellant has preferred the instant appeal.

3. During the course of arguments, learned Counsel for the appellant, on instructions from the appellant, has not pressed the grounds of appeal against conviction. He, however, has submitted that the appellant was a juvenile in terms of Section 2(k) of The Juvenile Justice (Care and Protection of Children) Act, 2000, wherein it is provided that a "juvenile. or a "child. means a person who has not completed eighteenth year of age. Thus, he is entitled to be dealt with under the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000.

4. As per record, during trial an application was moved by the appellant seeking

bail on the ground that he was a juvenile i.e. below 16 years of age at the time of commission of offence. The application was supported by his School Leaving Certificate which was issued by the Principal of the Middle School, Madayan, District Etawa, UP wherein his date of birth is shown as 30.12.1994. The learned Trial Court, in order to satisfy itself about age of the appellant, referred him for medical examination. As per the report of the Radiologist, as on 09.01.1991, the age of the appellant was more than 18 years but no specific age range was given in the report.

5. Learned Counsel for the respondent/State has not challenged the authenticity of the School Leaving Certificate of the appellant available on the record. Therefore, we are of the view that the date of birth of the appellant is 30.12.1974. Going by the said date of birth of the appellant, the age of the appellant on the date of commission of offence, i.e. 13.03.1990 was around 16 years. Therefore, he falls within the definition of juvenile as mentioned u/s 2(k) of The Juvenile Justice (Care and Protection of Children) Act, 2000. Even if, we go by the report of the Radiologist, then also, the age of the appellant as on 09.01.1991 was slightly above 18 years and after giving discount of time gap between 09.01.1991 and the date of offence (13.03.1990), the age of the appellant on the date of offence would be around slightly more than 17 years but under 18 years and qualify him to get benefit under The Juvenile Justice (Care and Protection of Children) Act, 2000.

6. Learned Counsel for the appellant has taken us through the scheme of The Juvenile Justice (Care and Protection of Children) Act, 2000 and submitted that Section 2(k) of the Act has expanded the definition of juvenile by increasing the age from 16 years to 18 years. He has submitted that Section 7-A(1) of the Act provides for the procedure to be followed when the claim of juvenility is raised before any court and Section 7-A(2) provides that if the court finds a person to be juvenile on the day of commission of offence, 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. He has also drawn our attention to Section 20 of the Act which deals with the pending cases of the persons who are covered under the definition of juvenile because of the definition of juvenile u/s 2(k) of the Act increasing the age from 16 to 18 years, and submitted that in view of the aforesaid provisions of the Act, the order of sentence awarding life imprisonment to the appellant is uncalled for and it needs to be modified.

7. In order to appreciate the submissions of learned Counsel for the appellant, it would be useful to reproduce Section 7-A of The Juvenile Justice (Care and Protection of Children) Act, 2000, which is as follows:

7-A Procedure to be followed when claim of juvenility is raised before any court -
1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and

shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be: Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

2) 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.

8. From a perusal of Section 7-A of The Juvenile Justice (Care and Protection of Children) Act, 2000, it transpires that as per Clause (1), whenever a claim of juvenility is raised before any Court, the Court shall make an inquiry and take such evidence as may be necessary so as to determine the age of such person and shall record a finding whether the person is a juvenile or a child or not stating his precise age as nearly as possible.

9. Section 20 of The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for the procedure to be followed in respect of pending cases pertaining to the juveniles in any court in any area on the date on which the Act comes into force in that area. It provides that such pending cases against the juvenile shall continue in the said courts as if this Act has not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of juvenile, forward the case to the Board which shall pass appropriate orders in respect of that juvenile in accordance with the provisions of the Act.

10. Since the appellant has conceded his pleas against the impugned judgment of conviction on merits, we dismiss the appeal to that extent. So far as the appeal against the order of sentence is concerned, we have already concluded above that the appellant was a juvenile on the date of commission of offence as his age then was less than 18 years. Clause 2 of Section 7-A and Section 20 of The Juvenile Justice (Care and Protection of Children) Act, 2000 provides that if the Court finds a person to be juvenile in terms of definition u/s 2(k) of the Act on the date of commission of offence, it shall forward the juvenile to the Juvenile Justice Board for passing appropriate orders, and the sentence if any, awarded by a Court shall be deemed to have no effect. The import of this provision is that sentence awarded by the learned trial Judge in terms of the impugned order of sentence will have no effect and the matter has to be referred to the Juvenile Justice Board for passing appropriate orders. We may, however, note that as per Section 15 of The Juvenile Justice (Care and Protection of Children) Act, 2000, the maximum period for which a juvenile can be sent to a Special Home is three years. As per the nominal roll of the appellant, the appellant has already suffered detention for a period of more than nine and a half years.

11. In view of the fact that the appellant has suffered incarceration for a period which is more than the maximum period of detention in Special Home permissible under The Juvenile Justice (Care and Protection of Children) Act, 2000, we do not deem it appropriate to refer the matter back to the Juvenile Justice Board for passing appropriate orders and direct formal release of the appellant in the present appeal.

12. The appeal is partly accepted and order on sentence is modified accordingly.

13. Bail-cum-surety bonds of the appellant are cancelled and discharged.