

**Lala Vs. State of M.P.**

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**Court :** Madhya Pradesh

**Decided On :** Jul-16-1984

**Reported in :** 1985CriLJ571

**Judge :** K.L. Shrivastava, J.

**Appellant :** Lala

**Respondent :** State of M.P.

**Judgement :**

**K.L. Shrivastava, J.**

1. This appeal is directed against the judgment dt. 30-9-1981 passed by the Sessions Judge, Rajgarh (Biora) in S.T. No. 23 of 1981 convicting the appellant Lala and his co-accused Rughnath (since deceased) of the offence Under Section 376 I.P.C and sentencing each of them to S.I. for one year.
2. According to the prosecution, the appellant and his co-accused Rughnath had committed rape on Mst. Prembai, a minor girl aged about 12-13 years on 5-1-81 within the jurisdiction of the police station Machalpur in District Rajgarh (Bioral).
3. The case was committed to the Court of Session by the Chief Judicial Magistrate Rajgarh by his order dt. 6-4-81 and after the trial, the Sessions Judge convicted and sentenced the appellant as stated above. However, in view of

Sections 26 and 27 of the Children Act 1928, he ordered that the appellant be sent to the Reformatory School Narsinghpur.

4. In this appeal, the conviction and sentence passed against the appellant Lala have been challenged on the grounds that it has not been proved that the prosecutrix was below 14 years of age on the date of the alleged offence and further that the offence has not even otherwise been proved against him.

5. During the course of arguments it has been contended that the appellant Lala was admittedly a child within the meaning of the M.P. Bal Adhiniyam 1970 (hereinafter referred to as 'the Adhiniyam') which has been brought into force in the Rajgarh District with effect from 15-2-1981 by the notification No. D/ 739, 6835-26-81 Dt. 5-2-1981 and, therefore, the Sessions Judge. Rajgarh had no jurisdiction to try the case.

6. The Children Act has been repealed by Section 64 of the Adhiniyam.

7. It has not been controverted that the Adhiniyam was brought into force in the Rajgarh District with effect from 15-2-81 and the appellant was a child within the meaning of Section 2(c) thereof on the date of the relevant proceedings.

8. Section 6(1) of the Adhiniyam provides that where a Juvenile Court has been constituted for any area, it will have power to deal exclusively with all proceedings under this Act relating to neglected children or delinquent children. Section 6(2) provides that where no such court has been constituted for any area, the powers conferred on the Juvenile Court by or under this Act shall be exercised in that area by a Magistrate of the First Class. Thus once the Adhiniyam has been brought into force, in a particular area, irrespective of the fact as to whether or not a Juvenile Court has been established for that area, the jurisdiction of the Sessions Court to deal with the case of a child comes to an end.

9. In the decision in *Raybir v. State of Haryana* : 1981 CriLJ1497 , a similar question was involved and the Supreme Court overruling the decision in *Devisingh v. State M.P.* reported in 1478 Cri LI 585 AIR 1978 Madh Pra 100 (FB). had allowed the appeal. This case has, therefore, to be sent back so that the appellant

is dealt with in accordance with the provisions of the Adhiniyam. I am aware of Section 6(3) of the Adhiniyam which provides that powers thereunder may also be exercised by the High Court and the Court of Session. When proceeding comes before them in appeal, revision or otherwise. The question here is of the enquiry at the first instance Under Section 14 of the Adhiniyam.

10. As a result of the foregoing discussion, the appeal is allowed and the conviction and sentence imposed upon the appellant are set aside. The appellant's entire trial is quashed and it is directed that he shall be dealt with in accordance with the provisions of the Adhiniyam.

11. The case be sent back to the C.J.M. Rajgarh for necessary action in accordance with this order.

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