

Babloo and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-07-2003

Reported in : RLW2004(1)Raj25; 2004(1)WLC645

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Acts : Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 2, 6, 15, 16 and 20; Indian Penal Code (IPC) - Sections 34 and 302; Juvenile Justice Rules, 2001

Appeal No. : D.B. Cr. Appeal No. 172 of 1999

Appellant : Babloo and ors.

Respondent : State of Rajasthan

Advocate for Def. : S.S. Rathore, Public Prosecutor and; Hridesh Singh, Adv.

Advocate for Pet/Ap. : Biri Singh Sinsinwar, Adv.

Judgement :

Sharma, J.

1. The appellants three in number were placed on trial before the learned Additional Sessions Judge Neemkathana (Sikar) in Sessions Case No. 31/97 for having committed murder of Rohitash and the learned Judge vide judgment dated

March 8, 1999 convicted and sentenced all the three appellants under Section 302 read to undergo imprisonment for Life Imprisonment with fine of Rs. 1000/- and in default of payment of fine to further suffer 6 months simple imprisonment. The appellants in the instant appeal have assailed the aforequoted finding of the learned trial Judge.

2. The police station Ajeetgarh recorded a parcha bayan of informant Lik-michand on June 24, 1997 wherein he stated that on the said day at about 7.00PM when his son Rohitash was returning to the house the appellants Babloo, Dharma and Ram Swaroop came out of their house armed with farsi and Lathis and started inflicting blows with farsi and lathis on the person of Rohitash, who died on the way while taken to the hospital. Case under Section 302 read with Section 34 of IPC was registered and investigation commenced. On completion of the investigation charge sheet was filed. In due course the case came up for trial before learned Additional Sessions Judge Neemkathana (Sikar), who framed charge under Section 302 read with Section 34 IPC. The appellants denied the charge and claimed to be tried. The prosecution in support of its case examined as many as 12 witnesses. In the explanation under Section 313 Cr. P.C. the appellants claimed innocence. One witness was examined in defence. The learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. By filling an application under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 (for Short 'Juvenile Justice Act') appellant Babloo canvassed that he could not have been sentenced to undergo imprisonment as on the date of incident he was juvenile. This Court vide order dated May 27, 2003 directed the Additional Sessions Judge Neemka Thana (Sikar) to conduct an enquiry in order to ascertain the age of Babloo on the date of incident. Learned Additional Sessions Judge after conducting detailed enquiry observed that date of birth of Babloo was June 10, 1981 and on the date of the incident i.e. on June 24, 1997, the age of appellant Babloo was 16 years and 14 days.

4. In order to appreciate the submissions advanced before us we have carefully scanned the material on record.

5. The superstructure of the prosecution case is founded on the testimony of Smt. Gulab (PW.5), Smt. Rukma (PW.6) and Likmichand (PW.7). Dr. Gauri Shankar Sharma (PW.8) conducted the autopsy on the dead body of Rohitash. Whereas the case was investigated by Chauthmal (PW. 11) and Surat Singh (PW.12).

6. A look at the post mortem report (Ex. P-4) goes to show that Rohitash sustained three incised wounds on parieto occipital region and cause of his death was primary shock caused by injuries to brain with excessive bleeding.

7. On a close scrutiny of the prosecution evidence we find that injuries with Farsi have been attributed to appellant Babloo. Allegations against appellants Ram Swaroop and Dharma that they inflicted lathi blows on the person of Rohitash do not find support from the medical evidence. Although Gulab (PW.5) and Rukma (PW.6) improved their version at the trial and attributed injuries with Farsis to appellants Ram Swaroop and Dharma but we find ourselves unable to place any reliance on their statements qua Ram Swaroop and Dharma as the case of the prosecution from the very beginning was that Ram Swaroop and Dharma had lathis. In such a situation possibility of over implication of Ram Swaroop and Dharma cannot be ruled out.

8. The prosecution evidence qua the appellant Babloo is consistent and it has been established beyond reasonable doubt that appellant Babloo caused the fatal injuries on the head of Rohitash with farsi. The prosecution is able to establish the charge under Section 302 read with Section 34 IPC against appellant Babloo beyond reasonable doubt and we are of the view that learned trial Judge has rightly convicted him under the said section.

9. Turning on to the scheme of Juvenile Justice Act it appears that pursuant to the directions of the Hon'ble Supreme Court in Sheela Barse v. Union of India (1), the Parliament enacted Juvenile Justice Act, 1986 (Act No. 53 of 1986). The said Act was re-drafted and re-enacted as Juvenile Justice (Care and Protection of Children) Act 2000. (for short 'Juvenile Justice Act') which came into existence with effect from April 1, 2001. While enacting the Act the Parliament considered United Nations standard Minimum Rules for the Administration of Juvenile Justice Act, 1985 (the Beijing Rules), the United Nations Rules for the

Protection of Juveniles deprived of their liberty (1990) and all other relevant international instruments and conventions on the rights of child held by the General Assembly United Nations on November 20, 1989 which was rectified by the Government of India on December 11, 1992 to achieve the objectives underline therein. The Act was enacted to consolidate and amend the law relating to Juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

10. The question that emerges for consideration is whether the appellant Babloo was Juvenile in terms of Juvenile or child under Section 2(k) of the Juvenile Justice Act at the time of commission of offence. A perusal of the report of the learned Additional Sessions Judge Neemkathana (Sikar) demonstrates that age of appellant Babloo at the time of commission of offence was 16 years and 14 days. Undeniably he was below 18 years of age and was Juvenile in terms of Section 2(k) of the Juvenile Justice Act. Under Rule 62(2) of the Juvenile Justice (Care and Protection of Children) Rules, 2001 (for short 'Juvenile Justice Rules, 2001') it was incumbent upon the trial court to pass appropriate order with regard to juvenile in terms of Juvenile Justice Act and Juvenile Justice Rules, 2001. Section 20 of the Juvenile Justice Act prescribed procedure in respect of Juvenile against whom proceedings were pending on the date on which the Juvenile Justice Act came into force. The learned trial Judge failed to consider the aforequoted provisions and passed order of sentence in conflict with Section 20 of the Juvenile Justice Act.

11. Section 6 of the Juvenile Justice Act gives power to the Juvenile Board to deal exclusively with all proceedings under the Juvenile Justice Act relating to the juvenile. Sub Section (2) of Section 6 of Juvenile Justice Act mandates that powers of the Board may also be exercised by the High Court and the Court of Sessions when the proceedings come before them in appeal, revision or otherwise. On a close look at Sections 15 & 16 of the Juvenile Justice Act, we find it appropriate that appellant Babloo, who was juvenile on the date of incident,

should be dealt with by the Juvenile Board in accordance with the provisions of Juvenile Justice Act.

12. In view of what we have discussed hereinabove we dispose of the instant appeal in the following terms:

(i) Appeal of appellants Dharma (a) Dharampal and Ram Swaroop is allowed. Their conviction and sentence under Sections 302/34 IPC stand set aside. They are acquitted of the charges under sections 302/34 IPC, They are on bail, they need not surrender and there bail bonds stand cancelled.

(ii) while maintaining the conviction of appellant Babloo under Sections 302/34 IPC we set aside the order of sentence and remit the case to the learned Additional Sessions Judge Neemkathana (Sikar) with the direction to forward the juvenile Babloo to the Board which shall pass orders in view of Sections 15 & 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules made thereunder.

(iii) The impugned judgment of the learned trial judge stands modified as indicated hereinabove.

(iv) A copy of the order be sent to the Additional Sessions Judge Neemkathana (Sikar) along with the record forthwith.