

Mahendra Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-15-2003

Reported in : 2004CriLJ1606; 2003(4)WLC616

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

Acts : Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 2, 20 and 62(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Crl. A. No. 370 of 1997

Appellant : Mahendra Singh

Respondent : State of Rajasthan

Advocate for Def. : Biri Singh, Adv. for; Surendra Kumar, Adv. and; S.S. Rat

Advocate for Pet/Ap. : Naina Sarraf and; R.S. Agrawal, Advs.

Judgement :

Shiv Kumar Sharma, J.

1. The appellant was placed on trial before the learned Additional Sessions Judge, Sikar in Sessions Case No. 24/96 for having committed murder of Parma Devi. Learned Trial Judge vide judgment dated July 3, 1997 convicted and sentenced the appellant as under :--

Under Section 302, IPC to undergo Imprisonment forlife and fine of Rs. 1000/-in default to furthersuffer Three months' Simple Imprisonment.Under Section 452, IPC to undergo Six Months'Rigorous Imprisonment and fine of Rs. 200/- in default to furthersuffer One Month Simple Imprisonment,Under Section 324/34, IPC to undergo Six Months'Rigorous Imprisonmentand fine of Rs. 200/-in default to further suffer One Month SimpleImprisonment. All the sentences were ordered torun concurrently.

2. As per written report Ex. P-18 the incident occurred on May 13, 1993 around 4.30 p.m. and the police station Laxmangarh registered a case against the appellant under Sections 147, 148, 149, 302, 452, 323 and 379, IPC. The appellant was arrested on April 5, 1996 and learned Additional Sessions Judge, Sikar proceeded with the trial and convicted and sentenced the appellant as indicated above. It is not necessary to incorporate the facts of the case as the learned counsel for the appellant did not assail the finding of conviction recorded by the learned trial Judge. The only contention advanced before us was that on the date of the incident the appellant was less than eighteen years of age and as per Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'JJ Act') was juvenile, therefore, in view of Section 20 of the JJ Act the appellant could not have been sentenced.

3. Pursuant to our direction the learned Additional Sessions Judge Sikar made an enquiry about the age of the appellant and on the basis of Secondary School Examination Certificate and other evidence observed that the date of birth of the appellant was June 15, 1975 and on the date of incident the age of the appellant was 17 years, 10 months and 28 days.

4. The JJ Act came into existence with effect from April 1, 2001. As per Section 2(k) of the JJ Act, 'Juvenile' or 'Child' means a person who has not completed 18 years of age. Section 20 of the JJ Act provides special provision in respect of pending cases and speaks that notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had 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 the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.

5. Sub-rule 2 of Rule 62 of the Juvenile Justice (Care and Protection of Children) Rules, 2001 (for short 'JJ Rules') provides that all pending cases which have not received finality shall be dealt with and disposed of in terms of the provisions of the JJ Act and the rules made thereunder.

6. Section 6 of the JJ Act provides that the Juvenile Justice Board shall deal exclusively with all proceedings under the JJ Act relating to juvenile. Sub-section 2 of Section 6 mandates' that the powers conferred on the Board may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

7. Three-Judge Bench of Hon'ble Supreme Court in Umesh Chandra v. State of Rajasthan, (1982) 2 SCC 202 : 1982 Cri LJ 994, indicated that crucial date to determine whether the accused is a juvenile or not, is the date on which the offence was committed.

8. The JJ 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 need 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.

9. Although the appellant was convicted and sentenced on July 3, 1997 and the JJ Act came into existence w.e.f. April 1, 2001 but in view of Section 6(2) of JJ Act and Rule 62 (2) of JJ Rules instant criminal appeal comes within the definition of pending cases, therefore, we have to deal with the appeal in accordance with the provisions contained in JJ Act as on the date of incident the appellant was less than 18 years of age and a juvenile. Accordingly we hold that sentence awarded to the appellant is not sustainable in view of Section 20 of the JJ Act. While

confirming the conviction of the appellant under Sections 302, 452 and 324/ 34, IPC, we set aside the sentence awarded to him vide judgment dated July 3, 1997. We, however, find it appropriate that the appellant should be dealt with by Juvenile Board.

10. For these reasons we dispose of the instant appeal in the following terms :--

(a) While maintaining the conviction of the appellant under Sections 302, 452 and 324/34, IPC, we set aside the order of sentence and remit the case to learned Additional Sessions Judge, Sikar with the direction to forward the appellant to the Juvenile Board who shall pass appropriate orders in terms of Sections 15 and 16 of the JJ Act and JJ Rules.

(b) The impugned Judgment of learned trial Judge stands modified as indicated above.

11. Before parting with the case we intend to refer the order dated August 5, 1996 passed by the learned trial Judge in respect of Surendra Kumar who was named as accused at the trial by the witnesses. The learned trial Judge although in the order dated August 5, 1996 observed that aspect to take or not to take cognizance against Surendra Kumar for involvement in the case, shall be considered after the statements of witnesses are recorded but failed to take notice of the said order at the time of conclusion of the trial. Show cause notice in this regard was issued to Surendra Kumar by this Court and we have heard the submissions advanced on his behalf. In view of the ratio indicated in *Dwarka Das v. State of Haryana*, 2003 Cri LR (SC) 241 : 2003 Cri LJ 414, it was argued that High Court cannot exercise advisory jurisdiction where the State did not assail the order and it attained finality.

12. The point is well taken. But in *Naresh Kumar v. Registrar*, 2002 SCC (Cri) 1015, their Lordships of the Supreme Court propounded that the High Court suo motu can exercise the revisional powers under Section 401/397, Cr.P.C. We, therefore, in exercise of powers under Section 401, Cr.P.C. direct, learned Additional Sessions Judge, Sikar to look at his order dated August 5, 1996 and act according to law. Copy of this order be remitted to learned Additional Sessions Judge, Sikar along with the record of this case.

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