

Sunder @ Sanju Vs. State

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Court : Delhi

Decided On : Apr-23-2010

Judge : A.K. Sikri and; Ajit Bharihoke, JJ.

Acts : Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 2, 7A, 7A(1), 15 and 20; ;Indian Penal Code (IPC) - Sections 34, 120B, 302 and 324; ;Code of Criminal Procedure (CrPC) - Section 389

Appeal No. : Crl. M.B. No. 42/2010 and Crl. Appeal No. 40/2010

Appellant : Sunder @ Sanju

Respondent : State

Advocate for Def. : Lovkesh Sawhney, APP

Advocate for Pet/Ap. : V. Madhukar, Adv.

Judgement :

Ajit Bharihoke, J.

1. Appellant Sunder @ Sanju has preferred this appeal against the impugned judgment in Sessions Case No. 40/2001 arising out of FIR No. 339/2000 P.S. Mangol Puri convicting him for the offences under Sections 120B IPC, 302 IPC read with Section 120B IPC and 324 IPC read with Section 34 IPC.

2. Briefly put, case of the prosecution is that on 16.04.2000, appellant Sunder @ Sanju entered into a criminal conspiracy with his co-accused Vikas, Sanjeev, Mohd. Abdul Hamid and Bhawishan Singh @ Vijay to commit murder of Sanjay s/o Kashi Ram and in furtherance of the conspiracy committed murder of Sanjay on 16.04.2000 at about 7.15 p.m. in front of H. No. T-1302, Mangol Puri, Delhi and caused simple injury with sharp object to Lakhpati and Raj Kapoor Singh.

3. During the pendency of the appeal, the appellant moved an application being CrI. M.B. No. 42/2010 under Section 389 Cr.P.C. in which one of the pleas raised by the learned Counsel for the appellant was that the appellant was a juvenile on the date of commission of the offence and prayed for determination of his age in terms of The Juvenile Justice (Care and Protection of Children) Act, 2000 ('the said Act' for short) as amended up to date and Rules framed there under and grant of benefit under said Act and Rules framed there under. In support of his prayer, the appellant filed photocopy of his School Leaving Certificate wherein his date of birth is shown as 19.06.1982 suggesting that on 16.04.2000, the date of commission of the offence, he was a juvenile being under 18 years of age.

4. In order to appreciate the submissions of learned Counsel for the appellant, it would be useful to reproduce Section 7A of the said Act, 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 there under, 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.

5. From a perusal of Section 7-A of the said Act, 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.

6. Since the appellant raised the issue of juvenility at the time of commission of offence, the respondent was directed to verify the authenticity of the said School Leaving Certificate and as per the report submitted by the SHO, P.S. Mangol Puri, Delhi, it has been confirmed that the School Leaving Certificate submitted by the appellant is genuine. As per the certificate, date of birth of the accused is 19.06.1982 suggesting that the appellant was less than 18 years, to be precise the age was 17 years, 09 months and 27 days, on the date of commission of offence i.e. 16.04.2000. Thus, he was a juvenile as per Section 2(k) of the said Act.

7. During the course of arguments, learned Counsel for the appellant, on instructions from the appellant, who is present in the Court submitted that the appellant admits his guilt and does not press his appeal on merits and prayed for grant of benefit under the provisions of the Juvenile Justice Act to him.

8. Section 20 of the said Act 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.

9. We have already concluded above that the appellant was a juvenile on the date of commission of offence and his age was 17 years 09 months and 27 days i.e. less than 18 years. Clause 2 of Section 7-A of the said Act provides that if the Court finds a person to be juvenile in terms of definition under Section 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 ought to be referred to the Juvenile Justice Board for passing appropriate orders. We may, however, note that as per Section 15 of the said Act, the maximum period for which a juvenile can be sent to a Special Home is three years. As per the nominal roll, the appellant has already undergone detention for more than 3 years.

10. 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 said Act, 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.

11. We may note that the appeals if any of co-accused persons, who were major on the date of commission of offence are to be dealt with on their own merits.

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

13. The appellant is in jail. He be released forthwith if not required in any other case.

14. The application and the appeal itself stand disposed of.