

Ananda Bauri Vs. State

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Court : Kolkata

Decided On : Feb-14-1997

Reported in : 1997CriLJ2188

Judge : Nisith Kumar Batabyal and ;Nure Alam Chowdhury, JJ.

Acts : Indian Explosives Act - Section 9B(1); ;Code of Criminal Procedure (CrPC) , 1974 - Section 313; ;Indian Penal Code (IPC) - Sections 109 and 395

Appeal No. : Criminal Appeal Nos. 118 and 152 of 1988

Appellant : Ananda Bauri

Respondent : State

Advocate for Def. : Ranjit Ghoshal, Ld. Adv.

Advocate for Pet/Ap. : Milan Mukherjee, Ld. Adv.

Judgement :

Nure Alam Chowdhury, J.

1. These two appeals, Criminal Appeals Nos. 118 and 152 of 1988 preferred by the appellants Mahadeb Bauri and Ananda Bauri respectively are directed against the same judgment and order dated 14-3-88, passed by the learned Assistant Sessions Judge, Purulia, in Sessions Trial No. 17 of 1987 (Sessions Case No. 27

of 1985), convicting Mahadeb Bauri (Appellant in Criminal Appeal No. 118 of 1988), under Sections 395/109, I.P.C. and sentencing him to R.I. for five years and convicting Ananda Bauri (Appellant in Criminal Appeal No. 152 of 1988) Under Section 395, I.P.C. and Section 9B(1)(b) of the Indian Explosives Act, and sentencing him to suffer R.I. for five years and pay fine of Rs. 1000/- i.d., suffer R.I. for six months more on conviction under Section 395, I.P.C. and to suffer R.I. for six months on conviction Under Section 9B(1)(b) of the I.E. Act, both the sentences to run concurrently. Both the Appeals are, therefore, heard analogously.

2. At the very outset of the hearing of those Appeals, Mr. Milan Mukherjee, learned Advocate, appearing on behalf of the appellant Ananda Bauri (Appellant in 152. of 1988) submitted that the appellant was a minor at the lime of the alleged occurrence and as such his trial and conviction have been vitiated and the conviction and sentence are liable to be set aside.

3. Mr. Mukherjee, learned Advocate, draw the attention of the Court to the evidence of P.W. 1, A.S.I. Subodh Rakshit (who arrested the appellant at the time of occurrence), in cross-examination at page 9 (first para last 2 lines), stating that 'At the time of occurrence, the age of the accused Ananda was about 15/16 years'.

4. Mr. Mukherjee, learned Advocate, also draw the attention of this Court to the examination of the appellant Ananda Under Section 313 of the Code of Criminal Procedure on 9th March, 1988, describing his age as 20 years and thereby indicating that he was aged about 14 years at the time of the occurrence and as such was a minor at that time.

5. Mr. Mukherjee further submitted that although the plea that the appellant was a minor, is being raised for the first time at the stage of this Appeal, in view of the decision reported in : 1984 CriLJ168 (Gopinath Ghosh v. State of West Bengal), this plea can be raised at any stage even if such plea was not taken when he was produced before the learned Magistrate or before the trial Court.

6. Mr. Ranjit Ghoshal, learned Advocate appearing on behalf of the State, drew the attention of this Court to the evidence of the two doctors P. W.8 and P. W. 12 who examined Ananda Bauri. P.W.8 examined Ananda on 26-6-82 and in his

cross-examination on 21-1 -88 (page 26, last para) he stated that Ananda was aged approximately 19 years. P.W. 12 examined Ananda Bauri on 27-6-82 and he stated in his examination-in-chief that he examined Ananda on 27-6-82 at 3.30 a.m. in the night aged 19 years.

7. After hearing Mr. Milon Mukherjee, learned Advocate on behalf of the appellant Ananda Bauri and the learned Advocate on behalf of the State we hold that neither the submissions of Mr. Mukherjee, learned Advocate for the appellant Ananda Bauri nor the submissions on behalf of the State, as pointed out above, enable us to determine the age or minority of the appellant Ananda Bauri on the date of occurrence.

8. However, in view of the aforesaid judgment reported in : 1984 CriLJ168 (Gopinath Ghosh v. State of West Bengal), in the aforesaid facts and circumstances, before hearing of the aforesaid Appeals, this Court has no other alternative than to adjourn the hearing of the Appeals and send the records to the learned Assistant Sessions Judge, Purulia for determining the age and minority of the appellant Ananda Bauri on the date of occurrence in accordance with law.

9. We, therefore, adjourn the hearing of both the Appeals for three months and direct the learned Assistant Sessions Judge, Purulia, to determine the age and minority of the appellant Ananda Bauri, in accordance with law on the date of occurrence and send his findings to this Court, preferably within two months from the date of receipt of the records from this Court. In order to come to his findings the learned Assistant Sessions Judge, Purulia, may refer the accused Ananda Bauri to the Medical Board or the C.M.O.H., Purulia or any other competent Medical Authority as the case may be, for ossification test etc. and also to any other competent Authority, if necessary, for obtaining credit-worthy evidence about the age and minority of the accused Ananda at the time of occurrence by examining the experts. The learned Assistant Sessions Judge may as well give an opportunity to the accused Ananda Bauri to lead evidence about his age, (if he so desires).

10. Office is directed to send down the records of the case to the trial Court immediately, with a copy of this order.

11. Office is also directed to send the Appeals 'to the appropriate Bench of this Court for orders', immediately after receipt of the aforesaid report and finding of the learned Assistant Sessions Judge, Purulia.

11. Let the records be put up 'For Orders' after three months.

Nisith Kumar Batabyal, J.

12. I agree.

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