

Prem Kumar Vs. State

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Court : Delhi

Decided On : Nov-09-2011

Judge : Badar Durrez Ahmed, J.

Acts : Indian Penal Code (IPC) - Section 302; Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 15, 16, 19

Appeal No. : CRL.A. No. 119 of 1999

Appellant : Prem Kumar

Respondent : State

Judgement :

1. This appeal is directed against the judgment dated 20.05.1998 passed by the learned Additional Sessions Judge, Delhi in sessions case No. 123/1996 arising out of FIR No.261/1994 under Section 302 IPC registered at P.S. Pahar Ganj. The appellant has been convicted for the offence punishable under Section 302 IPC and by virtue of the order on sentence dated 21.05.1998 passed by the learned Additional Sessions Judge, he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo simple imprisonment for three months. The appeal is also directed against the said order on sentence.

2. During the pendency of the present appeal, the appellant Prem Kumar had moved an application being CrI.M.A. 119/1999 claiming that he was a juvenile on

the date of the incident i.e., 22.05.1994. Consequently, the appellant prayed that he be treated as a juvenile and be dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the said Act). While disposing of the said application, a Division Bench of this Court, by virtue of its order dated 04.05.2011, directed the Additional Sessions Judge to conduct an inquiry with regard to the age of the appellant and also directed that a report be submitted. The report of the learned Additional Sessions Judge has been received which is dated 01.10.2011. As per the said report/order, the appellant has been found to be of the age of 17 years 3 months and 17 days on the date of the incident.

3. There is no contest with regard to this determination by the learned Additional Sessions Judge. As such, the appellant would have to be treated as a juvenile within the meaning of Section 2(k) of the said Act.

4. We find that the appellant had already undergone incarceration for about 10 years and 10 months when this court had granted him the benefit of suspension of sentence and had directed his release on bail by virtue of the order dated 26.05.2005.

5. Keeping in mind the decisions of the Supreme Court in the cases of Hari Ram v. State of Rajasthan & Anr (2009) 13 SCC 211 and Dharambir v. State (NCT of Delhi) & Anr 2010 (4) SCALE 316, the consequent benefit under the said Act would have to be given to the appellant. In view of the provisions of Section 15 and 16 of the said Act, the appellant could not have been 'detained' for a period extending beyond three years, whether in a special home or in a place of safety. Since the appellant has already been in custody for a period far in excess of the stipulated period of three years, he cannot be kept under detention of any kind any further.

6. The learned counsel for the appellant states that the appellant is not interested in challenging his conviction but is only seeking the benefit with regard to the sentence under the said Act. In view of Section 20 of the said Act, while we do not disturb the finding of guilt returned by the learned Additional Sessions Judge, the sentence awarded by the learned Additional Sessions Judge is to be set aside.

The maximum period of detention under the said Act being only three years, whether in a special home or any place of safety, no further order under Section 15 or 16 of the said Act can be passed in view of the fact that the appellant has already been in custody for over 10 years and 10 months.

7. In view of the foregoing, while the conviction of the appellant under Section 302 IPC is upheld, the sentence passed by the learned Additional Sessions Judge is set aside. It is obvious that the appellant will get the benefit of Section 19 of the said Act. The bail bonds are cancelled and the surety stands discharged.

The appeal stands disposed of accordingly.

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