

CASE NO.:
Appeal (crl.) 295 of 2008

PETITIONER:
Balu @ Bakthvatchalu

RESPONDENT:
State of Tamilnadu

DATE OF JUDGMENT: 12/02/2008

BENCH:
S.B. SINHA & V.S. SIRPURKAR

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 295 OF 2008
(Arising out of SLP (Crl.) No. 4905 of 2007)

S.B. SINHA, J.

1. Leave granted.

2. Appellant was prosecuted for commission of an offence under Section 302 of the India Penal Code. The occurrence took place on 20th April, 1998. He was arrested on the charge of murder of one Ramu Maistry on 8th May, 1998. Upon completion of investigation a charge sheet was filed against him on 30th November, 1998. The learned trial court delivered a judgment on 28th April, 2000. In the said judgment his age was shown to be '18'. An application was filed for sending him to Borstal School in terms of Section 10-A of the Tamil Nadu Borstal Schools Act, which was refused. An appeal preferred by the appellant before the High Court has been dismissed by reason of the impugned judgment.

This Court issued a limited notice as to whether the appellant was a juvenile on the date of occurrence of the incident.

3. Mr. Mukherjee, the learned counsel appearing on behalf of the appellant, submitted that in view of the materials placed on records, an inquiry should have been initiated as regards the age of the appellant.

4. The Juvenile Justice Act, 1986 (hereinafter referred to as "the Act") was applicable when the incident took place. In terms whereof, a juvenile, under Section 2(h) was defined as a boy who has not attained the age of 16 years.

5. The Parliament, however, enacted, the Juvenile Justice (Care and Protection of Children) Act, 2000. It came into force with effect from 1st April, 2001.

6. Section 2(k) defines 'juvenile' to mean a person who has not completed eighteen years of age.

7. Section 20 of the Act reads as under :-

"20. Special provision in respect of pending cases.-

Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court 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."

8. A question was raised as to whether the date on which the incident took place or the date on which the accused was produced before the Court would be the relevant date for computing the age of juvenile in view of the decision of this Court in *Arnit Das vs. State of Bihar* : (2000) 5 SCC 488. The correctness of the said decision came up for consideration before a Constitution Bench of this Court in *Pratap Singh vs. State of Jharkhand* : (2005) 3 SCC 551. The Constitution Bench held; "31 . Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with a non obstante clause. The sentence "notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act came into force" has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act are relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term "any court" would include even ordinary criminal courts. If the person was a "juvenile" under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or the girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that court as if the 2000 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 the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile. "

It concluded :-

"37 . The net result is:

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(b) The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1-4-2001."

In a separate judgment, one of us (S.B. Sinha, J.) stated :-

"95. Section 20 of the Act of 2000 would, therefore, be applicable when a person is below the age of 18 years as on 1-4-2001. For the purpose of attracting Section 20 of the Act, it must be established that: (i) on the date of coming into force the proceedings in which the petitioner was accused were pending; and (ii) on that day he was below the age of 18 years. For the purpose of the said Act, both the aforementioned conditions are required to be fulfilled. By reason of the provisions of the said Act of 2000, the protection granted to a juvenile has only been extended but such extension is not absolute but only a limited one. It would apply strictly when the conditions precedent therefor as contained in Section 20 or Section 64 are fulfilled. The said provisions repeatedly refer to the words "juvenile" or "delinquent juveniles"

specifically. This appears to be the object of the Act and for ascertaining the true intent of Parliament, the rule of purposive construction must be adopted. The purpose of the Act would stand defeated if a child continues to be in the company of an adult. Thus, the Act of 2000 intends to give the protection only to a juvenile within the meaning of the said Act and not an adult. In other words, although it would apply to a person who is still a juvenile having not attained the age of 18 years but shall not apply to a person who has already attained the age of 18 years on the date of coming into force thereof or who had not attained the age of 18 years on the date of commission of the offence but has since ceased to be a juvenile."

9. Recently the Parliament has introduced Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (which came into force with effect from 23.8.2006), in terms whereof retrospective and restorative meaning was given to the definition of 'juvenile' stating :-

' "4. In section 2 of the principal Act, -

(iv) for clause (1), the following clause shall be substituted, namely :-

(1) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;"

10. In view of the decision of the Constitution Bench of this Court as also the amendments carried out by the Parliament, evidently the question as to whether the appellant was aged '18' as on 1st April, 2001 requires consideration.

12. In a situation of this nature, where despite the possibility of a juvenile having been tried and convicted for rigorous imprisonment for life by the trial court or the High Court, this Court has in a large number of decisions directed an enquiry to be made as regards the age of the juvenile.

13. We shall refer to a few of them.

13. In Gurpreet Singh vs. State of Punjab : (2005) 12 SCC 615 a Bench of this Court opined :-

"18. Shri Prabha Shanker Misra, learned Senior Counsel appearing in support of Criminal Appeal No. 710 of 1995 apart from challenging the conviction of the appellant Mohinder Pal Singh on merits, which we have already dealt with, submitted that on the date of the alleged occurrence, he was a juvenile within the meaning of Section 2(h) of the Juvenile Justice Act, 1986 (hereinafter referred to as "the Act") as on that date he had not attained the age of 16 years. It appears that this point was not raised either before the trial court or the High Court. But it is well settled that in such an eventuality, this Court should first consider the legality or otherwise of conviction of the accused and in case the conviction is upheld, a report should be called for from the trial court on the point as to whether the accused was juvenile on the date of occurrence and upon receipt of the report, if it is found that the accused was juvenile on such date and continues to be so, he shall be sent to juvenile home. But in case it finds that on the date of the occurrence, he was juvenile but on the date this Court is passing final order upon the report received from the trial court, he no longer continues to be juvenile, the sentence imposed against him would be liable to be set aside. Reference in this connection may be made to a decision of this Court in Bhoop Ram v. State of U.P. 7 in which case at the time of grant of special leave to appeal, report was called for from the trial court as to whether the

accused was juvenile or not which reported that the accused was not a juvenile on the date of the occurrence but this Court, differing with the report of the trial court, came to the conclusion that the accused was juvenile on the date the offence was committed and as he was no longer a juvenile on the day of judgment of this Court, sentence awarded against him was set aside, though the conviction was upheld. In the present case, we have already upheld the conviction of the appellant Mohinder Pal Singh as well but it would be just and expedient to call for a report from the trial court in relation to his age on the date of the occurrence."

It was directed :-

"20. In Criminal Appeal No. 710 of 1995 filed by appellant Mohinder Pal Singh, call for a report from the trial court as to whether on the date of occurrence this appellant was juvenile within the meaning of Section 2(h) of the Juvenile Justice Act, 1986? The trial court shall give opportunity to both the parties to adduce evidence on this point. Let the entire original records of the trial court be returned to it. Report as well as records must be sent to this Court within a period of three months from the receipt of this order. Upon receipt of report from the trial court, final order shall be passed in this appeal."

14. In Ravinder Singh Gorkhi vs. State of U.P : (2006) 5 SCC 584 this Court held :-

"21. Determination of the date of birth of a person before a court of law, whether in a civil proceeding or a criminal proceeding, would depend upon the facts and circumstances of each case. Such a date of birth has to be determined on the basis of the materials on records. It will be a matter of appreciation of evidence adduced by the parties. Different standards having regard to the provision of Section 35 of the Evidence Act cannot be applied in a civil case or a criminal case.

It was furthermore held :-

"38. The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted.

39. We are, therefore, of the opinion that until the age of a person is required to be determined in a manner laid

down under a statute, different standard of proof should not be adopted. It is no doubt true that the court must strike a balance. In case of a dispute, the court may appreciate the evidence having regard to the facts and circumstances of the case. It would be a duty of the court of law to accord the benefit to a juvenile, provided he is one. To give the same benefit to a person who in fact is not a juvenile may cause injustice to the victim. In this case, the appellant had never been serious in projecting his plea that he on the date of commission of the offence was a minor. He made such statement for the first time while he was examined under Section 313 of the Code of Criminal Procedure.

40. The family background of the appellant is also a relevant fact. His father was a "Pradhan" of the village. He was found to be in possession of an unlicensed firearm. He was all along represented by a lawyer. The court estimated his age to be 18 years. He was tried jointly with the other accused. He had been treated alike with the other accused. On merit of the matter also the appellant stands on the same footing as the other accused. The prosecution has proved its case. In fact no such plea could be raised as the special leave petition of the persons similarly situated was dismissed when the Court issued notice having regard to the contention raised by him for the first time that he was a minor on the date of occurrence."

15. However, in *Jitendra Ram vs. State of Jharkhand* : (2006) 9 SCC 428 this Court noticed that in a similar situation it would be necessary to make an enquiry. It was stated :-

"20. We are, however, not oblivious of the decision of this Court in *Bhola Bhagat v. State of Bihar* wherein an obligation has been cast on the court that where such a plea is raised having regard to the beneficial nature of the socially oriented legislation, the same should be examined with great care. We are, however, of the opinion that the same would not mean that a person who is not entitled to the benefit of the said Act would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit. Each case has to be considered on the basis of the materials brought on records."

It was furthermore held :-

22. We, therefore, are of the opinion that the determination of the age of the appellant as on the date of the commission of the offence should be done afresh by the learned Sessions Judge."

16. We are, therefore, of the view that in this case the trial judge should be directed to hold the enquiry in regard to the age of the appellant on the date of commission of the offence and in the event it is found that the appellant was a juvenile within the meaning of the provisions of the said Act, he should proceed with the matter in accordance with law. It is directed accordingly.

17. The appeal is allowed on the aforesaid terms.