

CASE NO.:
Appeal (crl.) 318 of 2008

PETITIONER:
JAYASINGH

RESPONDENT:
STATE BY INSPECTOR OF POLICE

DATE OF JUDGMENT: 15/02/2008

BENCH:
ALTAMAS KABIR & J.M. PANCHAL

JUDGMENT:
JUDGMENT

O R D E R
(Arising out of SLP(Crl.) No.1505 of 2006)

Leave granted.

The appellant was convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment, fine of Rs.1,000/- and six months imprisonment in case of default, by the First Additional Sessions Judge, Coimbatore.

The appellant has challenged the aforesaid judgment and sentence on the ground that at the relevant point of time when the offence is said to have been committed, he was a juvenile and should have been tried under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, (hereinafter referred as 'the 2000 Act').

It is submitted on behalf of the respondent that such question had not been raised either before the Trial Court or before the High Court and that such point is being raised for the first time before this Court.

In our view, if the age of the appellant was below 18 years on the date of the incident, then the very jurisdiction which was exercised by the courts below was erroneous having regard to the provisions of the 2000 Act.

It may be indicated that under the Juvenile Justice Act, 1986, a male juvenile was defined to mean a person who had not completed sixteen years of age. With the enactment of the 2000 Act under Section 2(k) the age limit was raised to 18 years. Section 2(1) was subsequently amended in 2006 to define a 'Juvenile in conflict with law' to mean 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.

Apart from the above amendment, Section 20 of 2000 Act was also amended by Section 14 of the Amendment Act of 2006, and Section 20 as amended 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.

(Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.)

Explanation. \026 In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.\024

A glance at the above provisions will indicate that the provisions of the 2000 Act were made applicable to juveniles and juveniles who were in conflict with law but were below the age of 18 years prior to coming into operation of the 2000 Act.

In other words, the appellant, who claims to be 16 years, 6 months and 9 days on the date of the incident on the strength of his School Leaving Certificate, would be entitled to the benefit of Section 20 of the 2000 Act. In addition to the above, we find from the copy of the appellant's Birth Certificate annexed to the Affidavit filed on behalf of the State, that on the date of the offence the appellant was 17 years 10 months and 26 days, which also attracts the amended provisions of Section 20 of the 2000 Act.

In that view of the matter, the judgment under appeal, as far the appellant is concerned, cannot be sustained and is set aside. Since the appellant was a juvenile in terms of the 2000 Act on the date of the incident, the maximum punishment that could have been awarded to him is detention in a special home for a period of 3 years in terms of Section 15(g).

Since we are informed that the appellant has already undergone imprisonment of 7= years on the basis of the sentence passed by the Sessions Court, we reduce the sentence as passed, to a period of three years in view of Section 15(g) of the 2000 Act. Since he has already undergone imprisonment for the said period, the appellant be released forthwith.

The appeal is allowed.