

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 761 OF 2009
(Arising out of S.L.P. (Crl.) No. 3541 of 2008)

Satish @ Dhanna

...Appellant

Versus

State of M.P. and Ors.

...Respondents

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court, Indore Bench. Stand of the present appellant was that he was juvenile when the occurrence took place. His date of birth was 12.11.1980. Various accused persons faced trial for offence punishable

under Sections 147, 148, 302 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). Learned counsel for the appellant submitted that since the accused was juvenile, his trial could not have been held alongwith others. Learned counsel for the respondent-State on the other hand submitted that the question whether the appellant was a juvenile was never raised earlier.

3. It is to be noted that prior to the date of occurrence the Madhya Pradesh Children Act, 1928 (in short the 'Children Act') was in force. The Juvenile Justice Act, 1986 (in short '1986 Act') was in operation on the date of occurrence. Subsequently, the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as '2000 Act') has been enacted. Under section 2(h) of the 1986 Act, a juvenile is one who is below the age of 16 years. Under the 2000 Act under Section 2(k), a juvenile or child means a person who has not completed 18 years of age. The fact that on the date in question, i.e. on the date of occurrence and the date of production before the Court the appellant had not completed 18 years of age stands fully established on record. Section 16 of the 2000 Act provides that no juvenile shall be sentenced to death or imprisonment for life or committed to prison in default of payment of fine or in default of furnishing

security. Section 20 provides for special provisions in respect of pending cases. The 2000 Act came into force on 1.4.2001. In Bhola Bhagat v. State of Bihar (1997 (8) SCC 720) this Court after referring to the decision in Gopinath Ghosh v. State of West Bengal (1984 Supp SCC 228) and Bhoop Ram v. State of U.P. (1989 (3) SCC 1) held that an accused who was juvenile cannot be denied the benefit of provisions of 2000 Act. The course this Court adopted in Gopinath's and Bhola Bhagat's cases (supra) was to sustain the conviction, but at the same time modify the sentence awarded to the convict. At this distant point of time to refer the appellant to the Juvenile Board would not be proper. Therefore, while sustaining the conviction for the offence for which he has been found guilty, the sentence awarded is restricted to the period already undergone. The appellant be released from custody forthwith unless required to be in custody in connection with any other case. .

4. The appeal is allowed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
April 17, 2009