

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1336 OF 2007

Mahendra Singh ... Appellant

Versus

State of Rajasthan ... Respondent

WITH

CRIMINAL APPEAL NO. 1298 OF 2007

Ram Singh ... Appellant

Versus

State of Rajasthan ... Respondent

JUDGMENT

J U D G M E N T

Prafulla C. Pant, J.

1. These appeals are directed against judgment and order dated March 08, 2007 passed by the High Court of Judicature

for Rajasthan, Jaipur Bench, in D.B. Criminal Appeal NOs. 98 of 1999, and 958 of 2004 (arisen out of Session Case No. 4 of 1998 and 95 of 2002 respectively), whereby said Court has dismissed the appeals of Mahendra Singh and Ram Singh, but allowed the appeals of accused Shyobai and Shakuntala Devi. Appeals of accused Dalip Singh and Maduram stood abated as they died in jail during pendency of the appeal.

2. Prosecution story, in brief, is that PW-2 Amar Singh gave a First Information Report (Ex. P-1) at Police Station Bahrod informing that on 06.10.1997 at about 7.00 p.m. accused Maduram, his three sons Roshan, Dalip and Ram Singh, wives of Dalip, Ram Singh and Maduram, Jagat Singh and Krishna Kumar (all from the same family) have committed murder of his cousin Rudmal @ Devendra in the field of Banhadwala. On the basis of said report crime/FIR No. 453 of 1997 was registered and the matter was investigated. After investigation, first charge sheet was filed against accused Maduram, Dalip, Mahendra Singh, Shakuntala Devi and

Shyobai for their trial in respect of offences punishable under Sections 147, 148, 302 read with Section 149 of Indian Penal Code (IPC). The investigation against accused Ram Singh, Gyarasi Devi, Roshan, Jagat Singh and Krishna Kumar continued under Section 173(8) of Criminal Procedure Code, 1973, as they could not be arrested. It appears, on completion of investigation another charge-sheet was filed against them. From the first charge sheet, i.e. one filed against accused Dalip and others, after committal, Sessions Case No. 4 of 1998 was registered, and from the another charge sheet i.e., one against Maduram and others Sessions Case No. 95 of 2002 was registered. It appears that since the accused were in jail, Sessions Case No. 4 of 1998 got concluded before subsequent charge was filed, and was decided vide judgment and order dated 02.02.1999 by the Additional Sessions Judge, Bahrod. And another Session Case No. 95 of 2002 (old No. 38 of 1999) subsequently committed and registered, proceeded after the decision in the matter of first set of accused. Evidence of witnesses in the two cases was recorded separately and both were decided independently.

3. Present appellants before us are - Mahendra Singh, one of the convicts in Sessions Case No. 4 of 1998, and Ram Singh, one of the convicts in Sessions Case No. 95 of 2002. They stood convicted under Sections 148 and 302 read with Section 149 IPC. These two convicts filed separate appeals (along with other co-convicts) before the High Court. Mahendra Singh was appellant No. 3 in D.B. Criminal Appeal No. 98 of 1999 (arisen out of Sessions Case No. 4 of 1998), and Ram Singh was appellant in D.B. Criminal Appeal No. 958 of 2004 (arisen out of Sessions Case No. 95 of 2002). Both the appeals were heard together and dismissed by the High Court qua present appellants. However, appeals of Shyobai and Shakuntala Devi were allowed and they were acquitted of the charge. Appeals of Dalip and Maduram stood abated as they died in jail.

4. On behalf of appellant Mahendra Singh, only point argued before us is that, it is apparent from the lower court

record that he (Mahendra Singh) was aged 17 years on the date of the incident. It is further stated that he has already underwent imprisonment of more than ten years. Our attention is drawn to the case of ***Hari Ram v. State of Rajasthan and another***¹, and it is contended that the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'Juvenile Justice Act, 2000') should be extended to the convict Mahendra Singh, though he was aged above sixteen years but less than eighteen years on the date of incident and not a juvenile under the Juvenile Justice Act, 1986.

5. In para 39 in ***Hari Ram's*** case (supra), interpreting special provision contained in Section 20 of Juvenile Justice Act, 2000, regarding pending cases and appeals, this Court has observed as under: -

“39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the

¹ (2009) 13 SCC 211

determination of juvenility of a juvenile would be in terms of clause (1) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.”

6. Since it is not disputed that appellant Mahendra Singh was less than eighteen years of age on the date of incident, as such, we agree with the argument advanced on behalf of the appellant Mahendra Singh that he is entitled to the benefit of Section 20 of Juvenile Justice Act, 2000, as it stands today.

7. On behalf of the appellant Ram Singh it is pointed out that the sole eye witness of alleged incident PW-2 Mahendra Singh s/o Suraj Bhan (in Sessions Case No. 95 of 2002), has assigned no role to Ram Singh. (Accused Mahendra Singh is

different person, who is son of Dalip Singh). We have gone through the copy of the statement of witness Mahendra Singh s/o Suraj Bhan (Annexure P-4 in Criminal Appeal No. 1298 of 2007), examined in the subsequent Sessions Case, and found that he has nowhere stated that Ram Singh was present at the place of incident or that he assaulted the deceased. In his statement recorded on 6.4.2004, the sole eye witness has named all the accused except Ram Singh. On careful scrutiny of the evidence of the sole eye witness PW-2 Mahendra Singh s/o Suraj Bhan in Sessions Case No. 95 of 2002, we find that the trial court, as well as the High Court, has erred in law in concluding that the charge against accused Ram Singh stood proved on the record.

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8. Therefore, we are of the view that Criminal Appeal No. 1298 of 2007, filed by Ram Singh, deserves to be allowed. Accordingly the same is allowed and conviction recorded against him by the trial court and affirmed by the High Court, is set aside. He is on bail and need not surrender.

9. As far as appellant Mahendra Singh is concerned, we have already discussed that learned counsel for said appellant confined his submissions only regarding entitlement of benefit of Section 20 of Juvenile Justice (Care and Protection of Children) Act, 2000, as it stands today. Following ***Hari Ram*** (supra), we are of the opinion, he (Mahendra Singh) is entitled to the benefit as discussed in paragraph 4, 5 and 6. As such, while maintaining the conviction of said appellant Mahendra Singh, we set aside the sentence awarded against him. To that extent the impugned order stands modified. Accordingly, D.B. Criminal Appeal No. 1336 of 2006 also stands disposed of.

JUDGMENT

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi;
December 09, 2015.

SUPREME COURT OF INDIA



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