

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1852 OF 2009

ILİYAS &amp; ANR.

Appellant (s)

VERSUS

STATE OF U.P.

Respondent(s)

(With appln(s) for permission to file counter affidavit,  
permission to file additional documents and office report)

Date: 22/02/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY  
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s)

Ms. Charu Singhal, Adv.  
Ms. Lalita Kholi, Adv.  
M/s Manoj Swarup & Co.,Adv.

For Respondent(s)

Mr. T. N. Singh, Adv.  
Mr. Kamendra Mishra,Adv.UPON hearing counsel the Court made the following  
O R D E R

The conviction of the appellants for the offence for which they have been found guilty by the courts below, is sustained. At the same time, however, the sentence awarded to the appellants is quashed and appeal to this extent is allowed in part, in terms of the signed order.

They are directed to be released unless required in any other case.

(NIDHI CHUGH)  
Sr.P.A.(RENUKA SADANA)  
Court Master(Signed order is placed on the file.)  
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 1852 OF 2009

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O R D E R

This appeal is directed against the judgment and order dated 30.01.2009 of the High Court of Judicature at Allahabad made in Criminal Appeal No. 856 of 1982, whereunder and whereby, the High Court dismissed the appeal of the appellants herein and accordingly, affirmed the conviction and sentence of life imprisonment awarded by

the trial court. The appellants herein along with two other accused viz., Shri Kalloo and Smt. Sharifan were tried for the offence punishable under Sections 302 read with Section 34 of Indian Penal Code. They were convicted and sentenced as noticed hereinabove. During the pendency of the appeal, the said accused viz., Shri Kalloo and Smt. Sharifan had died. Their appeal was, accordingly, dismissed as having abated vide order dated 30.01.2009 of the High Court. Hence, this appeal by only the appellants.

During the pendency of this appeal, the appellants filed a Criminal Miscellaneous Petition No. 7357 of 2009 seeking permission to take additional ground in the appeal. It is pleaded that, at the time of occurrence of the incident on 29.09.1979, the appellants were juvenile, that is to say, appellant no. 1 Iliyas was around 18 years old and appellant No. 2 Ali Husain was around 14 years old. The age of the appellants was assessed by the learned Chief Judicial Magistrate at the time of granting of bail and considering the age of the appellants at the time of the incident as they were children within the meaning of Section 2(4) of U.P. Children Act, 1951, bail was granted by the learned Chief Judicial Magistrate, Moradabad, vide order dated 21.11.1979. It is, thus, clear that so far as

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the age of the appellants is concerned, sufficient material was available on record and the court was aware of the same, as is evident from the order dated 21.11.1979 passed by the learned Chief Judicial Magistrate, Moradabad, directing the release of the appellants on bail during the pendency of the trial.

It was the learned Chief Judicial Magistrate, Moradabad, who called for the report from the experts to fix the age of the appellants. The medical officers of the District Hospital, Moradabad, gave the report expressing their opinion that the age of the appellant no. 1 Iliyas was found to be around 18 years and the age of appellant no. 2 Ali Husain was about 14 years at the time of occurrence. The opinion of the medical board is not seriously put in issue. It is settled law and needs no restatement that the age of the accused is to be seen on the date of occurrence and not at the time when the trial commenced.

This court in Upendra Kumar Vs. State of Bihar (2005 (3) SCC 592) and various other decisions took the view that no sentence for life imprisonment could be passed if the offender was below 18 years of age.

That, so far as, appellant no. 2 is concerned, there is no dispute, whatsoever, that he was admittedly aged about 14 years as on the date of occurrence and was a child within the meaning of the provisions of U. P. Children Act, 1951. That the age of appellant No. 1 herein was assessed at 18 years. The age of appellant no. 1 could be discounted by two years. It could be safely inferred that even appellant no. 1 was also aged about 16 years and therefore, was child as on the date of occurrence.

Now the question is, what relief could be granted to the appellants. The course this Court adopted in Bhola Bhagat Vs. State of Bihar (1997 (8) SCC 720) and Gopinath Ghosh Vs. State of West Bengal (1984 Supp (2) SCC 228) was to sustain the conviction,

but,  
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at the same time, quash the sentence awarded to the convicted. In the present case, at this distant time, the question of referring the appellants to the Juvenile Board does not arise. This was the view taken by this Court in Upendra Kumar Vs. State of Bihar (2005 (3) SCC 592).

Following the aforesaid decisions, we would sustain the conviction of the appellants for the offence for which they have been found guilty by the courts below, at the same time, however, the sentence awarded to the appellants is quashed and appeal to this extent is allowed in part. They are directed to be released unless required in any other case.

....., J.  
(B. Sudershan Reddy)

....., J.  
(Surinder Singh Nijjar)

New Delhi;  
February 22, 2011.