

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.43 OF 2012

BECHARAM ACHARYA & ORS.

.....APPELLANTS

VERSUS

STATE OF JHARKHAND

.....RESPONDENT

O R D E R

1. Heard learned counsel for the rival parties.
2. This Court, by its order dated 11.03.2015, passed the following order for ascertaining the juvenility of the appellants - Becharam Acharya and Chinta Acharya:

"In view of the above, we consider it just and appropriate to direct the appellants Becha Ram Acharya and Chinta Acharya to appear before the trial Court, namely, before the Sessions Judge, Bokaro on 6.4.2015. The Sessions Judge, Bokaro shall assign the question of determination of juvenility to a Court of competent jurisdiction. The appellants are granted liberty to lead evidence to establish the question of their juvenility in terms of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Thereupon, the report of the Court assigned the case will be forwarded for consideration to this Court."

3. Consequent upon the passing of the above order, the Court of the Principal Magistrate, Juvenile Justice Board, Bokaro, by its order dated 11.06.2015, arrived at the conclusion, that Chinta Acharya was a juvenile. The question, that survives for consideration is whether Becharam Acharya was also a juvenile on

the date of occurrence? It is not disputed by the learned counsel for the rival parties, that the occurrence took place on 27.03.1998. It is also not disputed by the learned counsel for the rival parties, that Becharam Acharya was aged 17 years, 2 month and 14 days on the date of occurrence.

4. The benefit of juvenility was not extended to Becharam Acharya on account of the fact, that he was more than 16 years of age on the date of occurrence. It was, however, the contention of the learned counsel for the appellants, that Becharam Acharya would be entitled to the benefit of juvenility if it could be established that he was less than 18 years of age, on the date of occurrence. There is no dispute between the rival parties, that the appellant - Becharam Acharya was indeed less than 18 years of age on the date of occurrence.

5. The only surviving question, therefore, is whether Becharam Acharya would be entitled to the benefit of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000? Insofar as the instant aspect of the matter is concerned, learned counsel for the appellants has placed reliance on a judgment rendered by this Court in Abdul Razzaq vs State of Uttar Pradesh, (2015) 15 SCC 637. It was submitted on behalf of the appellants, that this Court, in the above-mentioned judgment, having placed reliance on a number of earlier judgments of this Court, had held, that the present age of juvenility, fixed by way of amendments to the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, would be retrospectively available to the appellant - Becharam Acharya.

6. During the course of hearing, learned counsel for the appellants extensively relied upon the judgment cited above, and whilst doing so placed reliance on Section 7A and Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 more particularly, on the proviso to Section 7A and the Explanation to Section 20, to contend, that the age of juvenility would be applicable retrospectively, and since the age of juvenility presently fixed at 18 years, was liable to be extended to the appellant - Becharam Acharya, he would be entitled to be treated as juvenile, as he was merely 17 years' old, on the date of occurrence - 27.03.1998.

7. Mr. Ajit Kumar Sinha, learned senior counsel for the respondent - State of Jharkhand, very fairly acknowledges, that the retrospective effect, canvassed by the learned counsel for the appellants, as has been determined in Abdul Razzaq's case, squarely covers the controversy in hand.

8. In view of the above, we allow the instant criminal appeal. The appellant - Becharam Acharya shall, therefore, be liable to be treated as a juvenile with reference to the occurrence dated 27.03.1998. The appellant - Chinta Acharya, has been found to be a juvenile, by the Principal Magistrate, Juvenile Justice Board, Bokaro. And, there is no dispute on that score.

9. Since the appellants have already undergone sentences, for a period in excess of the maximum period contemplated under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, it was submitted, that the remaining part of their sentences be set aside. The appellants - Becharam Acharya and

Chinta Acharya, are directed to appear before the Additional District and Sessions Judge, 1st, Bokaro, on 28.02.2017. The above Court shall examine the aforesaid prayer of the appellants, and in case they have suffered incarceration, as has been submitted above, necessary orders shall be passed.

10. Disposed of in the above terms.

.....CJI.
(JAGDISH SINGH KHEHAR)

.....J.
(N.V.RAMANA)

NEW DELHI;
JANUARY 24, 2017.

ITEM NO.104

COURT NO.1

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCriminal Appeal No(s).43/2012

BECHARAM ACHARYA & ORS.

Appellant(s)

VERSUS

STATE OF JHARKHAND

Respondent(s)

(With appln.(s) for exemption from filing proof of surrender)

Date : 24/01/2017 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE N.V. RAMANAFor Appellant(s) Mr. Arup Banerjee, Adv.
Mr.R.K.Dey, Adv.For Respondent(s) Mr.Ajit Kumar Sinha, Sr.Adv.
Mr. Ratan Kumar Choudhuri, Adv.Upon hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(SATISH KUMAR YADAV)
AR-CUM-PS(RENUKA SADANA)
ASSISTANT REGISTRAR

(Signed order is placed on the file)