

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1155 OF 2009
[Arising out of SLP(Crl.) No.9348 of 2008]

RAJESH KUMAR ... Appellant(s)

Versus

STATE OF PUNJAB ... Respondent(s)

ORDER

1 Leave granted.

2 This appeal is directed against the judgment and order dated 18th September, 2008, passed by the Punjab & Haryana High Court at Chandigarh in Criminal Appeal No.679-DB of 2007. The said appeal was preferred against the judgment of conviction and sentence dated 3rd August, 2007, passed by the learned Additional Sessions Judge, Ludhiana, in Sessions Case 23 dated 13th March, 2006, convicting the appellant and his co-accused under Section 302 read with Section 120-B, I.P.C. They were subsequently sentenced to life imprisonment and to pay a fine of Rs.5000/- and in default of payment of

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fine, to undergo rigorous imprisonment for a further period of two months. They were also sentenced to 5 years imprisonment under Section 120B IPC. The High Court by its judgment and order dated 18th September, 2008, under appeal, allowed the appeal as far as Shiv Kumari, the appellant No.1 in the appeal, was concerned, but confirmed the judgment of the learned Sessions Judge as far as the present appellant is concerned and dismissed his appeal.

3 When this appeal was taken up for consideration on earlier occasions, learned counsel appearing in support of the appeal pointed out that the appellant was a minor on the date of the incident, i.e. 30/08/2005 and that such ground had been taken in the special leave petition itself as ground(3). On the basis of the said submission, which was supported by a transfer certificate which had been issued by the Principal of the Ramvriksha Rambadan Uchch Vidyalaya, Khoripakar (Sewan), Bihar, wherein the date of birth of the appellant had been shown as 4th July, 1988, the date of birth as recorded would indicate that the appellant was a minor on the date of the incident (30.8.2005).

4 In fact, while recording the statement of the appellant

under Section 313 Cr.P.C. on 28th April, 2007, the learned Addl. Sessions Judge, Ludhiana, recorded the age of the appellant as 19 years, which would also indicate that on the date of occurrence, the appellant was a minor.

5 Having regard to the certificate as shown and the recording of the statement of
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the appellant under Section 313, learned counsel for the State of Punjab had been granted an opportunity to ascertain the genuineness of the date of birth of the petitioner in the transfer certificate referred to hereinabove. Learned counsel for the State submits that pursuant to the liberty granted steps were taken to verify the genuineness of the certificate as well as the date of birth recorded therein and that such exercise yielded the same result. In such circumstances, we have no option but to accept the date of birth in the certificate indicated in the school certificate issued on the basis of the Admission Register of the school.

6 Consequently, Section 7A of the Juvenile (Care and Protection of Children) Act, 2000, as amended in 2006, comes into play.

7 Section 7A of the aforesaid Act is reproduced

hereinbelow:

7A.1 Procedure to be followed when claim of juvenility is raised before any court.

"7A(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

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Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (i), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any,

passed by a court shall be deemed to have no effect."

8 From the said provisions, it will be seen that provision has been made that a claim of juvenility may be raised before any court and it shall be recognised at any stage even after final disposal of the case and such claim shall be determined in terms of the provisions contained in the Act and the rules made thereunder, even if the juvenile had ceased to be a juvenile on or before the date of commencement of the Act.

9 In that view of the matter, sub-Section (2) becomes operative and a duty is cast on the court hearing the matter to forward the juvenile to the Juvenile Justice Board for passing appropriate orders and the sentence passed by the courts shall be deemed to have no effect. At this juncture it may be indicated that the submission made on behalf of the respondent State that the claim of juvenility had not been raised either

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before the trial court or the Appeal Court loses much of its significance in view of the aforesaid proviso to Section 7A(1).

10 In keeping with the above, we allow the appeal, set aside the sentence, as passed by the learned Sessions Judge and while maintaining the conviction direct the records to be sent to the Juvenile Justice Board, Ludhiana, for passing appropriate orders in keeping with Section 15 of the aforesaid Act.

11 The appeal is allowed and disposed of accordingly.

12 In the event the appellant has already undergone the maximum punishment as may be imposed in terms of Section 15 of the Act, the Juvenile Justice Board shall take steps to pass appropriate orders to release him from custody.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

New Delhi,
July 08, 2009.

