

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 459 OF 2018
[ARISING OUT OF SPECIAL LEAVE PETITION
(CRIMINAL) NO.2934 OF 2015]

MAHESH ...APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN
& ORS. ...RESPONDENT(S)

WITH
CRIMINAL APPEAL NO(S). 460 OF 2018
[ARISING OUT OF SPECIAL LEAVE PETITION
(CRIMINAL) NO.5370 OF 2015]
[ARJUN VS. THE STATE OF RAJASTHAN]

ORDER

1. Leave granted in both the Special Leave Petitions.
2. The accused appellants who admittedly were juveniles under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "Act of 2000") on the date of commission of the crime i.e. on 12th May,

2001 were tried in a regular Criminal Court and found guilty of offences punishable under Sections 323, 324, 325, 427, 455 read with Section 149 of the Indian Penal Code, 1860 ("IPC" for short). Both the accused appellants were acquitted of the offence punishable under Section 302 IPC. The conviction under Section 455 IPC resulted in a sentence of rigorous imprisonment of three years which is the maximum of the punishments imposed on the accused appellants. The said conviction and sentences have been affirmed in appeal by the High Court.

3. The plea of juvenility of the accused appellants was taken before this Court for the first time. Accordingly, notices were issued to the State to respond to the said claim of the accused appellants. In the reply filed by the State the age of the accused appellants, as

claimed, on the date of occurrence was admitted by the State. The accused - appellants, therefore, were juveniles on the date of occurrence of the offence(s).

4. In the aforesaid facts, two questions arise for determination in the present appeals before us. The first is with regard to the validity/correctness of the conviction recorded by the learned trial Court and affirmed by the High Court and, secondly, if the conviction to be maintained what should be the appropriate measure of punishment/sentence and whether the same should be imposed by this Court or the matter be remanded to the Juvenile Justice Board in accordance with the provisions of Section 20 of the Act of 2000.

5. The position in law in this regard is somewhat unsettled as has been noticed

and dealt with by this Court in Jitendra Singh alias Babboo Singh and another versus State of Uttar Pradesh¹ wherein in paragraphs 24 to 27 four categories of cases have been culled out where apparently different approaches had been adopted by this Court. The net result is summed up in paragraph 28 of the aforesaid report which explains the details of the categorization made in the earlier paragraphs of the said report. Paragraph 28 of the said report, therefore, would require a specific notice and is reproduced below:

"28. The sum and substance of the above discussion is that in one set of cases this Court has found the juvenile guilty of the crime alleged to have been committed by him but he has gone virtually unpunished since this Court quashed the sentence awarded to him. In another set of cases, this Court has taken the view, on the facts of the case that the juvenile is adequately punished for the offence committed by him by serving out some period in

1. (2013) 11 SCC 193

detention. In the third set of cases, this Court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty. In the fourth set of cases, this Court has examined the case on merits and after having found the juvenile guilty of the offence, remitted the matter to the jurisdictional Juvenile Justice Board on the award of sentence."

6. The validity of the conviction in respect of the incident which occurred almost two decades back, in our considered view, ought to be decided in these appeals and the entire of the proceedings including the punishment/sentence awarded should not be interfered with on the mere ground that the accused appellants were juveniles on the date of commission of the alleged crime. Judicial approaches must always be realistic and have some relation to the ground realities. We, therefore, adopt one

of the possible approaches that has been earlier adopted by this Court in the four categories of cases mentioned above to examine the correctness of the conviction of the accused appellants under the provisions of the IPC, as noticed above.

7. In this regard, having perused the materials on record we find no ground whatsoever to take a view different from what has been recorded by the learned trial Court and affirmed by the High Court. The conviction of the accused appellants under Sections 323, 324, 325, 427, 455 read with Section 149 IPC accordingly shall stand affirmed.

8. This will bring us to a consideration of the sentence to be awarded. Here again, in the four categories of cases that have been noticed

in Jitendra Singh (supra) and in several subsequent decisions of this Court in Abdul Razzaq vs. State of Uttar Pradesh², Mohd. Feroz Khan alias Feroz vs. State of Andhra Pradesh³, Mumtaz alias Muntyaz vs. State of Uttar Pradesh⁴ and Mahendra Singh vs. State of Rajasthan⁵ different approaches have been adopted. In some cases, the question of punishment has been left to be determined by the Juvenile Justice Board in view of the provisions of Section 20 of the Act of 2000. In other cases, the issue of punishment has been dealt with by the Court having regard to the fact that on the date when the Court had considered the issue the juvenile(s) have advanced in age.

2. (2015) 15 SCC 637
3. (2015) 16 SCC 186
4. (2016) 11 SCC 786
5. (2016) 16 SCC 312

9. The present is a case where the accused appellants though juveniles on the date of commission of the alleged crime are, as on today, middle aged persons. The accused appellant - Mahesh in Criminal Appeal arising out of Special Leave Petition (Criminal) No.2934 of 2015 had undergone the custody for a period of nearly one year whereas the accused appellant - Arjun in Criminal Appeal arising out of Special Leave Petition (Criminal) No.5370 of 2015 had suffered custody for about eight (08) months. The maximum sentence, as already noted, is three years. Having regard to the long efflux of time we are of the view that it will not be necessary, in the facts of the present cases, to cause a remand of the matter to the Juvenile Justice Board for a decision on the quantum of sentence for the reason even if such a remand is made and

the Juvenile Justice Board comes to a decision that in addition to the period of custody suffered by the accused appellants they need to suffer a further period of custody, such custody can only be in a remand home or a protection home to which places the accused appellants, because of their age as on today, cannot be sent.

10. On the contrary, having regard to the period of custody suffered; the age of the accused appellants as on date; the efflux of time since the date of occurrence and all other relevant facts and circumstances we are of the view that while maintaining the conviction of the accused appellants the sentence imposed should be modified to one of the period undergone. We order accordingly.

11. With the aforesaid modification of the sentence, the appeals shall stand dismissed.

....., J.
(RANJAN GOGOI)

....., J.
(R. BANUMATHI)

NEW DELHI
MARCH 27, 2018

ITEM NO.21

COURT NO.3

SECTION II

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

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (CRL.) NO(S). 2934/2015
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 06-01-2015
IN CRLA NO. 1431/2007 PASSED BY THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR)

MAHESH

PETITIONER(S)

VERSUS

THE STATE OF RAJASTHAN & ORS.
(FOR FINAL DISPOSAL)

RESPONDENT(S)

WITH

SLP(CRL) NO. 5370/2015 (II)

(AND IA NO.78894/2017-EXEMPTION FROM FILING O.T.)

Date : 27-03-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s)

Ms. Archana Pathak Dave, AOR
Mr. Virag Gupta, Adv.
Ms. Ankita Chaudhary, Adv.
Mr. Utsav, Adv.

Mr. K.K. Tyagi, Adv.
Mr. Pankaj Kumar Singh, Adv.
Ms. Radha Rani T., Adv.
Mr. Iftexhar Ahmed, Adv.
Mr. Raj Singh Rana, AOR

For Respondent(s)

Mr. Anish Maheshwari, Adv.
Mr. Yunus Malik, Adv.
Ms. Farha Malik, Adv.
Mr. Milind Kumar, Adv.

Mr. Kunal Verma, Adv.
Mr. Yugandhara Pawar Jha, Adv.
Mr. Piyush Bhardwaj, Adv.
Mr. Milind Kumar, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

Leave granted.

**The appeals are disposed of in terms of the
signed order. Consequently, all pending applications
are also disposed of.**

**[VINOD LAKHINA]
AR-cum-PS**

**[ASHA SONI]
BRANCH OFFICER**

[SIGNED ORDER IS PLACED ON THE FILE]