

A SATISH @ DHANNA
v.
STATE OF M.P. & ORS.
(Criminal Appeal No. 761 of 2009)

B APRIL 17, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

C JUVENILE JUSTICE (CARE AND PROTECTION OF
CHILDREN) ACT, 2000:

D ss.2 (K), 16 and 20 – ‘Juvenile’ – On date of occurrence,
1986 Act was in operation – Subsequently 2000 Act coming
into force – Held: On the date of occurrence and on the date
of production of offender in court, he had not completed 18
years of age – He cannot be denied benefit of 2000 Act –
Referring him to Juvenile Board at this stage would not be
proper – While sustaining the conviction, sentence restricted
to period already undergone - Penal Code, 1860 – ss.147,
E 148, 302/149.

F In the instant appeal filed by the appellant, who faced
trial along with others for offences punishable u/ss. 147,
148 and 302/149 IPC, it was contended that on the date
of occurrence he was a juvenile.

Allowing the appeal, the Court

G HELD: It is to be noted that the Juvenile Justice Act,
1986 was in operation on the date of occurrence.
Subsequently, the Juvenile Justice (Care and Protection
of Children) Act, 2000 was enacted and it came into force
w.e.f. 1.4.2001. Under s.2(h) of the 1986 Act, a juvenile is
one who is below the age of 16 years whereas u/s 2(k) of
the 2000 Act, a juvenile or child means a person who has

not completed 18 years of age. The fact that on the date of occurrence and the date of production before the court the appellant had not completed 18 years of age stands fully established on record. At this distant point of time to refer the appellant to the Juvenile Board would not be proper. Therefore, while sustaining the conviction for the offence for which he has been found guilty, the sentence awarded is restricted to the period already undergone. [Para 3] [488-C-E; 489-A-B]

Bhola Bhagat v. State of Bihar 1997 (8) SCC 720; *Gopinath Ghosh v. State of West Bengal* 1984 Supp SCC 228 and *Bhoop Ram v. State of U.P.* 1989 (3) SCC 1, relied on.

Case Law Reference:

1997 (8) SCC 720	relied on	para 3
1984 Supp SCC 228	relied on	para 3
1989 (3) SCC 1	relied on	para 3

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 761 of 2009.

From the Judgment & Order dated 09.08.2007 of the High Court of M.P. Bench at Indore in Criminal No. 152/98.

Shashindra Tripathi, Pratibha Sharma, Sharad Tripathi and Debasis Misra for the Appellants.

C.D. Singh, Sunny Chaudhary, Aditya Singh, Upasana Nath and Arvind Verma for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division

- A Bench of the Madhya Pradesh High Court, Indore Bench. Stand of the present appellant was that he was juvenile when the occurrence took place. His date of birth was 12.11.1980. Various accused persons faced trial for offence punishable under Sections 147, 148, 302 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). Learned counsel for the appellant submitted that since the accused was juvenile, his trial could not have been held alongwith others. Learned counsel for the respondent-State on the other hand submitted that the question whether the appellant was a juvenile was never raised earlier.

3. It is to be noted that prior to the date of occurrence the Madhya Pradesh Children Act, 1928 (in short the 'Children Act') was in force. The Juvenile Justice Act, 1986 (in short '1986 Act') was in operation on the date of occurrence. Subsequently, the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as '2000 Act') has been enacted. Under section 2(h) of the 1986 Act, a juvenile is one who is below the age of 16 years. Under the 2000 Act under Section 2(k), a juvenile or child means a person who has not completed 18 years of age. The fact that on the date in question, i.e. on the date of occurrence and the date of production before the Court the appellant had not completed 18 years of age stands fully established on record. Section 16 of the 2000 Act provides that no juvenile shall be sentenced to death or imprisonment for life or committed to prison in default of payment of fine or in default of furnishing security. Section 20 provides for special provisions in respect of pending cases. The 2000 Act came into force on 1.4.2001. In *Bhoia Bhagat v. State of Bihar* (1997 (8) SCC 720) this Court after referring to the decision in *Gopinath Ghosh v. State of West Bengal* (1984 Supp SCC 228) and *Bhoop Ram v. State of U.P.* (1989 (3) SCC 1) held that an accused who was juvenile cannot be denied the benefit of provisions of 2000 Act. The course this Court adopted in *Gopinath's and Bhoia Bhagat's* cases (supra) was to sustain the conviction,

but at the same time modify the sentence awarded to the convict. At this distant point of time to refer the appellant to the Juvenile Board would not be proper. Therefore, while sustaining the conviction for the offence for which he has been found guilty, the sentence awarded is restricted to the period already undergone. The appellant be released from custody forthwith unless required to be in custody in connection with any other case.

4. The appeal is allowed.

R.P.

Appeal allowed. C