

Supreme Court of India
Eerati Laxman vs State Of A.P on 23 January, 2009
Author: S Sinha
Bench: S.B. Sinha, Mukundakam Sharma

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 139 OF 2009
(Arising out of SLP (CRL.) No. 2135 of 2007)

EERATI LAXMAN . . . APPELLANT

Versus

STATE OF A.P. . . . RESPONDENT

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellant was convicted for commission of an offence punishable under Section 302 of the Indian Penal Code. He was sentenced to undergo imprisonment for life. Allegations against him were that on or about 9.5.1994 at about 1.00 p.m. he committed murder of one Pittala Chandrakala by pouring kerosene over her and setting her on fire with a matchstick.

3. One of the grounds taken by him during trial was that he was a juvenile within the meaning of the provisions of Juvenile Justice Act, 1986 (for short, "the said Act") on the date of commission of offence. Indisputably, the date of birth of the appellant is 10.5.1978. The question, however, which arises for consideration is as to whether he had completed the age of 16 years on 9.5.1994. During the trial, it appears, such a contention was rejected by the learned trial judge opining that he was not a juvenile as no reliance could be placed on the date of his birth recorded in the registers of the primary school. A revision application was filed thereagainst before the High Court. By reason of a judgment and order dated 26.7.2000, the matter was remanded back to the trial court. Relying on or on the basis of a decision of this Court in Arnit Das vs. State of Bihar [(2000) 5 SCC 488], it was held that the date of production of the appellant before the learned Magistrate being 25.5.1994 and assuming that the date of birth of the accused was 10.5.1978, he was not a juvenile within the meaning of the provisions of the said Act.

The learned Sessions Judge, held:

"The learned Advocate feebly contended that the accused should be treated as a juvenile on the date of offence as per the decision reported in 2000 Supreme Court (CrI) 1270, ALT 2002 AP 511 page, ALT 2002 AP 485, SCC 2000 Vol. II page 1270 and AIR 1972, SC 1557. With due respect to all the above decisions, I express my inability to accept the contention of the learned advocates for the accused. As already stated by me earlier the accused in this case has preferred Criminal Revision Case No. 418 of 2000 before the Hon'ble High Court of Andhra Pradesh aggrieved by the earlier order of this Court refusing to accept him as a juvenile. In the order dated 26.7.2000, the Hon'ble High Court of Andhra Pradesh has specifically directed this Court to follow the decision reported in Arnit Das Vs. State of Bihar 2000 (4) Supreme 186. Therefore, I am bound by the order of the Hon'ble High Court and I cannot take a divergent view. I therefore, find that there is no force in the argument advanced by the learned counsel for the accused in this behalf. I accept the contention of the learned Public Prosecutor that the accused was not a juvenile on the date when he was brought before the Court. On an analysis of the entire evidence on record, I hold that the prosecution has successfully driven home the guilt of the accused under Section 302 IPC beyond the reasonable doubt."

4. An appeal preferred by appellant thereagainst has been dismissed by reason of the impugned judgment, holding:

"We do not agree with such a statement in view of the fact that a year is completed on 9.5.1994, if the date of birth of a person is 10th May of any of the preceding year, because in the case of reckoning of a calendar year which starts with 1st January of a particular year, a year is not completed on first January of the next year but is completed on 31st December, of the same year. So, by 10th May, 1994, the accused would start 17th year of his life and on 9th May, 1995, it shall be presumed that he completed 16 years of his life, if his date of birth is 10.5.1978.

Under Section 3(35) of the General Clauses Act, 1897 (for short "the Act"), "Month" shall mean a month reckoned according to the British Calendar. "Year" as defined under section 3(66) of the Act shall mean a "Year" reckoned according to the British Calendar. The Halsbury's Laws of England in Paragraph 143, Volume No. 37 (Third Edition), described "Month" as under:-

"When the period prescribed is a calendar month running from any arbitrary date the period expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts; save that, if the period starts as the end of a calendar month which contains more days than the next succeeding month the period expires at the end of the latter month."

5. Indisputably, Arnit Das (supra) has been overruled by a Constitution Bench of this Court in Pratap Singh vs. State of Jharkhand [(2005) 3 SCC 551] wherein it was clearly laid down that the date on which the offence had been committed and not the date when the accused was first produced before the court/competent authority would be the relevant date for the purpose of ascertaining as to whether the accused before it was a juvenile within the meaning of the provisions of the said Act or not. In Pratap Singh (supra) this Court in regard to Arnit Das (supra) stated:

"84. With great respect, we cannot agree to the said statement of law. It is incorrect to say that the preamble speaks of the things of post-delinquency only. The Act not only refers to the obligations of the country to re-enact the existing law relating to juveniles bearing in mind, the standards prescribed in various conventions but also all other international instruments. It states that the said Act was enacted inter alia to consolidate and amend the law relating to juveniles. Once the law relates to delinquent juveniles or juveniles in conflict with law, the same would mean both pre-and post- delinquency.

85. The definition of "juvenile" under the 1986 Act, of course refers to a person who has been found to have committed offence but the same has been clarified in the 2000 Act. The provisions of the 1986 Act, as noticed hereinbefore, sought to protect not only those juveniles who have been found to have committed an offence but also those who had been charged therefor. In terms of Section 3 of the 1986 Act as well as the 2000 Act, when an enquiry has been initiated even if the juvenile has ceased to be so as he has crossed the age of 16 and 18 as the case may be, the same must be continued in respect of such person as if he had continued to be a juvenile. Section 3 of the 1986 Act therefore cannot be given effect to if it is held that the same only applied to post- delinquency of the juvenile.

86. The field covered by the Act includes a situation leading to juvenile delinquency vis-`-vis commission of an offence. In such an event he is to be provided the post-delinquency care and for the said purpose the date when delinquency took place would be the relevant date. It must, therefore, be held that the relevant date for determining the age of the juvenile would be one on which the offence has been committed and not when he is produced in court."

{See also Balu @ Bakthvatchalu vs. State of Tamil Nadu [2008 (2) SCALE 419], Jyoti Prakash Rai @ Jyoti Prakash vs. State of Bihar [2008 (3) SCALE 348, Ravinder Singh Gorkhi vs. State of U.P. [(2006) 5 SCC 584], Vimal Chadha vs. Vikas Choudhary & Anr. [2008 (8) SCALE 608]}

6. The offence, as noticed hereinbefore, was committed on 9.5.1994. A "delinquent juvenile" in terms of the provisions of the said Act would be a juvenile who has been found to have committed an offence. In terms of the provisions of the said Act, "juvenile" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. The said Act was

repealed and replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, "the 2000 Act") in terms whereof "juvenile" or "child" means a person who has not completed eighteenth year of age.

Section 20 of the 2000 Act as amended by Act 33 of 2006 reads as under:

"20. Special provision in respect of pending cases.- Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.--In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."

7. In our opinion, the High Court is not entirely correct in arriving at the said conclusion. The said Act is a beneficent legislation. It, however, would not mean that the principle of literal interpretation thereof should not be resorted to.

8. Section 3 of the Indian Majority Act, 1875 provides for age of majority of persons domiciled in India and the criteria for computation of age of majority. It reads as under:

"3. Age of majority of persons domiciled in India.-(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day."

In *Prabhu Dayal Sesma vs. State of Rajasthan & Anr.* [(1986) 4 SCC 59], this Court categorically held that in absence of any express provision, while calculating a person's age, the day of his birth

must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. [See Salag Ram Sharma v. State of Rajasthan, (2005) 10 SCC 77]

9. Appellant, therefore, having been born on 10.5.1978, the said day was to be counted as a whole day and, thus, he had not attained the age of 16 years before 12 o'clock in the midnight of the previous day, i.e. 9.5.1978.

This aspect of the matter has recently been considered in Achhaibar Maurya vs. State of Uttar Pradesh & ors. [(2008) 2 SCC 639], wherein it was held:

"14. It is interesting to note, however, that the common law rule stated in Shurey, Re, Savory, LR (1918) 1 Ch 263, in respect of anniversaries has been abrogated by virtue of the Family Law Reform Act, 1969. The effect of the change is that, in respect of anniversaries falling after 1-1-1970, the time at which a person attains a particular age expressed in years is the commencement of relevant anniversary of the date of his birth. (See Halsbury's Laws of England, 4th Edn., Reissue, p. 209.) We do not have such statute. We have, therefore, to determine the cases on the touchstone of statute operating in the field and in absence thereof by common law principle."

10. We, for the reasons stated hereinbefore, are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly and the matter is remitted to the Juvenile Justice Board in terms of Section 20 of the Act.

11. The appeal is allowed with the aforementioned direction.

.....J.

[S.B. Sinha]J. [Dr. Mukundakam Sharma] New Delhi;

January 23, 2009