Supreme Court of India
Bhoop Ram vs State Of U.P. on 4 April, 1989
Equivalent citations: AIR 1989 SC 1329, 1990 CriLJ 2671, 1989 (2) Crimes 294 SC, JT 1989 (2) SC 105, 1989 (1) SCALE 799, (1989) 3 SCC 1
Author: Natarajan
Bench: A Ahmadi, S Natarajan
JUDGMENT Natarajan, J.

1. Leave granted.

2. The only question for consideration in this appeal by special leave is whether the appellant who was convicted along with 5 others by the VI Additional District & Sessions Judge, Bareilly under Section 148 IPS and Sections 302, 323 and 324 all read with Section 149 1PC and sentenced to imprisonment for life besides concurrent sentence for lesser terms of imprisonment should have been treated as a "child" within the meaning of Section 2(4) of the U.P. Children Act, 1951 (U.P. Act 1 of 1952) and sent to an approved school for detention therein till he attains the age of 18 years instead of being sentenced to undergo imprisonment in jail.

3. In support of his contention that he was less than 16 years of age on 3-10-1975, that being the date of the commission of the offences for which the appellant has been convicted along with others, the appellant relies upon a school certificates (Annexure B) wherein his date of birth is shown as 24-7-1960. The learned Sessions Judge without going into the question whether the appellant was below 16 years of age on the date of the commission of the offences, adverted only to the fact that the appellant was below 18 years of age at the relevant time and proceeded to follow the ratio in Bachey Lal v. State of U.P. 1956 SCC (Crl) 599 and awarded the lesser sentence of imprisonment for life instead of the extreme penalty of death sentence.

4. In such circumstances this Court felt it necessary, even at the stage of admission of the special leave petition, that the Sessions Judge Bareilly should be called upon to enquire into the age of the appellant and submit a report. The Sessions Judge was permitted to have the appellant examined by the Chief Medical Officer of the State and liberty was given to the parties to adduce evidence regarding the age of the appellant.

5. The Chief Medical Officer, Bareilly gave a certificate that as per radiological examination and physical features, the appellant appeared to be 30 years of age on 30.4.1987. The appellant did not place any other material before the Sessions Judge except the school certificate to prove that he had not completed 16 years on the date of the commission of the offences. The Sessions Judge, after considering the medical certificate and the school certificate has sent a report on 1-6-1987 stating that the appellant appeared to be about 28-29 years of age which means that the appellant would have completed 16 years on the date of occurrence. The Sessions Judge has rejected the school certificate produced by the appellant on the ground that "it is not unusual that in schools ages are understated by one or two years for future benefits".

6. The learned counsel for the appellant argued that the Chief Medical Officer's certificate and the Sessions Judge's report regarding the age of the appellant are based only on their respective opinions whereas the school certificate produced by the appellant contains definite information regarding the date of birth of the appellant and hence the school certificate should prevail over the certificate of the doctor and the report of the Sessions Judge especially in the absence of any material to raise doubts about the truth of the entries in the certificate. The learned counsel further stated that the reason given by the Sessions Judge for rejecting the school certificate is merely based on his assumption that parents very often under state the age of their children at the time of their admission in schools in order to secure benefits for the children in their future years. On the other hand, the learned counsel for the State laid stress upon the report of the Chief Medical Officer since it was based upon the fusion of bones etc., and argued that the appellant should have been about 18 years of age on the date of the occurrence and hence the appellant is not entitled to invoke the provisions of the U.P. Children Act.

7. On a consideration of the matter, we are of the opinion that the appellant could not have completed 16 years of age on 3-10-1975 when the occurrence took place and as such he ought to have been treated as a "child" within the meaning of Section 2(4) of the U.P. Children Act 1951 and dealt with under Section 29 of the Act. We are persuaded to take this view because of three factOrs. The first is that the appellant has produced a school certificate which carries the date 24-6-1960 against the column 'date of birth'. There is no material before us to hold that the school certificate does not relate to the appellant or that the entries therein are not correct in their particulars. The Sessions Judge has failed to notice this aspect of the matter and appears to have been carried away by the opinion of the Chief Medical Officer that the appellant appeared to be about 30 years of age as on 30-4-1987. Even in the absence of any material to throw doubts about the entries in the school certificate, the Sessions Judge has brushed it aside merely on the surmise that it is not unusual for parents to understate the age of their children by one or two years at the time of their admission in schools for benefits to the children in their future years. The second factor is that the Sessions Judge has failed to bear in mind that even the Trial Judge had thought it fit to award the lesser sentence of imprisonment for life to the appellant instead of capital punishment when he delivered judgment on 12-9-1977 on the ground the appellant was a boy of 17 years of age. The observation of the Trial would lend credence to the appellant's case that he was less than 10 years of age on 3-10-1975 when the offences were committed. The third factor is that though the doctor has certified that the appellant appeared to be 30 years of age as on 30-4-1987, his opinion is based only on an estimate and the possibility of an error of estimate creeping into the opinion cannot be ruled out. As regards the opinion of the Sessions Judge, it is mainly based upon the report of the Chief Medical Officer and not on any independent material. On account of all these factors, we are of the view that the appellant would not have completed 16 years of age on the date of the offences were committed. It therefore follows that the appellant should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment when he was convicted by the Sessions Judge under various counts.

8. Since the appellant is now aged more than 28 years of age, there is no question of the appellant now being sent to an approved school under the U.P. Children Act for being detained there. In a somewhat similar situation, this Court held in Jayendra v. State of U.P. that where an accused had

been wrongly sentenced to imprisonment instead of being treated as a "child" under Section 2(4) of the U.P. Children Act and sent to an approved school and the accused had crossed the maximum age of detention in an approved school viz. 18 years, the course to be followed is to sustain the conviction but however quash the sentence imposed on the accused and direct his release fortwith. Accordingly, in this case also, we sustain the conviction of the appellant under all the charges framed against him but however quash the sentence awarded to him and direct his release forthwith. The appeal is therefore partly allowed in so far as the sentence imposed upon the appellant are quashed.