Supreme Court of India
Bhola Bhagat And Ors. vs State Of Bihar on 27 October, 1997
Equivalent citations: 1997 (2) ALD Cri 645, 1998 (1) BLJR 628, 1998 CriLJ 390, JT 1997 (8) SC 537, 1997 (6) SCALE 558, (1997) 8 SCC 720, 1997 Supp 4 SCR 711
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Bench: A Anand, K Venkataswami
JUDGMENT A.S. Anand, J.

1. For an occurrence which took place at about 11.30 A.M. on 29th September, 1978, in the Bazar in village Barauli, District Gopalganj, 11 accused persons were sent up to face their trial for offences under Sections 302/149/148 IPC. The First Information Report in respect of the occurrence was lodged on 29th September, 1978 at Police Station Barauli on the statement of Paras Nath Choubey (PW-6) brother of the deceased, recorded at the hospital. The learned Additional Sessions Judge vide judgment and order dated 22nd July, 1983 acquitted Mishri Bhagat, but convicted the remaining 10 accused for offences under Sections 302/149/148 IPC. Each of the 10 accused was sentenced to undergo imprisonment for life for an offence under Sections 302/149. No separate sentence was imposed on any one of the accused for an offence under Section 148 IPC. Against their conviction and sentence, all the 10 convicts filed three different set of appeals. The Division Bench of the High Court vide Judgment and order dated 24th August, 1995 acquitted Sarwa prasad (appellant No. 5 in the High Court). The conviction and sentence of the remaining 9 convicts was, however, maintained. By Special Leave 6 of the convicts have filed three separate appeals in this Court. Three convicts have not filed any appeal against their conviction and sentence. All the three appeals are being disposed of by this common judgment since they arise out of the common judgment and order of the courts below. Prabhunath Prasad has filed Criminal Appeal No. 1827 of 1996 while Bhola Bhagat is the appellant in Criminal Appeal No. 1826 of 1996, the remaining four convicts have filed Criminal Appeal No. 1828 of 1996.

2. According to the prosecution case, on the fateful day Parasnath Choubey (PW-6) along with his brother Ram Naresh Choubey (deceased) went to the shop of Anish Haider (PW-5) for purchasing some cloth. After making the purchase, when they reached near the shop of Jagat Prasad, PW-6 saw Mishri Bhagat standing in a lane near the medicine shop. He directed the remaining accused who were armed with weapons like Dab, Bhala and Farsa to assault the complainant party. While the first informant PW-6 managed to escape, the accused surrounded his brother and assaulted him, as a result of which Ram Naresh Choubey fell down on the ground. On raising an alarm a number of persons including Jita Manjhi (PW-1), Bindeshwari Prasad (PW-3), Rajendra Choubey (PW-4), Anish Haider (PW-5), Shaukat Ali (PW-8) and Damodar Choudhary arrived at the scene of occurrence. After the appellants had assaulted the deceased they fled towards the east. PW-6 came near his brother but found him unconscious with bleeding injuries on different parts of his body. He removed him to Barauli hospital on a cart. On intimation being set from the hospital to police station Barauli, Abdul Jalil (PW-9) arrived at the hospital and recorded the statement of P.W. 6 since the injured was in an unconscious state. The injury report of Ram Naresh Choubey was prepared. On the advice of the Doctor, the deceased was removed to Gopalganj hospital. PW-9 returned to the police station and drew up a formal FIR for offences under Section 307 IPC etc. The investigation was taken in hand and site inspection carried out. Blood stained earths was seized

from the place of occurrence and was subsequently sent for chemical examination. At about 10.00 P.M., the investigating officer received information that the injured had succumbed to his injuries in Gopalganj hospital. The case was thereupon converted to one under Section 302 IPC. An inquest was held at Gopalganj hospital the same day. Thereafter, the post-mortem was conducted by Dr. Lakhi Chand Prasad (PW-7). As many as 17 antimortem injuries, all cut wounds, were found on the body of the deceased. After close of the investigation the appellants were chargesheeted, tried and convicted as already notice.

3. At the trial all the witnesses except PW-1, PW-3, and PW-4 turned hostile. The Trial Court did not believe Jita Majhi PW-1, but the High Court did not agree with the opinion of the Trial Court and found him to be a reliable witness, PW-3 Bindeshwari Prasad was believed both by the Trial Court and the High Court. He made a clear deposition regarding the part played by the appellants and the manner in which the occurrence had taken place. PW-4 Rajendra Choubey, brother of the deceased, was believed by the Trial Court but the High Court did not place complete reliance upon his testimony. Even though Anish Haider (PW-5) had been declared hostile, both the Trial Court as well as the High Court scrutinised his testimony carefully and relied upon his evidence. He was named in Faradbeyan also. His evidence connects the appellants with the crime. Similarly, Parasnath Choubey (PW-6) even though had turned hostile has been believed by both the courts. No reliance, however, has been placed on the testimony of Shaukat All (PW-8) by either of the two courts. The defence of alibi pleaded by Mansen Prasad and Dr. Anil Kumar alias Tansen, appellants was not accepted after critically examining the evidence of Mahendra Prasad (DW-1) and Dr. M.M. Kolay (DW-2) by the High Court.

4. We have heard learned Counsel for the parties at length. We find that the view taken by both the courts with regard to the involvement of the appellants in the three appeals in the commission of crime of murder of Ram Naresh Choubey on the fateful day has been established beyond every reasonable doubt. Both the courts have carefully appreciated the evidence of witnesses and taken into account the medical evidence and the established enemity between the parties and then recorded an order of conviction. In our opinion the appreciation of evidence by both the courts is proper and sound. We are not persuaded to take a view different than the one taken by the courts below in so far as the involvement of the appellants in the commission of crime is concerned. Their conviction is, therefore, well merited.

5. There is, however, one other aspect of the case which now engages our attention and that pertains to appellant No. 2, Chandra Sen Prasad, appellant No. 3, Mansen Prasad and appellant No. 10, Bhola Bhagat--(The number as given to the appellants in the High Court)

6. In March, 1983, more than four years after the occurrence, when the statements of these appellants were recorded under Section 313 Cr. P.C. they gave their age as follows:

Chandra Sen Prasad - 17 years (Appellant No. 2) Mansen Prasad - 21 years (Appellant No. 3) Bhola Bhagat - 18 years (Appellant No. 10)

7. The Trial Court recorded that in its estimation the age of Appellant No. 2 was 22 years at that time while that of appellant No. 3, 21 years and appellant No. 10, 18 years. The Trial Court, however, did not give benefit to these three appellants of the Bihar Children Act, 1970.

8. In the High Court also an argument that Chandra Sen Prasad, Mansen Prasad and Bhola Bhagat were Children as defined in the Bihar Children Act, 1970 on the date of the occurrence and their trial along with the adult accused by the criminal court was not in accordance with law was raised but was inter alia with the following observations:

Since, the alleged occurrence had taken place in September 1978 and the statements of the appellants had been recorded in February and March, 1983 it was contended that even by the estimate of the age of the appellants made by the court, all the three appellants were below 18 years of age on the date of occurrence. It appears that except for the age given by the appellants and the estimate of the court at the time of their examination under Section 313 of the CrPC, there was no other material in support of the appellants claim that they were below 18 years of age.

9. In coming to the above conclusion, the High Court relied upon a judgment of this Court in the case of State of Haryana v. Balwant Singh [1993] Supp. 1 SCC 409 wherein it has been observed that if the plea that the accused was a child had not been raised before the committal court as well as before the Trial Court, the High Court could not merely on the basis of the age recorded in the statement under Section 313 Cr. P.C. conclude that the respondent was a 'child' within the meaning of the definition of the expression under the Act on the date of the occurrence, in the absence of any other material to support that conclusion.

10. To us it appears that the approach of the High Court in dealing with the question of age of the appellants and the denial of benefit to them of the provisions of both the Acts was not proper. Technicalities were allowed to defeat the benefits of a socially oriented legislation like the Bihar Children Act, 1982 and the Juvenile Justice Act, 1986. If the High Court had doubts about the correctness of their age as given by the appellants and also as estimated by the Trial Court, it ought to have ordered an enquiry to determine their ages. It should not have brushed aside their plea without such an enquiry.

11. The Bihar Children Act, 1982 was already in force when the Juvenile Justice Act, 1986 was extended to all the States w.e.f. 2.10.1987. Section 32 of the Juvenile Justice Act, 1986 provides:

Section 32 Presumption and determination of age. (1) Where it appears to a competent authority that a person brought before it under any of the provisions of this Act (otherwise than tor the purpose of giving evidence) is a juvenile, the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a juvenile or not, stating his age as early as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile, and the age recorded by the competent authority to be the age of the person so brought before it shall,

for the purposes of this Act, be deemed to be the true age of that person.

This section casts an obligation on the court to make due enquiry as to the age of the accused and if necessary by taking evidence itself and record a finding whether the person is a juvenile or not.

12. In Gopinath Ghosh v. State of West Bengal [1984] Supp. SCC 228, an argument was raised on behalf of the appellant therein for the first time in the Supreme Court that on the date of an offence the appellant was aged below 18 years and was, therefore, a 'child' within the meaning of the expression 'child' as contained in the West Bengal Children Act, 1959 and, therefore, the court had no jurisdiction to sentence him to suffer imprisonment, after holding a trial. In that case, this Court framed an issue as to what was the age of the appellant on the date of an offence for which he had been tried and convicted and remitted the issue to the learned Sessions Judge, Madia to return a finding on that question. The learned Sessions Judge after hearing both the sides certified his findings that the appellant Gopinath Ghosh was aged between 16-17 years on the date of the offence. This Court then after referring to various provisions of the Act opined that Section 24 of the Act takes away the jurisdiction of the Court to impose a sentence of imprisonment, unless the case falls under the proviso and that Section 25 of the Act forbids any trial of juvenile delinquent and that only an inquiry can be held in his case in accordance with provisions of the CrPC, for the trial of a summons case. This Court noticed that unfortunately the appellant had never questioned the jurisdiction of the Sessions Court which tried him for the offence. Nor was any such plea raised in the appeal against his conviction and sentence in the High Court. It was Tor the first time that the contention was raised before the Supreme Court. The Court then observed:

In view of the underlying intendment and beneficial provisions of the Act read with Clause (f) of Article 39 of the Constitution which provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment, we consider it proper not to allow a technical condition that thin contention is being raised in this Court for the first time to thwart the benefit of the provisions being extended to the appellant, if he was otherwise entitled to it.

(Emphasis ours) and then went on to direct:

The next question is : what should be the sequel to our decision? The appellant has been in prison for some years. But neither his antecedents nor the background of his family are before us. It is difficult for us to gauge how the juvenile court would have dealt with him. Therefore, we direct that the appellant be released on bail forthwith by the learned Additional Sessions Judge, Nadia," and then proceed in accordance with law keeping in view the provisions of the Act.

13. Again, in the case of Bhoop Ram v. State of U.P. , the only question for consideration before a Bench of this Court was whether the appellant who had been convicted and sentenced along with certain adult accused should have been treated as a child within the meaning of Section 2(4) of the U.P. Children Act, 1951 and sent to the approved school for detention therein till he attained the age of 18 years instead of being sentenced to undergo imprisonment in jail. The Court after considering

the material on the record opined that the appellant therein could not have completed 16 years of age on the date when the offence was committed and held 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 grounds. Since, the appellant had by the time the appeal was heard by the Supreme Court reached the age of more than 28 years, the court directed:

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 forthwith. 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.

(Emphasis ours)

14. A three Judge bench of this Court in the case of Pradeep Kumar v. State of U.P. , noticed the following observations of the High Court regarding the age of the appellant:

At the time of the occurrence Pradeep Kumar appellant, aged about 15 years, was resident of Railway Colony, Naini, Krishan Kant and Jagdish appellants, aged about 15 years and 14 years respectively, were residents of village Chaka P.S. Naini.

At the time to granting special leave, two appellants therein produced school leaving certificate and horoscope respectively showing their ages as 15 years and 13 years at the time of the commission of the offence and so far as third appellant is concerned, this Court asked for his medical examination and on the basis thereof concluded that he was also a child at the relevant time. The Court then held:

It is, thus, proved to the satisfaction of the Court that on the date of occurrence, the appellants had not completed 16 years of age and as such they should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment on conviction under Section 302/34 of the Act.

Since the appellants are now aged more than 30 years, there is no question of sending them to an approved school under the U.P. Children Act for detention. Accordingly, while sustaining the conviction of the appellants under all the charges framed against them we quash the sentences awarded to them and direct their release forthwith. The appeals are partly allowed in the above terms.

(Emphasis supplied)

15. A full Bench of the Patna High Court in the case of Krishna Bhagwan v. State of Bihar , considered the question relating to the determination of the age of the accused and the belated raising of that plea and opined that though the normal rule is that a plea unless it goes to the very root of the jurisdiction should not be allowed to be taken at the appellate stage especially when it requires the investigation into a question of fact but a plea that accused in question was a "child" within the meaning of the Act can be entertained at the appellate stage also and should not be overlooked on technical grounds. After noticing the provisions of the Bihar Children Act, 1982 and that Juvenile Justice Act, 1986, the Full Bench of the Patna High Court opined, taking into consideration the aim and intention of the two Acts, that the application of the provisions of the Acts should not be denied to an offender where by the time the trial commenced or concluded the accused had ceased to be a juvenile, although when the offence was committed he was a juvenile within the meaning of the Act. The Court then laid down the procedure which should be followed when a plea is raised to the effect that the accused on the date of the offence was a child and held that inquiry into that aspect should be conducted and on the basis of the evidence led at the inquiry, the court should record a finding whether or not on the date of commission of the offence, the accused was a 'child' within the meaning of the Act.

16. The judgment of the two Judge Bench of this Court in the case of State of Haryana v. Balwant Singh [1993] Supp. 1 SCC 409, which has been relied upon by the High Court is clearly distinguishable. The Bench in that case recorded:

Admittedly, neither before the committal court nor before the trial court, no plea was raised on behalf of the respondent that he was a child and that he should not have been committed by the Magistrate and thereafter tried by the sessions court and that he ought to have been dealt with only by the court of Juveniles. When it is not the case of the respondent that he was a child both before the Committal Court as well as before the Trial Court, it is very surprising that the High Court, based merely on the entry made in Section 313 statement mentioning the age of the respondent as 17 has concluded that the respondent was a 'child' within the definition of the Act on the date of the occurrence.

In the instant case, however, the plea had been raised both in the Trial Court as well as in the High Court and both the Courts even considered the plea but denied the benefit to the appellants for different reasons which do not bear scrutiny. That apart, the earlier judgments of this Court reported in [1984] Suppl. SCC 228 (supra) and (supra), were not even noticed or considered in Balwant Singh's case (supra) since the view expressed in Gopinath Ghosh's case and Bhoop Ram's case (supra) receive support from the three Judge Bench judgment in the case of Pradeep Kumar v. State of U.P., (supra), the appellants cannot be denied the benefit of the provisions of the Act on the basis of Balwant Singh's case (supra).

17. The correctness of the estimate of age as given by the Trial Court was neither doubted nor questioned by the State either in the High Court or in this Court. The parties have, therefore, accepted the correctness of the estimate of age of the three appellants as given by the Trial Court. Therefore, these three appellants should not be denied the benefit of the provisions of a socially progressive statute. In our considered opinion, since the plea had been raised in the High Court and

because the correctness of the estimate of their age has not been assailed, it would be fair to assume that on the date of the offence, each one of the appellants surely fell within the definition of the expression 'child'. We are under these circumstances reluctant to ignore and overlook the beneficial provisions of the Acts on the technical ground that there is no other supporting material to support the estimate of ages of the appellants as given by the Trial Court, though the correctness of that estimate has not been put in issue before any forum. Following the course adopted in Gopinath Ghosh, Bhoop Ram and Pradeep Kumar's case (supra) while sustaining the conviction of the appellants under all the charges quash the sentences awarded to them.

18. The appellants Chandra Sen Prasad, Mansen Prasad and Bhola Bhagat, shall, therefore, be released from custody forthwith, if not required in any other case. Their appeals succeed to the extent indicated above and are partly allowed.

19. The conviction and sentence of the remaining appellants is maintained and their appeals are hereby dismissed.

20. Before parting with this judgment, we would like to reemphasis that when a plea is raised on behalf of an accused that he was a "child" within the meaning of the definition of the expression under the Act, it becomes obligatory for the court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially oriented legislation, it is an obligation of the court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions of an accused. The court must hold an enquiry and return a finding regarding the age, one way or the other. We except the High Courts and subordinate courts to deal with such cases with more sensitivity, as otherwise the object of the Acts would be frustrated and the effort of the Legislature to reform the delinquent child and reclaim him as a useful member of the society would be frustrated. The High Courts may issue administrative directions to the subordinate courts that whenever such a plea is raised before them and they entertain any reasonable doubt about the correctness of the plea, they must as a rule, conduct an inquiry by giving opportunity to the parties to establish their respective claims and return a finding regarding the age of the concerned accused and then deal with the case in the manner provided by law.