

THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Appeal no.512 of 2016

JUDGMENT

(per Hon'ble Sri Justice M. Seetharama Murti)

In this appeal under Section 374(2) CrPC, the appellant/sole accused, Gaganam Sammakka @ Sammi, impugned the judgment dated 10.02.2016 in S.C.No.268 of 2014 on the file of the Court of the learned VIII Additional Sessions Judge at Medak.

2. By the aforesaid judgment, the learned VIII Additional Sessions Judge found the appellant/accused guilty of the offence punishable under Section 302 IPC and sentenced her to suffer imprisonment for life and pay a fine of Rs.200/- and suffer simple imprisonment for six months in default thereof.

3. We have heard the submissions of the learned counsel for the appellant/accused and the learned Public Prosecutor appearing for the respondent/State. We have perused the material on record.

4. During pendency of the appeal, the appellant filed CrI.A.M.P.No.1123 of 2016 under Section 7(A) of Juvenile Justice (Care and Protection of Children) Act, 2005 read with Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007, requesting to cause an enquiry as to the age of the appellant/accused and release her in the interests of justice as she is a juvenile/child in conflict with law as on the date of the commission of

the alleged offence. In the grounds urged in support of the said request, it is stated by the deponent, the father of the appellant, to the following effect:

5. The appellant was born on 22.09.1996 and her said date of birth was entered in the records of the M. P. Primary School, Indiranagar, Andole Mandal, Medak District. In proof of the said fact, a copy of bonafide certificate issued by the Head Master of the said school was filed. The said document discloses that the date of birth of the appellant/accused as entered in her school records is 22.09.1996. The date of commission of the alleged offence is 29.09.2013. As such, the appellant was a minor/child as on the date of the alleged offence. Finally, a request was made to cause an enquiry as to the age of the appellant as on the date of commission of the alleged offence and set her free.

6. Since the appellant claimed before this Court that she was a child as on the date of the commission of the alleged offence for which she was convicted and sentenced, this Court on 08.08.2016 passed the following order:

The Jail Superintendent, Special Jail for Women, Chanchalguda, Hyderabad, is therefore directed to refer the petitioner-appellant to the Medical Board of Osmania General Hospital for determination of her age as on the date of the alleged commission of the offence i.e., 29.09.2013. The Osmania General Hospital shall ensure that the Medical Board comprises a member who is qualified to look into the aspect of age determination and after conducting the age determination test in accordance with the scientific norms, submit a report to this Court certifying the age of the petitioner as on 29.09.2013. The report in this regard shall be submitted by the next date of hearing.

7. Acting on the said orders of this Court, the Superintendent of Special Prison for Women, Chanchalguda, along with his letter in

Lr.No.SPWH/2202/2016, dated 22.08.2016, submitted to this Court the opinion of the Associate Professor, Department of Forensic Medicine, Osmania Medical College/Osmania General Hospital, Hyderabad. Perusal of the said letter and the opinion reflects that the appellant/accused is pregnant and that the gestation is seven months old and that therefore doing radiological examination for the determination of the age of the appellant/accused is dangerous to the mother and baby and hence, the said Associate Professor advised to send the individual for age determination after delivery.

8. Pursuant thereto, the learned Public Prosecutor sought time to verify the genuineness of school record being sought to be relied upon by the appellant/accused.

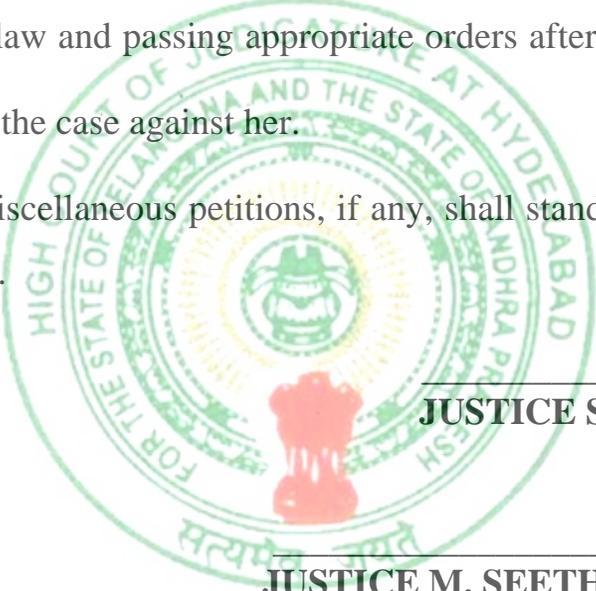
9. The learned Public Prosecutor, on instructions furnished to him by the Superintendent of Special Prison, confirmed that the statement made in the supporting affidavit of the father in regard to the date of birth of the appellant/accused as entered in the school record is correct. The bonafide and conduct certificate with admission No.166 dated 31.08.2016 of the appellant/accused issued by the Head Master of the MPP School, Indira Nagar, Andole Mandal, Medak District, is placed on record. In the said certificate, as per school record, the date of birth is mentioned as 22.09.1996. Since the date of birth as borne out by the school record is not in dispute, we are of the opinion that it can be taken as correct for the purpose of determination of the age of the appellant/accused.

10. Since the date of the commission of the alleged offence is 29.09.2013, it follows that the contention of the appellant/accused that she is a child/minor as on the date of the commission of the alleged offence emerges to be true. In that view of the matter, we find that the appellant, who was alleged to have committed the offence with which she is charged in S.C.No.268 of 2014 on the file of the Court of the learned VIII Additional Sessions Judge at Medak, was a juvenile or a child in conflict with law within the meaning of Section 2(13) of the Juvenile Justice (Care and Protection of Children) Act, 2015 as on the date of the commission of the alleged offence. The law permits a person to claim that he/she is a child and that such claim can be raised at any stage and even before the Court of appeal. It is undeniable that when a person alleged to have committed an offence claims before a Court other than a Board that the said person is a child on the date of the commission of the alleged offence and if the said claim is found to be true on such enquiry as may be necessary in regard to determination of the age of such person, such Court shall forward the child to the Board concerned for passing appropriate orders and sentence in accordance with law applicable to the case of such child. That being the legal position, given the facts and the submissions coupled with the reliable document produced, we find that the appellant/sole accused is a minor/child as on the date of the commission of the alleged offence.

11. In view of the said finding we hold that the conviction recorded and the sentence imposed against the appellant/sole accused in S.C.No.268 of 2014 by the learned VIII Additional Sessions Judge at Medak have no effect in the eye of law.

12. In the result, we set aside the conviction recorded and the sentence imposed against Gaganam Sammakka @ Sammi, accused, for the offence punishable under Section 302 IPC in S.C.No.268 of 2014 on the file of the Court of the learned VIII Additional Sessions Judge at Medak and allow the appeal of the appellant accordingly. The fine amount, if paid already shall be refunded. As a sequel to the above findings, we direct the State to take appropriate steps for production of the appellant/accused forthwith before the Board constituted for Medak District under the Juvenile Justice (Care and Protection of Children) Act, 2015, for proceeding against her in accordance with law and passing appropriate orders after due enquiry as per law applicable to the case against her.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.



JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

07.09.2016

Vjl