Reading Material

Workshop of "Principal Magistrates, J.J.B. and Chairpersons, CWC and other Stake Holders on Effective Implementation of Juvenile Justice (Care & Protection of Children) Act. 2000 and the Rules made therein"

Date : 4th May 2014

Venue : Nyaya Sadan, Doranda, Ranchi

Organised by :

Jharkhand State Legal Services Authority (JHALSA)

(This Reading Material is also available on the official website of JHALSA, *www.jhalsa.org)*

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the Juvenile Homes and the inmates

JHARKHAND STATE LEGAL SERVICES AUTHORITY (JHALSA)

Workshop of Principal Magistrate, J.J.B. and Chairpersons, CWC and Other Stake Holders on Effective Implementation of J.J. Act and the Rules made therein

On 4th May, 2014 (Sunday)
at Nyaya Sadan, JHALSA, Doranda, Ranchi

Organised by :
Jharkhand State Legal Services Authority (JHALSA)

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Key Responsibilities & Approach

By Hon'ble Mr. Justice Madan B. Lokur
Judge, Supreme Court of India

Children seem to be easiest victims of most unlawful activities - be it petty penal offences or even something as serious as trafficking or war crimes. Perhaps, this is because of their innocence or their vulnerability or both. Sometimes, juvenile perpetrators of crime are victims of the unlawful activity of someone else. This was graphically brought out by Charles Dickens in Oliver Twist. These are all instances of children being victims of acts of commission. But, sometimes they are the victims of omissions - they are entitled to live a normal existence but are denied the opportunity to do so for no fault of theirs. This may well be the worst crime that they are subjected to.

It is in the above background that due importance needs to be given to Observation Homes set up under the Juvenile Justice (Care and Protection of Children) Act, 2000.

Initial experience

I first visited an Observation Home for Boys (OHB) in Delhi about two years ago. Believe me, the conditions prevailing there were nothing like what anybody would expect in a facility for children. There were eight available dormitories, but for good reasons, only five of them were being used for living purposes. There were more than 200 residents from the age of 12 to young men of about 22 years of age living in those dormitories - each dormitory had more than 40 of them. They slept on mattresses spread out on the floor; the toilets were attached to the dormitories and were stinking; cleanliness and hygiene were perhaps not even heard of; there was no segregation of children either on the basis of age or crime and so there were those accused of murder and rape living with those accused of a petty crime.

What was the attitude of the officer in charge? Well, he hadn't invited those children to come and live there - they were in judicial custody, so to speak, and so it was for the Juvenile Justice Board (the JJB) to take care of them. What about nourishment, facilities and infrastructure requirements? Well, they were the concern of the Department of Social Welfare and he was only a lowly employee of the department. If the senior officers thought it appropriate to improve the living conditions, they would certainly do it and if they did not, he wasn't going to push them around, since it was not a part of his job. And so, there was a general apathy, which started I don't know when, and would perhaps continue till the OHB closed down, if at all.

The first thought that came to my mind was that the State and its officers must adopt and accept their role as parens patrie of the children in Observation Homes.

Constitutional vision

Of course, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules framed thereunder have excellent provisions for the better 'care and protection' of

children, but they were not being implemented in the OHB and were, in a sense, Utopian. I was faced with the question: Is there a simpler way out to make the life of the children more comfortable?

The answer is available in our Constitution which provides for the right to life in Article 21. Over a century ago, the American Supreme Court in Munn v. Illinois, 94 US 113 explained 'life' as occurring in the 5th and 14th Amendments to the US Constitution in the following words:

> "By the term 'life' as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed."

This definition was accepted over fifty years ago by our Supreme Court in *Kharak Singh v. State of U.P., (1964) 1 SCR 332*. Well then, is it possible to implement the Constitutional vision (accepted by the Supreme Court) and improve the quality of life for children in the Observations Homes, more in the spirit of the Act and the Rules rather than in its letter? In my opinion, the answer to this was in the affirmative and we should strive to achieve this Constitutional goal.

Bail not jail

The first question to ask is how long has each child been in the Observation Home? It would be shocking to know (it certainly did shock me) that many children were in the Observation Home because no one really thought about releasing them till the conclusion of their inquiry. Section 15 of the Act provides a maximum punishment of three years stay in a Special Home. Yet, there were children in the Home who had spent more than three years as 'undertrials' and so their 'punishment' period was already over. First things first - such children needed to be immediately released.

Section 436-A was incorporated in the Criminal Procedure Code, 1973 in 2005 and it provides for the maximum period for which an undertrial prisoner can be detained. Unless there are special reasons, the maximum period for which an umdertrial may be detained cannot exceed one-half of the maximum period of imprisonment. Therefore, pending an inquiry, no juvenile may be kept in an Observation Home for more than 18 months. To my shock, I found that many children were in the OHB well beyond this period provided for by law. Was it because their bail application was not being decided or was it because bail was denied to them? Whatever the reason, they could not be kept in custody contrary to law and they needed to be released.

Add to this another option available - sending a child to the Observation Home should be the last option and not the first. This is mentioned as the Principle of last resort in Section 3(2) of the Act. Once this is kept in mind by the JJB, the number of children being routinely sent to the Observation Home to spend a few days would fall dramatically.

These three steps were implemented in the OHB in Delhi and they really emptied it

out, with the result that for the last few months, the number of children in the OHB has not exceeded 50.

Bringing about changes

Once the number of children in the Observation Home becomes manageable, the atmosphere within is that much more conducive to change and it is that much easier for the person in charge to manage change. And this is what happened in the OHB in Delhi.

Suddenly, the Superintendent found it possible to recognize each child by his name or at least his appearance. It became easier for him to attend to his specific needs, if any. This not only included medical attention, which is extremely important but also any particular activity that the child was interested in - painting, tailoring, clay modeling etc. Short stay education courses and counseling was an area that could be considered favorably by the Superintendent, and he did. This necessitated the involvement of NGOs who could help out in a variety of activities that would keep the child busy for most of the day.

Simultaneously, the physical needs of the child were also attended to by the Superintendent. There was that much less utilization of the toilets, for example, and so maintenance could be looked into. Kitchen facilities slowly improved and therefore, the children got a better diet. What about sports and games? The adjacent garden was completely unattended. The horticulture wing of the Public Works Department was persuaded to plant some grass and grow some trees. Fortunately, they responded positively. The children could now go out and play for a couple of hours each day.

Merely because a child is in the Observation Home, it does not mean that he should not have any contact with his family. Without there being any rule or regulation in this regard, a practice had developed whereby the parents or guardians of a child in the Observation Home could meet with him only once a month. The Superintendent changed all that - now he permits a weekly meeting - because it can be easily managed.

Community activities have been given a fillip by the entire staff of the OHB. They have organized a 'sports day' with prizes being distributed courtesy of NGOs. An exhibition of talent, singing, painting, sculpture and tailoring has been organized quite successfully with some people from the neighborhood having purchased a few items. The Song and Drama Division of All India Radio and Doordarshan have assisted in performances such as a magic show, a skit and dancing. Children who have since left the OHB have interacted with those in custody and have encouraged them to integrate into society as useful members.

Conclusion

It is necessary for all stakeholders to work together - whether it is the JJB or the staff of the Observation Home, officials of the concerned department of the government (Social Welfare or Child Development or Public Works), NGOs and anybody who is prepared to spend some time with disadvantaged children. While day-to-day responsibilities are mentioned in the Act and the Rules, it is necessary to look beyond the letter of the law and

understand the spirit behind it. Our Constitution always provides the guidance. Once these fundamentals are clear, the approach becomes obvious.

We need to understand that children are not born into crime - they are led into it. They need to be weaned away from it, sometimes through cajoling, counseling or appreciating their problems. Sometimes it is necessary to take a tougher route and that is why the law provides for Observations Homes and Special Homes. But these Homes need to be the last resort and they should essentially play a restorative role of enabling the integration of a 'wayward' child into society.

In a recent television program, Professor Amartya Sen spoke of how it is so much easier for Indians to live with each other than for people in many other countries. He backed this up by saying that the crime rate in India is lower than in most countries. Our endeavor should be keep it that way and if some of us stray away from the path, particularly children, special efforts need to be made to restore them to the straight and narrow and then integrate them into society. Only a positive approach can help us achieve this Constitutional vision.

Key Responsibilities & Approach

By Hon'ble Mr. Justice R. V. Raveendran
Former Judge, Supreme Court of India

Probation service originally started as a part of religious missionary service. When courts discharged minor offenders conditionally on assurance of good conduct, it was found that the offenders were more likely to conduct themselves properly, if they were placed under the supervision of some responsible person. As it was difficult to secure adequate number of responsible persons willing to 'supervise' discharged offenders, courts developed the practice of calling upon missionaries to supervise the discharged offenders and give advice and help to them. Gradually the supervision during probation were shifted from religious missionaries to professional Probation Officers, as the emphasis shifted from 'redeeming the sinner' to 'advising, assisting and befriending the probationer'. Conceptually, Probation Officers in their supervising capacity, endeavour to 'improve the position of the probationer by tendering advice, providing moral support and identifying employment opportunities'.

2. The skills and knowledge required to supervise adult offenders on probation are completely different from the skills and understanding required for supervising juveniles in conflict with law. A.E.Jones in 'Juvenile Delinquency & the Law' (1945) succinctly defined the role of a Probation Officer in regard to juveniles thus :-

> *"......the relationship between the probation officer and the probationer will have little value if it is regarded as a matter of carrying out the terms of a contract for a certain period... The essential power of the probation officer is in his personality; if he can inspire devotion in his charge; if the probationer becomes filled with a genuine desire to gain his approval; if the parents accept him unreservedly as a wise friend of the family and profit by his suggestions on the upbringing of their offspring; if the probationer does not look on him as a sort of policeman whose watchfulness it is almost a point of honour to cheat; then the probation officer may hope for a true success...... the probation officer can only cure delinquency by effecting a change of heart either in the child or the parent."*

3. To discharge his duties effectively, a Probation Officer dealing with juveniles should know the basics of juvenile justice law and criminal law as also human and child psychology, and a broad knowledge about avenues of educational, vocational and employment opportunities. He should be able to 'talk' to them to gain their confidence and respect. His supervision should be a proper blend of discipline, patience, concern, understanding and compassion. He should not treat juveniles in conflict with law as criminals. Nor should he treat their problems, grievances, fears and needs with disdain and cynicism, in a mechanical and routine manner. A Probation Officer should always remember that a juvenile usually gets into a situation of conflict with law on account of ignorance, illiteracy, penury, threats or undue influence, which in turn, are the consequences of the greed, selfishness, apathy, lust and depravity of adults - many a time the parents and guardians. More often than not, a juvenile is unaware of the consequences of his actions; he is hardened by the callous and harsh treatment meted out by the adult world; and he is hardly in a position to distinguish right from wrong. Many a juvenile being victims of physical and sexual abuse, suffer from sexually transmitted diseases, physical ailments and mental disorders. Many

develop fear psychosis or other abnormal behaviour which may vary from Violent and unsociable' to 'timid and withdrawn'. Many become addicted to drugs and substance abuse, making them human wrecks requiring special care and delicate handling. The Probation Officer's role is to persuade the juveniles in conflict with law learn to follow what is good and healthy; to make them unlearn what is bad; and to wean them away from corrupting habits and influences. In short, each Probation Officer should be a social worker, disciplinarian, friend, guide, nurse, teacher and mentor rolled into one. A daunting and difficult task indeed. That is why Chief Justice Bhagwati observed two decades ago [in Sheela Barse vs. Secretary, Children Aid Society - AIR 1987 SC 656] that unless Probation Officers remain motivated and observant, they will not be able to handle juvenile related situations.

4. Moving from general to specific, let us consider their role under Juvenile Justice (Care and Protection of Children) Act, 2006 CAct' for short). It is as follows:

   (i) When any juvenile is arrested and detained or appears or brought before the Juvenile Justice Board (for short 'Board') in connection with an offence, the Board may direct that such juvenile be released on bail or placed under the supervision of a Probation Officer. [Section 12(1)]

   (ii) When a juvenile is arrested, the concerned Police shall have to inform the Probation Officer of such arrest, to enable him to obtain the information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry. [Section 13 (b)]

   (iii) Before passing a final order as to whether the juvenile has committed an offence, the Board is required to obtain the social investigation report on the juvenile through a Probation Officer (or a recognized voluntary organization or otherwise) and take into consideration the findings of such report. [Section 15(1) and (2)]

   (iv) When the Board finds that the juvenile has committed an offence, it may, while passing the final order, make an order that the juvenile in conflict with law, shall remain under the supervision of a Probation Officer during a period not exceeding three years (subject to such conditions as it deems necessary to impose for due supervision of such juvenile) - [Section 15(1) (d, e, f) and (3)

   The Act also enables the state government to make rules providing for the preparation of a report by the Probation Officer in respect of each juvenile prior to his discharge from a special home regarding the necessity and nature of after-care, the period of such after-care, supervision thereof, and for the submission of report on the progress of such juvenile.

5. The general duties of a Probation Officer are enumerated in section 14 of the Probation of Offenders Act, 1958. They are : (a) to enquire into the circumstances or home surroundings of the accused, and submit reports to assist the court in determining the most suitable method of dealing with the accused; (b) to supervise persons placed under his supervision, and where necessary, endeavour to find them suitable employment; (c) advise and assist the offenders in payment of compensation or costs; and (d) advise and assist in such cases and in such manner as may be prescribed, persons who have been released on probation of good conduct. The duties, functions and responsibilities

of Probation Officers with reference to supervision of Juveniles are enumerated in Rule 87 of the Central Juvenile Justice Rules 2007.

6. Thus the two significant roles of a Probation Officer under the juvenile justice system can be summerised thus :

   Investigation, that is *obtaining information* regarding the antecedents and family background of the juvenile and other material circumstances to assist the Board in making the inquiry, *preparing a social investigation report* on the juvenile to be taken into consideration by the Board while passing a final order in respect of the juvenile, and preparing further report regarding the necessity, nature and period of after-care, when the juvenile is discharged from the Special Home.

   And

   Supervision, that is supervising a juvenile, either pending inquiry by the Board, or on a final order being passed by the Board on finding that the juvenile has committed an offence, or after the juvenile is discharged from the Special Home.

7. The Act is intended to provide for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and make the juvenile justice system more appreciative of, and responsive to the developmental needs of the juvenile, as compared to the normal criminal justice system applicable to adults. It is reformative and not punitive. It even carefully avoids use of words associated with criminals and criminal justice system. Under the Act, a juvenile is not brought before a 'Magistrate or Judge', but before a 'Juvenile Justice Board'. The Act does not provide for 'convicting' and 'sentencing' a juvenile on being found 'guilty' of an offence, but provides for passing a 'final order' when the Board finds that a juvenile has committed an offence. It does not refer to an offender as an 'accused' or 'convict' but refers to him as a 'juvenile in conflict with law'. It does not provide for punishing juveniles by awarding imprisonment in jails or confinement in correction homes, but it contemplates 'advising' the juvenile and 'counselling' the parents, or asking the juvenile to 'perform' community service, or releasing the juvenile on probation of good conduct or at worst 'sending him to a special home' for a period of three years. It gives the Board a wide choice in respect of the orders that could be made in respect of a juvenile who is found to have committed an offence, on the inputs given by the Probation Officer in his Social Investigation Report, so that a juvenile in conflict with law does not get branded as a criminal or "convict'. It takes care to describe the places where the juveniles in conflict with law are made to stay during investigation as 'observation homes' and not 'detention centres', and the places where such juveniles are required to be sent on passing final orders as special homes instead of 'jails' or 'correction centres'. In short it gives an opportunity to the juvenile in conflict with law to get back to normalcy without stigma or scars of incarceration. It also attempts to bring about an attitudinal and perceptional change in those who deal with juveniles in conflict with law, so that the juveniles are not viewed as criminals to be punished, but as unfortunate or misguided youngsters requiring advice, counselling, education, treatment and reformation. Thus the role of a Probation Officer and his functions and tasks are clear-cut and obvious.

8. The general perception among the public is that there is considerable delays and

inadequacies in the appointment of Probation Officers and Child Welfare Officers and in setting up of observation homes (for the stay of juveniles during inquiry), special homes (for the stay of juveniles during the period of punishment) and child protection homes (for children in need of care and attention) as required under the Act. These inadequacies are attributable to financial constraints and lack of administrative 'will' and 'commitment' to implement the 'Act'. Inordinate delay in effective implementation of the Act will make a mockery of juvenile justice system. There should be adequate Probation Officers and Child Welfare Officers. They should be given specialized training to enable them to deal with juveniles and their special problems, so that they can effectively guide, educate, reform and improve the juveniles entrusted to their supervision. If the existing probation service does not have adequate number of efficient, full-time professional Probation Officers, the service should be augmented by honorary voluntary officers. The Boards cannot effectively discharge their duties nor render justice to the juveniles in the absence of an effective and dedicated probation service with necessary facilities and infrastructure. The reports of the Probation Officer containing the facts relating to the background, antecedents and present condition of the juvenile and the suggestions and recommendations of the Probation Officer, is the most important input which the Board will have in taking an appropriate final decision in regard to the juvenile in conflict with law. On such report depends the decision whether the juvenile will be sent to a Special Home for three years, or will be released to the care of the parents or guardian or a voluntary organization or will be asked to do community service or will be merely admonished and advised. On such report depends the directions as to how the juvenile will be dealt with after he completes his stay in a Special Home. Effective achievement of the objects of the Act is therefore possible, only when there are adequate number of committed and professionally trained Probation Officers and Child Welfare Officers sensitized to the problems and needs of victimized and abused juveniles.

9. Statistics demonstrate that whenever juveniles in conflict with law are released into the care of parents or fit institutions and are placed under the supervision of Probation Officers, there is a lesser chance of the juveniles reverting to a life of crime. Probation Officers play a crucial role in the reformation, rehabilitation and social reintegration of the juveniles in conflict with law. Probation Officers can prevent them from reverting to a life of crime and debasement and convert them into law abiding responsible citizens of the society.

Key Responsibilities and approach

By Hon'ble Mr. Justice Altmas Kabir
Former Chief Justice, Supreme Court of India

While adopting the Declaration of the Rights of the Child on 20th November, 1959, the General Assembly of the United Nations laid down ten principles designed to enable children, irrespective of race, colour, sex, language, religion or origin, to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. This was followed up by the adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the "Beijing Rules", on 29th November, 1985. As a member country, India enacted the Juvenile Justice Act, 1986, in keeping with the Beijing Rules, but after the adoption of the Convention of the Rights of the Child by the United Nations in 1987, the said Act was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000.

The 2000 Act made a conscious distinction between juvenile who had committed offences and were referred to as "children in conflict with law" and children from indigent backgrounds who were in need of care and protection. The Act was, therefore, divided into two broad parts. While the first part comprising Chapter II deals with juveniles in conflict with law, Chapter III makes provision for children in need of care and protection. In this article the focus is on Chapter II of the Act and the role of the Principal Magistrate and the other Members of the Board in dealing with juvenile delinquency.

Section 4 of the 2000 Act empowers the State Government to constitute one or more Juvenile Justice Boards in each District to be comprised of a Magistrate and two social workers, of whom at least one is to be a woman. Such Board is to constitute a Bench having powers conferred by the Code of Criminal Procedure on a Metropolitan Magistrate or a Magistrate of the First Class with the Magistrate on the Board to be designated as the Principal Magistrate.

The provisions of the 2000 Act are rehabilitation oriented and the procedure prescribed under the Act and the Rules framed thereunder are child-friendly and not adversarial. The Bench, therefore, has to deal with juvenile delinquency from a point of view which is entirely different from the procedure prescribed for adults under the Code of Criminal Procedure. Necessarily, the Principal Magistrate, who is a member of the judicial service and is used to the provisions of the Code, has to undergo a complete mental metamorphosis and attitudinal transformation while discharging his or her duties under the 2000 Act. The two Members, who probably have little legal experience, have to blend their expertise in the field of social welfare with the legal parameters to effect solutions which are rehabilitation oriented which is the primary object of the 2000 Act.

However, it is for the Principal Magistrate to guide the other Members of the Board and to carry them as a team to achieve the objects of the Act. One of the most important objects that the Act seeks to achieve and has to be kept in mind by the Juvenile Justice Board is the speedy disposal of enquiries contemplated under the Act. If the infrastructure is not available, it is for the Board and, in particular the Principal Magistrate, to ensure that the same is made available. Each Member of the Board has to be sufficiently sensitised to understand the trauma a child, who is removed from his normal surroundings or familiar faces, suffers

when faced with an unfamiliar situation which he or she is unable to handle. If is, therefore, the moral, if not legal, duty for the Members of the Board and the Principal Magistrate in particular, to ensure that all those involved in the juvenile justice delivery system, from the Probation Officers to the Superintendents of the different Homes contemplated under the Act, perform their duties conscientiously and without resorting to unfair means. Children are hardly in a position to raise their voices in protest against injustice, but if the same is brought to the notice of the Board, its members must act with alacrity and not shirk their responsibility in dealing with the problem.

It would be a complete negation of the provisions of the 2000 Act if the case of a juvenile in conflict with law is allowed to remain pending indefinitely for whatever reason. It is the duty of the Board to keep track of such cases so that they can be disposed of at the earliest opportunity and the juvenile and his guardians cease to be exploited by unscrupulous players within the juvenile justice delivery system.

The Juvenile Justice (Care and Protection of Children) Rules, 2007, provides a comprehensive procedure to be followed in dealing with juveniles in conflict with law. If the same is implemented in its true spirit, considerable change can be brought about in the Juvenile Justice delivery system and can help juveniles in conflict with law to return to the mainstream of society and become responsible citizens, instead of being transformed into hardened criminals.

Section 6 of the 2000 Act enumerates the powers of the Juvenile Justice Board and provides that the Board when constituted for a district shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in the Act, have exclusive power to deal with all proceedings under the Act relating to juveniles in conflict with law.

A grave responsibility has been entrusted to the Juvenile Justice Board which is exclusively empowered to deal with offences relating to children and to rehabilitate such children so that they became responsible members of society instead of being criminalized. It is for the Board and its Members to discharge such responsibility in the true spirit of the special law for children and in the interest of the children who come under their jurisdiction.

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Key Responsibilities and Approach

By Hon'ble Mr. Justice I A Ansari
Judge, Patna High Court

A child is a child, no matter, which region he comes from, which family he belongs to or who are, or were, his parents. Regardless, therefore, of the structure of a government, or of the political, economic or social philosophy of a government, welfare of children must be of utmost priority to every government. Children are the backbone of the next generation and leaders of the future.

A child may come into conflict with the law even if he, otherwise, belongs to a good, respectable and affluent family. However, a large number of children who come into conflict with law, emerge as law-breakers due to poverty, social conditions governing the child, hunger for food, malnutrition, even environment in educational institution, lack of proper guidance arising out of disintegration of family, community bondage and erosion of social values, which, at one point of time, worked as deterrent factors towards anti-social behaviour. So it is the high time that government should adopt such effective mechanism for those juveniles in conflict with law for their proper rehabilitation and re-integration.

A phenomenon, which has, now, developed into a potential threat and drives children to come into conflict with law is insurgency, for, the areas, which see extremism and insurgency, give rise to children, who, for a number of reasons, are either driven to take the law into their own hards or are left by the society so uncared and unprotected that they have to choose their own mode of sustenance and one of the common modes of sustenance, which such children are driven to choose, is theft. Gradually, survival of such children on theft and various other law-breaking acts becomes their mode of living. Sometimes, such children are forced to work in various dhabas (a kind of wayside restaurants) and serve food and even liquor to customers, though such avocation is wholly unsuitable to their age.

No wonder, therefore, that Article 39, as a Directive Principle of State Policy, casts responsibility, on the State, to evolve a policy for protecting children and youth against exploitation and moral and material abandonment. Articles 15(3), 45, 47 of the Constitution impose, on the State, the responsibility to ensure that all the needs of the children are met and their basic human rights are fully protected. It is, however, after more than half a century of our independence that under the orders of the Supreme Court, as given in Unnikrishnan J P & Others vs. State of Andhra Pradesh, (1993) 1 SCC 645, it has become the fundamental right of every child to receive, and, correspondingly, a fundamental duty of every state to provide, education, free of cost, up to the age of fourteen years.

Article 3 of the Convention on the Rights of the Child (adopted by the General Assembly of the United Nations on 20* November, 1989) emphasizes responsibilities of the public as well as private social welfare institutions, courts of law, administrative authorities

and legislative bodies to adopt, in all its actions concerning children, the principle of 'best interest of the child'

It is to fulfill its obligations under the Constitution and international conventions that the Juvenile Justice (Care and Protection of Children) Act, 2000, has been enacted. This Act is designed as a comprehensive legal framework, which seeks to take care of two categories of children, namely, (i) those, who are in conflict with law, and (ii) those, who are in need of care and protection. Statement of objects and reason of this Act spells out the urgent need for creating adequate infrastructure, which may be necessary for effective implementation of this significant piece of legislation. This Act envisages that the State shall, apart from its own machinery, which it may use for achieving the objects of the Act, also become a facilitator for voluntary organizations and local bodies so as to achieve effective implementation of the legislation. This enactment casts responsibility on the State to make effective provisions for rehabilitation and social re-integration, such as, adoption, foster care, sponsorship and post care of delinquent juvenile.

Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000, obligates the States to establish Juvenile Justice Board (JJB) in every district and assign duty to them in relation to juvenile in conflict with law. In many parts of our country, though Juvenile Justice Boards have been constituted, what is, unfortunate, is that the authorities, constituting these Boards, appear to have lost sight of the eligibility criteria for persons, who constitute such Boards, inasmuch as Section 4(3) of the Act states that the Principal Magistrate shall have special knowledge or training in child psychology or child welfare and that the members of the Board shall be those, who have been involved in health, education or welfare activities pertaining to children for, at least, seven years. Unless, therefore, suitable persons constitute the Juvenile Justice Boards, the basic purpose of formation of the Board may stand defeated.

Sections 42 and 43 further oblige the State to provide and regulate the foster care scheme. It also envisages State's role in inspiring and helping individuals as well as group of individuals and/or communities to sponsor schemes for taking care of the children, who are in need of care of the society and protection from exploitation. Section 44 makes the State governments responsible to set up or identify organization(s), which would take care of the children, who may come into conflict with law and help them become responsible citizens so that they can lead honest and useful life. It is, thus, the solemn duty of the State to motivate individuals or groups to take up responsibility of the children, who are uncared for, and are, therefore, likely to come in conflict with law or who may have already come in conflict with law.

Section 63 of the Act imposes a duty, on the State, to set up Juvenile Police Unit in each district for handling cases concerning juvenile. Such a unit would have no meaning unless the people constituting the unit are made aware of what they are expected to do. Thus, special training, for this purpose, is necessary and a desire to work for the future benefit of this country must be ignited in them. In fact, the Government must provide training to all

stakeholders in order to ensure effective coordination amongst the various organs, which would make the Act a meaningful and workable Act.

It is pertinent to note that the Act casts a duty upon the State to establish Observation Home and Special Home in every district or a group of districts. Most appropriately, the Act uses the word 'Home', for, a home does not mean a mere structure of concrete, called building, with inanimate objects, such as, furniture. A '//cme' signifies care, love, protection and affection. Hence, a building would remain a building and not become a 'Home'ti the building is devoid of heart and life. In most of the cases, the observation homes and special homes are in pitiable state and the atmosphere is so hostile there that a child, who may have been sent there for reformation or for his well-being, is quite likely to fall in bad company and get exposed to all sorts of notoriety.

Apart from establishing Homes, the Government must constitute various statutory bodies like Advisory board, Selection Committee, Child welfare Committee, Child protection unit, etc. and also recognize those NGOs who can render service for effective implementation of juvenile justice system. Keeping in mind the concept of nthe best interest of child*, the State Government must prepare and conduct programmes such as Sponsorship programme, After-care plan, Counseling, Community service etc. for proper rehabilitation and reintegration of the juvenile. The concept of Community service introduced in Rule 2(e) of the Act is a flexible, personalized and humane sanction inasmuch it gives an offender an opportunity to work for the society, gain work experience, boost his self-esteem and make himself settle in future. It also gives the community a chance to participate in. the correctional process of the offender so that the community is the ultimate gainer. In fact, a trained group of motivated persons would be essential to make the scheme of community service meaningful. Of late, various Universities have started courses on social works. The students of such Universities may be gainfully utilized for such purposes.

It is the duty of the State Government to make all required support system for the purpose of ensuring effective functioning of all the other players under the Juvenile Justice System. However, various duties envisaged under the Act and the Rules cannot be implemented effectively unless and until the Government take initiatives and create 'Juvenile Justice Fund' with sufficient amount for incurring expenditures for implementing programmes, restoration, aiding NGOs , to meet expenses of Homes, Special Juvenile Police Unit, Juvenile Justice Board and other statutory bodies for the purpose of ensuring effective functioning of all the stakeholders under the Juvenile Justice System. Therefore the role of the Government Is very crucial in the juvenile justice system as functioning of all the stake holders revolves around the infrastructure and facilities made available by the State.

Various problems, relating to children, who come in conflict with law, cannot or should not, therefore, be viewed independent of, or divorced from, each other, because a child is, after all, nothing, but a genesis of future society. No enactment, far less an enactment relating to juvenile in conflict with law, can be successful if suitable mechanism, with logistic

support, is not in place for implementation of the objectives, which the enactment seeks to achieve. It is sad, but true, that in our country, we have no dearth of laws; what we suffer from is the logistic support so as to ensure proper implementation of the objects of law and the logistic support has to come from the State Government.

Prevention is always better than cure. As all of us constitute the State; it is, therefore, our duty to ensure that requisite care is taken of every child and, particularly, of a child, who is uncared for, or a child, whose misfortune may have brought him into conflict with law, so that each child grows up and shapes into a responsible, law-abiding and respectful citizen.

Key Responsibilities & Approach

By Hon'ble Mr. Justice Tarun Chatterjee
Former Judge, Supreme Court of India

"Humanity has the Stars in its future and that future is too important to be lost under the burden of juvenile folly and ignorant superstition."

—Isaac Asimov

"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their fives are free from fear and want and that they grow up in peace."

—Kofi Annan.

A juvenile in conflict with law is a child who is alleged to have committed an offence and who cannot be treated as an adult offender. Such a child is termed as a "Juvenile Delinquent". Juvenile Delinquency may be defined as an act prohibited by law for children upto a prescribed age limit and, therefore, a child found to have committed an act of juvenile delinquency by a court of law is a juvenile delinquent.

Development of the Juvenile Justice System in India:

The years following 1950 witnessed both official and non-governmental initiatives that contributed to the development or a more pronounced juvenile justice system in India. To address the increase in neglected and delinquent children as a result of partition of the country into Pakistan and India, the Indian government passed a Central Children's Act (CCA) in 1960. The CCA provided for the care, protection, and treatment of juveniles, and made it applicable in the territories under direct central government rule. The central government, however, did not make any effort to apply the law throughout the entire country. As a result, states with existing laws were free to enforce their own laws, and other states failed to pass any laws regarding the special treatment of children. Further still in 1974, India declared its National Policy for Children, "recognizing children is a nation's supremely important asset and that their programs must find a prominent place in the national plan for the development of human resources". The policy included, among other things, training and rehabilitation of delinquent, destitute, neglected, and exploited children. By 1986, almost all states had passed their own children's legislation. Because these acts lacked consistency in terms of defining delinquency, court procedures, and institutionalization practices, the Indian government felt a need for a children's justice act that could be applied throughout the country. With that in mind, the central government passed the most comprehensive act to date, the Juvenile Justice Act of 1986. (JJA). The JJA was considered a unique piece of social legislation intended to provide care, protection, treatment, development, and rehabilitation for neglected and delinquent juveniles as well as the adjudication of matters relating to the disposition of delinquent juveniles. To accomplish the goals of this legislation, special provisions were made for separate procedures for handling offenders and non-offenders. Juvenile courts were created to deal with juvenile delinquents, and juvenile welfare boards were established to handle neglected juveniles. The final decision regarding the implementation of these courts and boards was left to the respective state governments, but with some stipulations.

The Juvenile Justice Act despite being andmark legislation in the field of juvenile justice failed at various levels to fulfill the aims and goals of ensuring that juvenile delinquents needed special care and protection and had to be viewed in a different light.

The Juvenile Justice (Care and Protection of Children) JJ(C&P) Act, 2000, was enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

In India, The Juvenile Justice (Care and Protection of Children) Act, 2000 has been framed which is aimed at protecting the rights of juvenile delinquents. The Juvenile Justice Act 1986 was repealed by this Act. Any action taken under the former Act would be deemed to have been taken under corresponding provisions of this new Act. The Act defines the 'juvenile' on child' as a person who has not completed 18 years of age. 'Juvenile in conflict with law' means a juvenile who is alleged to have committed an offence. An important change brought about by the Act was to replace the existing Juvenile Welfare Board with the Juvenile Justice Board (JJB). According to the Act, children in conflict with the law are to be kept in an observation home while children in need of protection are sent directly to a juvenile home.

The Constitution of India under Article 39 A provides that, "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free Iegal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". This provision has been complied with by inserting Rule 14 under the Central Juvenile Justice (Care and Protection of Children) Rules, 2007 that "Every juvenile is entitled to free legal aid".

The juvenile justice system has been established with a view to take juvenile delinquents out of the jurisdiction of criminal courts and to protect them from technicalities of criminal procedures. Efforts have been made to co-ordinate various agencies to make the judicial system more accessible to the community. Emphasis has been made to create a relationship between the judicial system and the members of the community which could help the juvenile court in its decision making process.

The Law relating to juvenile delinquents by down elaborate provisions for the protection of the rights of the delinquents and provides them with adequate opportunities for their rehabilitation. It is still the responsibility of those involved in the legal profession to ensure that the law is complied with and that the juveniles in conflict with the law are not deprived from receiving free legal aid. To this respect, the role of the advocates and the Legal Service Authority is of paramount importance. They can provide pro bono legal assistance and advocacy to such children in need in addition to their usual client services.

In the case of Sheela Barse & Anr (1) v. Union of India & Ors., (1986) 3 SCC 596, the Hon'ble Supreme Court issued direction to the State Legal Aid Boards and other legal aid organizations to arrange for the visit of two advocates to custodial institutions once every week for the purpose of providing legal assistance to children below the age of sixteen years who are confined in the observation homes.

Further, in the case of Supreme Court Legal Aid Committee v. Union of India, (1989) 2 SCC 325, the Court stressed on the importance of ensuring justice for juvenile, observing that juvenile delinquents are not capable of initiating their claims or protecting their rights. A committee of Advocates was constituted and entrusted with drafting a scheme for the proper implementation of the Juvenile Justice Act. Every state was also directed to appoint an adequate ate number of Probation Officers and to establish training institutions for imparting child welfare knowledge.

Section 12(c) of the Legal Services Authorities Act, 1987, provides that a child shall be entitled to legal services for filing or defending a case. Therefore, it is the duty of various State Legal Service Authorities to provide free legal aid to juvenile in conflict with law and work towards speedy disposal of cases. The term free legal aid includes not only legal assistance but moral, socieI and learning assistance to juvenile in conflict with the law so that the child can plan for and live a dignified life in future.

In the United States, lawyers are socialized in law school into this aspect of a criminal justice approach. In addition, for many students, training also includes a strong emphasis upon rights, because one of the few things law school faculty members seem to share, is a kind of liberalism which values civil liberties highly and which influences their teaching. In England, it is the attorney who approaches the juvenile court with substantial information in hand. The ability to understand and deal with people, and to perceive the implications of what is said or not, and attitudes of, demeanor or even gestures is, therefore, an important aspect of the practitioners' professional skills. Much is known about interviewing techniques in other professions, but in the legal profession it still depends upon intuition and experience.

In India, the juvenile justice system provides measures to chalk out the rehabilitative programmes. Therefore, its approach towards delinquent juvenile is of rehabilitative nature rather than punitive. In such circumstances, the role of the legal practitioner is not considered more valuable, as the magistrates and probation officers are expected to be capable of fully understanding the juvenile situation. However, the legal practitioner participates in the proceedings of the juvenile court and provides relevant information and legal aid and advice to juvenile as also to the juvenile court to arrive at a conclusion, which is more suitable and beneficial to the juvenile. Right to engage legal practitioner is also provided in the Constitution of India as a Fundamental Right under Article 22 (1). Lawyers should not go into the technicalities of law while dealing with juvenile cases. The practitioner should bring all those relevant facts before the juvenile court, which may be useful for treatment and rehabilitation. Practitioner who is having special knowledge may make substantial contribution for legal defence to the child.

In dealing with juvenile delinquents, this important to focus on their rehabilitation rather than punishment. A positive approach should be taken towards these children by the legislature, the courts, the advocates involved in dealing with these children and by the legal service authorities. The state governments for the proper rehabilitation of these juveniles should take adequate administrative and legislative steps. While dealing with the juvenile delinquents by the respective authorities and the advocates, it is necessary to understand the psyche of such offenders. It should be borne in mind that the accused concerned is a juvenile who does not have the proper understanding of the nuricate details of law and hence is unaware of the legality of a particular act he involves himself in. Therefore, the concerned legal service authorities and the advocates should take care not to discus too

much details about the legal aspect of a particular case, rather they should encourage the juvenile concerned to understand that his actions are against his morality and detrimental to the society as a whole.

The Juvenile Justice (Care and Protection of Children) Rules, 2007, provide that the Juvenile Justice Board had to ensure that any juvenile in conflict with law does not undergo ill treatment by the police, lawyers or probation officers. The child must also be allowed to take part, and be renduring the enquiry proceedings [Rule 13(2)].

Advocates can also render a variety of services, including, offering information and referral, training and education, negotiations, legal services, investigation and monitoring. The State Legal Service Authority can help the State Governments to set up or identify after-care organizations and their functions so that children in conflict with the law can lead an honest and useful life [Section 44(a) (b) of the Juvenile Justice (Care and Protection of Children) Act, 2000].

The legal service authorities and advocates must work towards ensuring that juveniles in conflict with law are not made victims of overly harsh criminal procedures. As such it is important to ensure that their rights are protected. In addition to this advocates can also play an important role by providing juveniles the information about their rights and guiding then towards a healthy, honest future. Advocates, through the means of public interest litigation and legal aid services can also represent the cause of such delinquents. They can work towards sensitizing the community to the needs of such children. Often, concerns have been raised about the occurrence of child abuse within the Observation Homes, which must be promptly investigated, and the legal service authorities along with the advocates must raise their voice against the violation of the law by officials who are in charge of these homes and institutions.

The preamble to the Juvenile Justice (Care and Protection of Children) Act, 2000, amongst other things states, “proper care, protection and treatment by catering to their development needs...”. This suggests that the aim of the Act is to take care of, protect, and treat the juvenile while keeping in mind their developmental needs. The various legal service authorities and advocates can achieve this with the help of NGOs, the society and other related institutions.

Children are an asset to a country and are responsible for building its future. Therefore it is the responsibility of everyone to ensure that they are able to live safely and with dignity. Efforts should be made from everybody concerned to make sure that their exploitation is curbed at all costs. Helping the young to develop into active, contributing citizens is essential for the development of the nation.

Accordingly, it is important that the legaI service authorities and advocates must fulfill their responsibilities towards juvenile delinquents and help them to develop into responsible citizens of the country.

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CHILDREN - SUPREME NATIONAL ASSET

By Dr. Justice Shivraj V. Patil,
Former Judge, Supreme Court of India
Former Member, National Human Rights Commission, Patron, Legal Assistance Forum

Gabrial Mistral, the Nobel Laureate said "We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot; right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer 'tomorrow'. His name is today'.

One of the greatest achievements of progressive democracies in the last century is to have recognized the rightful place of the child in the societal fabric. Both in the international forum as well as domestic policies, positive action for the child's welfare is evidenced by way of various United Nations Conventions, State legislations and judicial interpretations. The efforts toward preserving environment and bringing about sustainable development are aimed at giving our children what is naturally "theirs. Child centric human rights jurisprudence has come to be a new dimension to the larger role of law in social engineering.

Starting with the Declaration of the Right of the Child, adopted in 1924 by the League of Nations that "mankind owes to the child the best it has to give", there have been many endeavors of the international community in protecting the interest of the child. The Declaration of the Rights of the Child 1959 and the Convention on the rights of the child, 1989 of the United Nations ratined by our country as well, contain legal standards necessary for granting social, economic and cultural rights for children. The Universal Declaration of Human rights, 1948, the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, 1966 are the other instruments that convey the rights of the child.

At the domestic level, India has made good strides in uplifting the position of the child. The 86th Constitutional Amendment that made education a fundamental right for children in the age group of 6 to 14 years is a result of the empathy shown by public-spirited individuals and institutions towards the child. Many statutes are in place to make the life of child easier and enjoyable.

The role and concern of the Indian Supreme Court has been profound in making better the lives of numerous children who were objects of exploitation. Supreme Court in Bandhua Mukti Morcha vs. Union of India[1] and others had to say, "This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the lease therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity".

The observations made yet in another judgment in Bandhua Mukti Morcha vs. Union of India and others are relevant in the context, which read:-

"Child of today cannot develop to be a responsible and productive member of

1 1997 (10) SCC 549

tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child........Neglecting the children means loss to the society as a whole. If children are deprived of their childhood - socially, economically, physically and mentally - the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. The founding fathers of the Constitution, therefore, have bestowed the importance of the role of the child in its best for development".

The Supreme Court of India in Rosy Jacob vs. Jacob A. Chakrammakkal observed that "Children are not mere chattels, nor are they mere play things, for their parents. Absolute right of parents over the destinies and the lives of their children has in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow. Up in a normal balanced manner to be useful members of the society". Every children the country has a legitimate claim and is entitled to its share in the finances of the Republic for harmonious and comprehensive development of its personality. There is a need to enhance share in the Budget for the development and welfare of children in their interest as ell as in the interest of the country. As a plant needs protection, nourishment and proper environment to grow into a big fruit-bearing tree, a child also needs protection, promotion, nourishment and proper environment to grow into a useful and responsible citizen to serve the nation.

Proper Health, Education and Environment for the children are the imperative needs of the hour. It is said that large number of children under the age of five die every year due to diarrhea and several million suffer from other dangerous diseases. Female foeticide is still a tragic evil in rural India. It is true that the government is relentlessly working for eradication of diseases like polio, hepatitis and AIDS, but the enormity of the population and incidence of disease have their own negative effects on these sincere efforts. This is natural when the country supports 16 percent of the global population while it holds only 2.4 percent of the world's land.

Spending money on education of the child is not an expense on public exchequer but an asset in the long run. It is the best infrastructure that could be laid for the prosperity of a nation. About 42 million children in the age group of 6-14 do not have access to basic education. Female education, while Palkivala calls the priority of priorities, is hampered not only by the Jeep-rooted culture prejudices but also due to lack of real concern. According to the statistics provided by UNICEF, out of India's 7 lakh rural primary and upper primary/ schools only one in six have toilets deterring girls from attending school. Initiatives like Operation Blackboard, Sarva Shiksha Abhiyaan and mid day meal scheme etc. have been taken so that school drop out rate is curtailed. But we must also ensure that the policies and efforts to serve the purpose must be consistent and continuous and not momentary promises. Education of the child is inextricably intertwined with the progress of a democracy. Democracy can succeed only with an informed crizenry.

Children are the supreme asset of any nation on, they being the greatest gift to humanity. Children are the potential and useful human resources for the progress of the country. Kamaladevi Chattopadhyay wrote 'There is no greater waste in life either in magnitude or intensity than the colossal waste of human talent that goes on for want of the educative stimulant, scientific training and congenial modes of expression". We should remember and remind ourselves that it is only the strong, knowledgeable and virtuous children who can make the country strong and great.

Children are innocent, vulnerable and dependent. Abandoning children and excluding

good foundation of life for them is a crime against humanity. Millions of children live under especially difficult circumstances - as orphans, street children, refugees, displaced persons, as victims of war and other man-made disasters. Article 39 (e) indicates State as the guardian of the health and strength of the tender-aged children to see that they are not abused or forced to enter avocations unsuitable to them, Compelled by economic necessities. We must remember that children cannot and should not be treated as chattels or saleable commodities or play things. They are in flesh and blood with life as much as we elders are and they are also capable of becoming as great, as good or as useful as wears and even more. Therefore, they are to be provided with all necessary facilities and atmosphere to grow into responsible and useful citizens of the country. For the full and harmonious development of his or her personality, a child should grow up in a family environment, in an atmosphere of happiness, love and understanding. Adults cannot barter away the future of the children. There must be conscious and continuous effort by all the concerned to take care of the children to ensure wholesome development of their personality.

In my view, all globalization, liberalization, modernization and privatization must have element of humanization so that the human right violations including the violations of the rights of children, if they cannot be eliminated, can be minimized. The United Nations in the Universal Declaration of Human Rights has proclaimed that childhood Is entitled to special care and assistance.

If we neglect and do not provide or meet bare needs of food, health and education of children, heavy price will have to be paid in future. There is need to made people aware about rights of children and as to the importance of their growing as responsible and productive citizens. Educational institutions, Governments, NGOs and media can play vital role in this regard. Social communication needs to be stimulated at different levels and through multiple channels across the plural society. This requires sensitive and professional handling in a decentralized manner. Methods and mechanics are to be designed to inform children and parents through the educational system and other media to sensitize public functionaries and opinion makers. Voluntary organizations could be powerful means of social mediation and communication in promoting rights of children and equally in preventing their exploiting and suffering. In the democratic set up, the most important need is institutional support at the political and policy levels.

It appears from the beginning of the human society the children have been exploited mercilessly and indiscriminately. Child labour has been the cheapest and disciplined. Children were made to work at home and outside, in factories and fields, in hazardous occupations, in hotels, restaurants and as a domestic aid. Children have been working even at an early age of 6 to 8. Their working hours have been long and their wages have been meager.

As per the Census of 2001, children below the age of 6 years were 157.86 million accounting for 15.24% of the country's population. Their holistic development should be of great concern in their interest and in the interest of the country.

Pandit Jawaharlal Nehru in his letter dated 26th October, 1930 addressed to his daughter Indiraji wrote, "Be brave and all the rest follows". The children are innocent but defenseless. They are not burdened by prejudice, fears and hypocrisy. They need appropriate attention and proper support to grow well to engage themselves usefully to serve the country. Panditji's great love and concern for children was well pronounced. The fact that Panditji's birthday 14th November every year is celebrated as Children's Day shows the importance he attached to the children. He was of the view that unless India's women were educated, the future generation of this country would be seriously affected.

Even as on today, millions of children in the metropolitan slums are growing in an environment of crime and drug abuse. Who is to care for them and what is to be done? Ignoring or neglecting children is nothing but wasting supreme national asset. Many of them, if properly groomed, may occupy various vital and useful positions in all walks of life in future. If our children are denied basic needs of life such as education, health, food, clothing and shelter, visualize what our country is going to be in future. We realize the importance and worth of oxygen when it is withdrawn resulting in suffocation and leading to serious consequences. Neglecting or ignoring the welfare of children and their all-round development may create a like atmosphere where oxygen Is withdrawn making the life of even the country miserable over the years. We have a full-fledged Ministry of Human Resources Development and numerous agencies engaged in child welfare work. It is true that the health, education and general well-being of the children have received the focus and attention of officials and public but in effect and practice, lot is required to be done, yet. In a sense children are custodians of the glory and greatness of the nation. The proper growth of our children will be a true tribute to Panditji - the Builder of Modern India. Almost 65 years ago he asked, “Who live if India dies? Who dies if India lives’? If India is to live children are to live well.

The Constitution of India articulates the concern for the children as can be seen from Articles 15, 24, 39(e), 39(f) 47 and 51A The provisions in the Constitution provide right to the children against exploitation through hazardous employment, on free and compulsory education and to make special provision for them. Numerous laws have been enacted at the Central and State level for children but what is really needed is the effective implementation with concern and commitment.

Even the concern of international community for the well-being of children can be seen in the Resolution on the Rights of the Child, unanimously adopted by the General Assemble of the United Nations in 1989. This Convention sets legal standards for the protection of children against neglect, abuse and exploitation as well as guaranteeing to them their basic human rights with assurance for their individual growth and well-being. Although there are numerous laws at national and international level to protect the rights of the children and ensuring their development but the ground realities are not still encouraging inasmuch as there still exist neglected children, after divorce ignorance, of fallen women, HIV/ AIDS affected parents and the child bride, groom and child widow. These children face exploitation and suffering in the society - mental and physical both.

Children should be motivated, inspired and persuaded to possess good qualities and human values. Children can be inspired to possess these qualities so that when they grow, they should be able to build bridges between man and man irrespective of regions, religions, caste, community, language et., based on mutual love and trust and not the walls of hatred, violence and distrust. It is both expedient and convenient to infuse these qualities in the children from the beginning so that the future of this country can be safe in their hands.

Children being supreme asset of the country, they are to be looked after and groomed well not merely on the basis of constitutional or statutory provisions but also with great human touch and concern.

Case
Laws

[2013] 0 CrLJ 3976/ [2013] 7 SCC 263/ [2013] 5 Supreme 39

IN THE SUPREME COURT OF INDIA

P. Sathasivam and Jagdish Singh Khehar, JJ.

Jarnail Singh - Appellant
Versus
State of Haryana - Respondent

CRIMINAL APPEAL NO. 1209 OF 2010

Decided on: 1-7-2013

(a) Code of Criminal Procedure, 1973- Section 164- Significance of statement Discrepancies in deposition before the trial Court, with the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure, as also, the statement of the prosecutrix recorded by the investigating Officer under Section 161 of the Code of Criminal Procedure had no merit-As she was recovered from the custody of the accused and in medico-legal examination it was affirmed that she had been subjected to sexual intercourse, inasmuch as her hymen was found ruptured and the report of the forensic science laboratory and of the Serologist clearly establish the presence of semen on her salwar,underwear and pubic hair. (Para 4)

(b) Code of Criminal Procedure, 1973-Section 313- Statement of accused under- Not Guilty- Not lead any evidence, in his defence (Para 6)

(c) Cross-examination of witnesses- The suggestion put to the prosecutrix at the behest of the accused-appellant during the course of her cross-examination, that she had accompanied the accused of her own free will and had had sexual intercourse with him consensually, leaves no room for any doubt, that she was in his company, and that, he had had sexual intercourse with her.(Para 24)

(d) Juvenile Justice (Care and Protection of Children) Act, 2000- Section 68(1 - Juvenile Justice (Care and Protection of Children) Rules, 2007- Rule 12(3)- Procedure to be followed in determination of Age- Prima facie on the basis of physical appearance or documents- Statutory provision should be the basis for determining age, even for a child who is a victim of crime- The highest rated option available, would conclusively determine the age of a minor. (Para 20)

(e) Juvenile Justice (Care and Protection of Children) Act, 2000- Section 68(1 - Juvenile Justice (Care and Protection of Children) Rules, 2007- Rule 12(3)- Prosecutrix had studied upto class 3- The school records indicating, that the prosecutrix was minor on the date of occurrence- It is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause- It would have been improper to rely on any other material including the Ossification test, for determining the age of the prosecutrix.(Para 21)

(f)lndian Penal Code, 1860- Sections 366, 376(g) and 120-B- Consent of minor- The prosecutrix was a minor at the time of occurrence and even if she had accompanied the accused of her own free consent, and even if she had had sexual intercourse with the accused consensually, the same would be immaterial-For, consent of a minor is inconsequential. (Para 17,21)

(g)Indian Penal Code, 1860- Sections 366, 376(g) and 120-B- Consent of the prosecutrix. The father of the prosecutrix had categorically mentioned that a sum of Rs. 3,000/- was missing from his residence, and the said fact was duly mentioned in his complaint to the police, yet he had not accused the prosecutrix for having taken it away The instant aspect pales into insignificance on account of the statement made by the father before the Trial Court- During the course of his deposition before the Trial Court, he had asserted, that he had mentioned that a sum of Rs.3,000/- was missing from his residence, but his wife had found the aforesaid money from the residence itself, a few days later-Contention of having taken away a sum of Rs.3,000/- while leaving her house, or that she left her house along with clothes and jewellery not accepted. (Para 16)

Facts of the case:

The prosecutrix was forcibly taken away on 25.3.1993, when she had gone out of her house to urinate in the street, by the accused and his three accomplices. All the four had caught hold of her. They had made her inhale something, which rendered her unconscious. The accused and his accomplices, had then taken her to some unknown place in Uttar Pradesh in a vehicle where the accused forcibly attempted to commit intercourse with her. At that juncture, she had slapped accused on his face, but in order to subjugate her, he had put a cloth in her mouth to prevent her from raising an alarm. Additional Sessions Judge arrived at the conclusion that the prosecution had been able to bring home the guilt of the accused beyond any shadow of reasonable doubt, under Sections 366, 376(g) and 120-B IPC The High Court dismissed the appeal.

Findings of the Court :

The prosecutrix was forcefully taken away, and that, she was subjected to rape at the hands of the accused-appellant Jarnail Singh and his three accomplices. It may still have been understandable, if the case had been, that she had consensual sex with the accused-appellant alone. But consensual sex with four boys at the same time, is just not comprehensible.

Result : Appeal dismissed.

Cases Referrred:

Sunil v. State of Haryana, AIR 2010 SC 392 (Para 19)

JUDGMENT

Jagdish Singh Khehar, J.

1. The factual position on which the prosecution version is founded, commences with the passing of information by Savitri Devi (the mother of the prosecutrix VW - PW6), to her husband Jagdish Chander-PWB, on 26.3.1993, at about 6 am. She informed her husband, that the prosecutrix VW - PW6 was missing from their residence. In this behalf it would be pertinent to mention, that on 25.3.1993 at about 10 pm, Jagdish Chander went to sleep in the '"baithak" (drawing room) of their residence. Savitri Devi, the mother of the prosecutrix VW - PW6, along with the prosecutrix VW - PW6, and the other children (comprising of three sons, the prosecutrix VW - PW6 and one other daughter), went to sleep in the other rooms of the house. Savitri Devi, told her husband, that she suspected the accused-appellant Jarnail Singh, may be responsible for having taken away their daughter.

2. Jagdish Chander-PWB, commenced to search for his daughter. During the course of the aforesaid search, the accused-appellant Jarnail Singh, who had his residence in the neighbourhood (of Jagdish Chander-PWB), was also found missing from his residence. The search for the prosecutrix VW - PW6 by her father, proved futile. It is therefore, that Jagdish Chander-PWB, made a complaint Exhibit PO on 27.3.1993 to the Sub-Inspector lncharge, Police Post, Jathlana. In his complaint, he described VW - PW6, as the elder of his two daughters. He gave out her age as about 16 years. He also alleged, that his daughter VW - PW6 had gone missing from their residence in the night intervening 25th and 26th March.1993. He also alleged, that an amount of Rs.3,000/- was missing from his house, which he assumed may have been taken away by his daughter VW - PW6, while leaving the house. In the complaint Exhibit PO. the needle of suspicion was pointed at the accused-appellant Jarnail Singh.

3. After the registration of the complaint of Jagdish Chander-PWB, the prosecutrix VW - PW6 was recovered on 29.3.1983, from the custody of the accused-appellant Jarnail Singh, from the house of Shashi Bhan at Raipur in district Haridwar. The accused-appellant simultaneously came to be arrested, on 29.3.1993.

4. The statement of the prosecutrix VW - PW6 was got recorded under Section 164 of the Code of Criminal Procedure before O.P. Verma, Judicial Magistrate First Class, Jagadhri on 6.4.1993. It is necessary in the facts and circumstances of this case to extract herein her short statement recorded under Section 164 of the Code of Criminal Procedure, which is being reproduced hereunder:

   "Stated that on the night of 25.3.1993 at around 11 pm, I went to a street near my house to answer nature's call. Accused Jarnail Singh and his three accomplices were hiding there. When I got up after answering nature's call, then they caught hold of me and inhaled me something by cloth, due to which, I got unconscious. They took me to some unknown place in U.P. by putting me in some vehicle. There they took me to a room.

   Jarnail Singh, forcibly committed wrong (intercourse) with me. I slapped on his face, then he put cloth in my mouth. Therefore, I could not raise noise. Thereafter, everyone committed forcible intercourse with me, turn by turn. Huge blood came out of my vagina, and I felt a lot of pain. Thereafter, police caught us and handed over me to my parents."

5. On completion of investigation, a challan was presented under Sections 366, 376 and 120 of the Indian Penal Code. The matter was committed to the Court of Sessions, Jagadhri, whereupon, it was marked to the Additional Sessions Judge, Jagadhri. The Additional Sessions Judge, Jagadhri framed charges on 20.12.1993. The accused-appellant pleaded not guilty, and claimed trial.

6. In order to bring home the charges levelled against the accused-appellant, the prosecution examined 9 witnesses. Thereafter, the prosecution evidence was closed. The statement of the accused-appellant Jarnail Singh, was then recorded under Section 313 of the Code of Criminal Procedure. He denied the allegations levelled against him, and pleaded false implication. Despite opportunity having been afforded to him, the accused-appellant did not lead any evidence, in his defence.

7. It is necessary to record, that on the culmination of the trial, the Additional Sessions Judge, Jagadhri arrived at the conclusion, that the prosecution had been able to bring

home the guilt of the accused-appellant beyond any shadow of reasonable doubt, under Sections 366, 376(g) and 120-B of the Indian Penal Code. The accused-appellant Jarnail Singh was accordingly held guilty of the charges levelled against him. The Additional Sessions Judge, Jagadhri gave an opportunity of hearing to the accused-appellant Jarnail Singh on the question of sentence. Thereupon, for the offence under Section 376(g) of the Indian Penal Code the accused-appellant was awarded rigorous imprisonment for 10 years, he was also required to pay a fine of Rs.200/- (in case of default in payment of fine, the accused-appellant was to undergo further rigorous imprisonment for 3 months). For the offence under Section 366 of the Indian Penal Code, the accused-appellant was awarded rigorous imprisonment for 7 years, and was required to pay a fine of Rs.150/- (in case of default in payment of fine, the accused-appellant was to undergo further rigorous imprisonment for 3 months). And for the offence under Section 120-B of the Indian Penal Code, the accused-appellant was awarded rigorous imprisonment for 7 years, and was required to pay a fine of Rs.150/- (in case of default in payment of fine, the accused-appellant was to undergo further rigorous imprisonment for 3 months). The aforesaid sentences were ordered to run concurrently.

8. Dissatisfied with the judgment dated 14.3.1995, rendered by the trial Court, the accused-appellant Jarnail Singh preferred Criminal Appeal no. 247-SB of 1995 before the Punjab & Haryana High Court at Chandigarh (hereinafter referred to as, the High Court). The High Court dismissed the appeal preferred by the accused-appellant on 4.11.2008. The judgment of conviction dated 14.3.1995 and the order of sentence dated 15.3.1995 (rendered by the trial Court i.e., the Additional Sessions Judge, Jagadhri) were upheld.

9. Dissatisfied with the judgment of the trial Court dated 14.3.1995 and that of the appellate Court dated 4.11.2008, the accused-appellant Jarnail Singh approached this Court. On 7.7.2010, this Court granted leave, in the Petition for Special Leave to Appeal (Crl.) no. 7836 of 2009, filed by the accused-appellant. Having traversed the aforesaid course, the instant criminal appeal has finally been placed before us, for adjudication.

10. Before dealing with the issues canvassed at the hands of the learned counsel for the accused-appellant Jarnail Singh, it is considered expedient to have a bird's eye view of the relevant prosecution witnesses. It is, therefore, that we shall endeavour to deal with the testimony of some of the prosecution witnesses hereunder:

    (i) Dr. Kanta Dhankar was produced by the prosecution as PW1. She had medico-legally examined the prosecutrix VW - PW6 on 29.3.1993 at 3 pm. According to her testimony, no blood or seminal stain was visible to the naked eye, during the course of examination of the prosecutrix VW - PW6. Pubic hairs were present. There was no visible injury on the external genitalia or vagina. The hymen of the prosecutrix VW - PW6 was found ruptured. Her vagina admitted 2/3 fingers easily. The clothes of the prosecutrix VW - PW6, a swab taken from her vagina and her pubic hair, were sent to the forensic science laboratory for examination, so as to determine whether there was any semen or blood thereon. Along with the testimony of Dr. Kanta Dhankar-PW1, it is necessary to record, that as per the report of the forensic science laboratory (Exhibit PL), human semen was detected on the prosecutrix's "salwar" (female trouser), her underwear, as also, on her

pubic hair. The report of the serologist (Exhibit PU1) further revealed medium and small sized blood stains on the “salwar”. The report of the serologist also disclosed, that the stains on the “salwar” were of human blood.

(ii) Dr. Satnam Singh-PW2, was the second witness to be examined by the prosecution. He had medico-legally examined the accused-appellant Jarnail Singh. Dr. Satnam Singh PW2, while deposing before the trial Court affirmed, that the accused-appellant was capable of sexual intercourse.

(iii) The prosecution then examined Moti Ram as PW3. Moti Ram testified, that he was present when the prosecutrix VW - PW6, was recovered whilst in custody of the accused appellant, from the house of Shashi Bhan at Raipur, in district Haridwar. Moti Ram also affirmed the presence of Om Prakash, Jagmal and Sumer Chand, along with the police party, at the time of recovery of the prosecutrix VW - PW6, on 29.3.1993. Moti Ram had identified the prosecutrix VW- PW6, at the time of her said recovery.

(iv) Satpal was produced by the prosecution as its fourth witness. Satpai-PW4 was the Headmaster of the Government High School, Jathlana, i.e. the school which the prosecutrix VW - PW6, had first attended. Satpai-PW4 proved the certificate Exhibit PG, as having been prepared on the basis of the school records. As per the certificate, Exhibit P4, the prosecutrix VW- PW6 was bom on 15.5.1977.

(v) The prosecutrix appeared as PW6 before the trial Court. She affirmed the factual position expressed by her father Jagdish Chander-PW8 in his complaint dated 27.3.1993 (Exhibit PO). She also reiterated the factual position expressed by her, in her statement, recorded under Section 164 of the Code of Criminal Procedure, on 6.4.1993. In sum and substance she asserted, that she had studied upto class 3 at the Government High School, Jathlana, whereafter, she started to do household work at home. On 25.3.1993 at about 11 pm, she had gone out of her house to urinate in the street. The accused-appellant Jarnail Singh and three other persons had caught hold of her, and had taken her in a tanker towards Raipur side in Uttar Pradesh. The accused-appellant Jarnail Singh and his three accomplices, had then raped her in a small room. She also testified, that she had been recovered by the police from Raipur, and at the time of her recovery, Moti Ram-PW3 and her uncle Omilal (Om Prakash) and Jagmal were present with the police party. Thereafter, she claims to have been brought to police post Jathlana, and was got medico-legally examined by a lady doctor at Civil Hospital, Radaur. Since the prosecutrix VW - PW6, was not disclosing the entire factual position, and seemed to be changing the version of her statement recorded under Section examine her. Consequent upon being permitted to cross-examine the prosecutrix VW - PW6, she affirmed, that the accused-appellant had been alluring her for marriage, with the promise of giving her ornaments and clothes, and a further commitment to move her to the city, after their marriage. During these allurements, the accused-appellant Jarnail Singh used to also impress upon her, that her parents were poor and would marry her to some poor person, who would never be able to provide her such facilities. During her cross-examination, she expressly denied the suggestion, that she herself had allured the accused-appellant Jarnail Singh, to take her away, in order to marry him.

(vi) O.P. Verma, Judicial Magistrate First Class, Jagadhri, appeared as PW7. He proved the statement, recorded before him under Section 164 of the Code of Criminal Procedure, by the prosecutrix VW - PW6, on 6.4.1993.

vii) Jagdish Chander-PW8, the father of the prosecutrix VW - PW6 during the course of his deposition, affirmed the factual position depicted in his complaint dated 27.3.1993 (Exhibit PO). He also corroborated the testimony of his daughter (i.e., the prosecutrix VW - PW6) in all material particulars. The conviction of the accused-appellant at the hands of the trial Court (on 14.3.1995) and by the High Court (on 4.11.2008) was primarily based on the statements of the prosecution witnesses summarised above.

11. We shall now endeavour to deal with the submissions advanced at the hands of the learned counsel for the accused-appellant.

12. The first and foremost contention advanced at the hands of the learned counsel for the accused-appellant was, that the prosecutrix VW - PW6, had voluntarily and with her free consent, accompanied the accused-appellant Jarnail Singh. It was contended, that in actuality, it was the prosecutrix VW - PW6 who had allured the accused-appellant to marry her, and had persuaded him to take her away during the night intervening 25th and 26th March, 1993. In order to substantiate the instant submission, it was pointed out that the prosecutrix VW - PW6 has remained with the accused Jarnail Singh for four days without any protestation. During the course of the aforesaid four days in the company of the accused-appellant Jarnail Singh, they had travelled from one place to another, and had finally reached the house of Shashi Bhan at Raipur (from where the police recovered her on 29.3.1993). It was submitted, that there was ample opportunity with her, to raise an alarm during the aforestated four days. The fact that she did not raise any alarm shows, that she had voluntarily remained with the accused-appellant Jarnail Singh. Therefore, sexual intercourse with the accused-appellant Jarnail Singh, according to learned counsel, was also consensual. Thus viewed, it was asserted, that the accused-appellant Jarnail Singh could not be accused of either having kidnapped her, and/or having committed rape on her.

13. On the same issue, learned counsel for the accused-appellant also invited our attention to the fact, that in the complaint lodged by Jagdish Chandra (PW8), dated 27.3.1993, he had expressly mentioned that the prosecutrix had taken away a sum of Rs. 3,000/-. In this behalf it was submitted that the instant act of the prosecutrix exhibits that she had taken money from her father's house to make good her escape in the company of the accused-appellant Jarnail Singh. It is sought to be inferred from the above, that the prosecutrix VW - PW6 had gone with the accused-appellant Jarnail Singh, of her own free will. And, that she had sexual intercourse with him consensually. For the reasons indicated hereinabove, it was the vehement contention of the learned counsel for the accused appellant Jarnail Singh, that the courts below had seriously erred in recording the appellant's conviction under Sections 366, 376 and 120-B of the Indian Penal Code.

14. We have given our thoughtful consideration to the first contention advanced at the hands of the learned counsel for the accused-appellant. We shall venture to determine the factual aspects taken into consideration by the learned counsel for the appellant, to substantiate the alleged free will and consent of the prosecutrix VW - PW6 individually, so as to effectively determine the veracity of the submissions noticed above.

15. In so far as the issue of having gone with the accused-appellant Jarnail Singh of her own free will, and of having had sexual intercourse with him consensually, it is necessary only to examine the uncontested deposition of the prosecutrix VW - PW6. In this behalf, it may be pointed out, that in her statement recorded under Section 164 of the Code of Criminal Procedure before the Judicial Magistrate, First Class, Jagadhari on 6.4.1993, the prosecutrix VW - PW6 had expressly asserted, that she was forcibly taken away on 25.3.1993, when she had gone out of her house to urinate in the street, by Jarnail Singh and his three accomplices. She had clearly and categorically testified, that all the four had caught hold of her. They had made her inhale something, which rendered her unconscious. She had further stated, that the accused-appellant Jarnail Singh and his accomplices, had then taken her to some unknown place in Uttar Pradesh in a vehicle where Jarnail Singh forcibly attempted to commit intercourse with her. At that juncture, she had slapped Jarnail Singh on his face, but in order to subjugate her, he had put a cloth in her mouth to prevent her from raising an alarm. Thereafter, the accused-appellant Jarnail Singh and his accomplices had committed forcible intercourse with her, one after the other. In her statement before the Trial Court, where she appeared as PW6, she had reiterated clearly the position of having been taken away by the accused-appellant Jarnail Singh, and his three accomplices. She affirmed, that she was taken away in a tanker to Uttar Pradesh and then all the accused had committed rape on her in a small room. On the aforestated aspect of the matter, she was not subjected to cross examination at the behest of the accused. Only a suggestion was put to her, that she had persuaded the accused-appellant Jarnail Singh to take her away, in order to perform marriage with her, and for the said purpose had taken away cash, clothes and jewellery from her own residence. The aforestated suggestion was denied by the prosecutrix VW - PW6. Keeping in view the statement of the prosecutrix VW - PW6 under Section 164 of the code of Criminal procedure before the Judicial Magistrate, First Class, Jagadhri, as also, the statement made by her while appearing before the trial court, and the manner in which she was subjected to cross-examination, there is no room for any doubt, that the prosecutrix was forcefully taken away, and that, she was subjected to rape at the hands of the accused-appellant Jarnail Singh and his three accomplices. It may still have been understandable, if the case had been, that she had consensual sex with the accused-appellant alone. But consensual sex with four boys at the same time, is just not comprehensible. Since the fact, that the accused-appellate Jarnail Singh and the prosecutrix VW - PW6 had eloped together is not disputed. And furthermore, since the accused-appellant having had sexual intercourse with the prosecutrix is also the disputed. It is just not possible to accept the proposition canvassed on behalf of the accused-appellant. We, therefore, find no merit in the instant submission.

16. The contention advanced at the hands of the learned counsel for the accused appellant Jarnail Singh, that while leaving her house on 25.3.1993, the prosecutrix VW - PW6, had taken away a sum of Rs.3,000/-, needs a holistic examination. Whilst it is true that in the complaint, Jagdish Chandra (PWB), the father of the prosecutrix VW - PW6, had categorically mentioned that a sum of Rs.3,000/- was missing from his residence, and the said fact was duly mentioned in his complaint to the police dated 27.3.1993, yet he had not accuse the prosecutrix VW - PW6 for having taken it away. The instant aspect, in our considered view pales into insignificance, on account of the statement made by

Jagdish Chandra (PWB) before the Trial Court. During the course of his deposition before the Trial Court, he had asserted, that he had mentioned that a sum of Rs.3,000/- was missing from his residence, but his wife Savitri Devi had found the aforesaid money from the residence itself, a few days later. Accordingly, the assertion made by the learned counsel representing the accused-appellant to the effect that the prosecutrix VW - PW6 had taken away a sum of Rs. 3,000/-, when she left the house of her father on 25.3.1993, cannot be stated to have been duly proved. Besides the aforesaid, it is apparent from the cross-examination of the prosecutrix VW - PW6, that a suggestion was put to her that besides cash, she had taken away clothes and jewellery at the time of leaving her father's house on 25.3.1993. The prosecutrix VW - PW6 expressly denied the suggestion. There is no material on the record of the case to substantiate the said allegation. Therefore, it is not possible for us to accept the accusation levelled by the accused-appellant Jarnail Singh against the prosecutrix VW - PW6, either on the issue of having taken away a sum of Rs.3,000/- while leaving her house, or that she left her house on 25.3.1993 along with clothes and jewellery. Accordingly, the inference drawn by assuming the said factual position as true, simply does not arise.

17. The first contention advanced at the hands of the learned counsel for the appellant can be conveniently determined from another perspective. The High Court in the impugned order arrived at the conclusion that the prosecutrix VW - PW6 was a minor at the time of occurrence on 25.3.1993, and had concluded, that even if she had accompanied the accused-appellant Jarnail Singh on 25.3.1993 of her own free consent, and even if she had had sexual intercourse with the accused consensually, the same would be immaterial. For, consent of a minor is inconsequential.

18. During the course of hearing of the present appeal, learned counsel for the appellant vehemently contested the determination of the High Court in the impugned judgment, wherein it had concluded, that the prosecutrix VW - PW6 was a minor. Insofar as the instant aspect of the matter is concerned, it was pointed out, that the sexual organs of the prosecutrix VW - PW6 were found to be fully developed by Dr. Kanta Dhankar-PW1. Her hymen was found to be ruptured. It was also seen during the medico-legal examination of the prosecutrix VW - PW6, that the vagina admitted two/three fingers easily. Learned counsel for the appellant-accused Jarnail Singh, also invited our attention to the cross-examination of Dr. Kanta Dhankar-(PW1), wherein she acknowledged having mentioned the age of the prosecutrix VW - PW6 as 15 years, on the basis of the statement made by the prosecutrix to her. Dr. Kanta Dhankar-PW1 had also acknowledged, that she had not got the ossification test conducted on the prosecutrix VW - PW6 to scientifically determine the age of the prosecutrix. Based on the aforesaid, it was averred that there was no concrete material on the record of the case, on the basis of which it could have been concluded by the High Court, that the prosecutrix was a minor on the date of occurrence.

19. In order to support his contention, that the prosecutrix was not a minor at the time of occurrence, learned counsel for the appellant placed reliance on the judgment rendered in Sunil vs. State of Haryana, AIR 2010 SC 392. Ordinarily, we would have extracted the observations on which reliance was placed, but for reasons that would emerge from our conclusion, we consider it inappropriate to do so.

20. On the issue of determination of age of a minor, one only needs to make a reference to

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforestated 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :

"12. Procedure to be followed in determination of Age.? (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in subrule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry

shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub- rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.

21. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW - PW6 could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied upto class 3 only, and thereafter, had left her school and had started to do household work. The prosecution in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW-PW6, on the next available basis, in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW4), to prove the age of the prosecutrix VW - PW6. Satpal (PW4) was the Head Master of the Government High School, Jathlana, where the prosecutrix VW - PW6 had studied upto class 3. Satpal (PW4) had proved the certificate Exhibit-PG, as having been made on the basis of the school records indicating, that the prosecutrix VW -

PW6, was bom on 15.5.1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are therefore of the view, that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW -

PW6. It would also be relevant to mention, that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material including the ossification test, for determining the age of the prosecutrix VW-PW6. The deposition of Satpai-PW4 has not been contested. Therefore, the date of birth of the prosecutrix VW - PW6 (indicated in Exhibit P.G., as 15.7.1977) assumes finality. Accordingly it is clear, that the prosecutrix VW-PW6, was less than 15 years old on the date of occurrence, i.e., on 25.3.1993. In the said view of the matter, there is no room for any doubt that the prosecutrix VW - PW6 was a minor on the date of occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court, that even if the prosecutrix VW-PW6 had accompanied the accused-appellant Jarnail Singh of her own free will, and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor.

22. Since the judgment relied upon by the learned counsel for the appellant is distinguishable on facts. And since the judgment relied upon, had not made any reference to the 2007 Rules, we are of the view that the same would not be relevant for the purposes of determining the age of the prosecutrix VW - PW6, specially in the background of the evidence led by the prosecution through Satpal (PW4) to establish.

23. The next contention advanced at the hands of the learned counsel for the accused appellant Jarnail Singh was, that the oral testimony of the prosecutrix VW - PW6 ought not to be accepted as sufficient to return a finding of guilt against the accused-appellant Jarnail Singh. Insofar as the testimony of the prosecutrix VW - PW6 is concerned, it is pointed that there were a number of discrepancies and contradictions therein. It was submitted, that such discrepancies can be seen on a comparison of her deposition before the trial Court, with the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure on 6.4.1993, as also, the statement of the prosecutrix recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure on 29.3.1993.

24. We have given our thoughtful consideration to the above noted submission, advanced at the hands of the learned counsel for the appellant. We, however, find no merit therein. It is not as if the prosecution version is entirely based on the statement of the prosecutrix VW - PW6. It would be relevant to mention, that her recovery from the custody of the accused-appellant Jarnail Singh from the house of Shashi Bhan, at Raipur, is sought to be established from the statement of Moti Ram-PW3. There can therefore be no room for any doubt, that after she was found missing from her father's residence on 25.3.1993, and after her father Jagdish Chandra-PWB had made a complaint to the police on 27.3.1993, she was recovered from the custody of the accused-appellant Jarnail Singh. Thereafter, the prosecutrix VW - PW6 was subjected to medico-legal examination by Dr. Kanta Dhankar-PW1 on 29.3.1993 itself at 3.00 p.m. Dr. Kanta Dhankar-PW1, in her independent testimony, affirmed that she had been subjected to sexual intercourse, inasmuch as her hymen was found ruptured.

Even though the visual examination of the prosecutrix VW - PW6, during the course of her medico-legal examination did not reveal the presence of semen or blood, yet the report of the forensic science laboratory (Exhibit PL) and of the Serologist (Exhibit PU1) clearly establish the presence of semen on her salwar, underwear and pubic hair. The serologist's report also disclose, medium and small blood stains on her "salwar". In her own deposition, she had mentioned that, when she was raped by the accused-appellant Jarnail Singh and his accomplices, bleeding had taken place and she had felt pain, and her clothes were stained with blood. Her deposition stands scientifically substantiated by Exhibits PL and PU1. The suggestion put to the prosecutrix VW - PW6 at the behest of the accused appellant Jarnail Singh, during the course of her cross-examination, that she had accompanied the accused-appellant Jarnail Singh, of her own free will and had had sexual intercourse with him consensually, leaves no room for any doubt, that she was in his company, and that, he had had sexual intercourse with her. The assertion that the prosecutrix VW - PW6 had accompanied the accused-appellant Jarnail Singh, and had had sexual intercourse with him consensually is completely ruled out, because as per the substantiated prosecution version, the prosecutrix VW - PW6 was not taken away by the accused-appellant Jarnail Singh alone, but also, by his three accomplices. All the four of them had similarly violated her person. Additionally, in her statement under Section 164 of the Code of Criminal procedure, the prosecutrix VW - PW6 had asserted, that in the first instance, after having caught hold of her, the accused had made her inhale something from a cloth which had made her unconscious. Thereafter, when the accused-appellant Jarnail Singh attempted to commit intercourse with her, she had slapped him. He had then put a cloth in her mouth, to stop her from raising an alarm. Thereafter, each one of the accomplices had committed forcible intercourse with her in turns. The factum of commission of forcible intercourse by the accused appellant, as also, his accomplices was reiterated by her during her testimony before the Trial Court as PW6. Besides the aforesaid, there is a statement of her own father, Jagdish Chandra (PWB) who also in material particulars had corroborated the testimony of the prosecutrix VW - PW6. The prosecutrix VW - PW6, was not subjected to cross-examination on any of these issues. Nor was the prosecutrix confronted with either the statements made by her under Section 161 or Section 164 of the Code of Criminal Prosecution, so as to enable her to explain discrepancies, if any. Therefore, we find no merit at all, in the submission advanced by the learned counsel. In the above view of the matter, we are satisfied that there was substantial material corroborating the statement of the prosecutrix VW - PW6, for an unequivocal determination of the guilt of the accused-appellant Jarnail Singh.

25. No other submission besides those dealt with hereinabove, was advanced at the hands of the learned counsel for the appellant. For the reasons recorded above, we find no merit in the instant appeal and the same is accordingly dismissed.

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[2013] 7 SCC 705/ [2013] 5 Supreme 481

SUPREME COURT OF INDIA

ALTAMAS KABIR & SURINDER SINGH NIJJAR, J. CHELAMESWAR, JJ.

SALIL BALl - PETITIONER

vs.

UNION OF INDIA & ANR. - RESPONDENTS

WRIT PETITION (C) NO. 10 OF 2013
WITH
W.P.(C)NOS.14, 42, 85, 90 and 182 OF 2013
WITH
W.P.(CRL)N0.6 OF 2013
AND
T.C.(C)No. 82 OF 2013

Decided On: :July 17, 2013

Juvenile Justice (Care and Protection of Children) Act, 2000- Sections 2(k), 2(1) and 15- Constitutional validity of- The Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006, and the Juvenile Justice (Care and Protection of Children) Rules, 2007, are based on sound principles recognized internationally and contained in the provisions of the Indian Constitution- There is a definite thought process, which went into the enactment of the aforesaid Act- The Juvenile Justice (Care and Protection of Children) Act, 2000, is in tune with the provisions of the Constitution and the various Declarations and Conventions adopted by the world community represented by the United Nations.(Paras 39, 40, 44)

Juvenile Justice (Care and Protection of Children) Act, 2000- Parliament to amend if in its wisdom-In any event, in the absence of any proper data, it would not be wise on our part to deviate from the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, which represent the collective wisdom of Parliament. (Para 45)

Juvenile Justice (Care and Protection of Children) Act, 2000- No necessity of amendment- No interference is necessary with the provisions of the Statute till such time as sufficient data is available to warrant any change in the provisions of the aforesaid Act and the Rules- On the other hand, the implementation of the various enactments relating to children, would possibly yield better results.(Para 49)

Juvenile Justice (Care and Protection of Children) Act, 2000- Object and Purpose The essence of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules framed thereunder in 2007, is restorative and not retributive, providing for rehabilitation and re-integration of children in conflict with law into mainstream society The age of eighteen has been fixed on account of the understanding of experts in child psychology and behavioural patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future. There are, of course, exceptions where a child in the age group of sixteen to eighteen may have developed criminal propensities, which would make it virtually impossible for him/her to be re-integrated into mainstream society,

but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and re-integrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future. (Para 48)

Juvenile Justice (Care and Protection of Children) Act, 2000 Section 15(1)(g) - One misunderstanding of the law relating to the sentencing of juveniles, needs to be corrected- The said understanding needs to be clarified on account of the amendment which came into force with effect from 22.8.2006, as a result whereof even if a juvenile attains the age of eighteen years within a period of one year he would still have to undergo a sentence of three years, which could spill beyond the period of one year when he attained majority. (Para 47)

Facts of the case:

The relief which has been prayed for in common on behalf of the Petitioners was that in offences like rape and murder, juveniles should be tried under the normal law and not

under the aforesaid Act and protection granted to persons up to the age of 18 years under the aforesaid Act may be removed and that the investigating agency should be permitted to keep the record of the juvenile offenders to take preventive measures to enable them to detect repeat offenders and to bring them to justice.

Findings of the Court :

We do not think that any interference is necessary with the provisions of the Statute till such time as sufficient data is available to warrant any change in the provisions of the aforesaid Act and the Rules. On the other hand, the implementation of the various enactments relating to children, would possibly yield better results.

Result : Writ Petitions and the Transferred Case dismissed.

Cases Referrred:

Abuzar Hossain Vs. State of West Bengal [(2012) 10 SCC 489 (Paras 19, 29) Avishek Goenka Vs. Union of India, (2012) 5 SCC 321 (Para 19)

BALCO Employees Union Vs. Union of India [(2002) 2 SCC 333 (Para 28)

State of Tamil Nadu Vs. K. Shyam Sunder, (2011) 8 SCC 737 (Para 29)

JUDGMENT

ALTAMAS KABIR, CJI.

1. Seven Writ Petitions and one Transferred Case have been taken up together for consideration in view of the commonality of the grounds and reliefs prayed for therein. While in Writ Petition (C) No. 14 of 2013, Saurabh Prakash Vs. Union of India, and Writ Petition (C) No. 90 of 2013, Vinay K. Sharma Vs. Union of India, a common prayer has been made for declaration of the Juvenile Justice (Care and Protection of Children) Act, 2000, as ultra vires the Constitution, in Writ Petition (C) No. 10 of 2013, Salil Bali Vs. Union of India, Writ Petition (C) No. 85 of 2013, Krishna Deo Prasad Vs. Union of India, Writ Petition (C) No. 42 of 2013, Kamal Kumar Pandey & Sukumar Vs. Union of India and Writ Petition (C) No. 182 of 2013, Hema Sahu Vs. Union of

India, a common prayer has inter alia been made to strike down the provisions of Section 2(k) and (I) of the above Act, along with a prayer to bring the said Act in conformity with the provisions of the Constitution and to direct the Respondent No. 1 to take steps to make changes in the Juvenile Justice (Care and Protection of Children) Act, 2000, to bring it in line with the United Nations Standard Minimum Rules for administration of juvenile justice. In addition to the above, in Writ Petition (Crl.) No. 6 of 2013, Shilpa Arora Sharma Vs. Union of India, a prayer has inter alia been made to appoint a panel of criminal psychologists to determine through clinical methods whether the juvenile is involved in the Delhi gang rape on 16.12.2012. Yet, another relief which has been prayed for in common during the oral submissions made on behalf of the Petitioners was that in offences like rape and murder, juveniles should be tried under the normal law and not under the aforesaid Act and protection granted to persons up to the age of 18 years under the aforesaid Act may be removed and that the investigating agency should be permitted to keep the record of the juvenile offenders to take preventive measures to enable them to detect repeat offenders and to bring them to justice. Furthermore, prayers have also been made in Writ Petition (Cr1.) No. 6 of 2013 and Writ Petition (C) No. 85 of 2013, which are personal to the juvenile accused in the Delhi gang rape case of 16.12.2012, not to release him and to keep him in custody or any place of strict detention, after he was found to be a mentally abnormal psychic person and that proper and detailed investigation be conducted by the CBI to ascertain his correct age by examining his school documents and other records and to further declare that prohibition in Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000, be declared unconstitutional.

2. In most of the matters, the Writ Petitioners appeared in-person, in support of their individual cases.

3. Writ Petition (C) No.10 of 2013, filed by Shri Salil Bali, was taken up as the first matter in the bunch. The Petitioner appearing in-person urged that it was necessary for the provisions of Section 2(k), 2(1) and 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, to be reconsidered in the light of the spurt in criminal offences being committed by persons within the range of 16 to 18 years, such as the gang rape of a young woman inside a moving vehicle on 16th December, 2012, wherein along with others, a juvenile, who had attained the age of 17’1. years, was being tried separately under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

4. Mr. Bali submitted that the age of responsibility, as accepted in India, is different from what has been accepted by other countries of the world. But, Mr. Bali also pointed out that even in the criminal jurisprudence prevalent in India, the age of responsibility of understanding the consequences of one’s actions had been recognized as 12 years in the Indian Penal Code. Referring to Section 82 of the Code, Mr. Bali pointed out that the same provides that nothing is an offence which is done by a child under seven years of age. Mr. Bali also referred to Section 83 of the Code, which provides that nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on a particular occasion. Mr. Bali, therefore, urged that even under the Indian Criminal Jurisprudence the age of understanding has been

fixed at twelve years, which according to him, was commensurate with the thinking of other countries, such as the United States of America, Great Britain and Canada.

5. In regard to Canada, Mr. Bali referred to the Youth Criminal Justice Act, 2003, as amended from time to time, where the age of criminal responsibility has been fixed at twelve years. Referring to Section 13 of the Criminal Code of Canada, Mr. Bali submitted that the same is in pari materia with the provisions of Section 83 of the Indian Penal Code. In fact, according to the Criminal Justice Delivery System in Canada, a youth between the age of 14 to 17 years may be tried and sentenced as an adult in certain situations. Mr. Bali also pointed out that even in Canada the Youth Criminal Justice Act governs the application of criminal and correctional law to those who are twelve years old or older, but younger than 18 at the time of committing the offence, and that, although, trials were to take place in a Youth Court, for certain offences and in certain circumstances, a youth may be awarded an adult sentence.

6. Comparing the position in USA and the Juvenile Justice and Delinquency Prevention Act, 1974, he urged that while in several States, no set standards have been provided, reliance is placed on the common law age of seven in fixing the age of criminal responsibility, the lowest being six years in North Carolina. The general practice in the United States of America, however, is that even for such children, the courts are entitled to impose life sentences in respect of certain types of offences, but such life sentences without parole were not permitted for those under the age of eighteen years convicted of murder or offences involving violent crimes and weapons violations.

7. In England and Wales, children accused of crimes are generally tried under the Children and Young Persons Act, 1933, as amended by Section 16(1) of the Children and Young Persons Act, 1963. Under the said laws, the minimum age of criminal responsibility in England and Wales is ten years and those below the said age are considered to be doli incapax and, thus, incapable of having any mens rea, which is similar to the provisions of Sections 82 and 83 of Indian Penal Code.

8. Mr. Bali has also referred to the legal circumstances prevailing in other parts of the world wherein the age of criminal responsibility has been fixed between ten to sixteen years. Mr. Bali contended that there was a general worldwide concern over the rising graph of criminal activity of juveniles below the age of eighteen years, which has been accepted worldwide to be the age limit under which all persons were to be treated as children. Mr. Bali sought to make a distinction in regard to the definition of children as such in Sections 2(k) and 2(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the level of maturity of the child who is capable of understanding the consequences of his actions. He, accordingly, urged that the provisions of Sections 15 and 16 of the Act needed to be reconsidered and appropriate orders were required to be passed in regard to the level of punishment in respect of heinous offences committed by children below the age of eighteen years, such as murder, rape, dacoity, etc. Mr. Bali submitted that allowing perpetrators of such crimes to get off with a sentence of three years at the maximum, was not justified and a correctional course was required to be undertaken in that regard.

9. Mr. Saurabh Prakash, Petitioner in Writ Petition (C) No. 14 of 2013, also appeared in person and, while endorsing the submissions made by Mr. Bali, went a step further in suggesting that in view of the provisions of Sections 15 and 16 of the Juvenile Justice

(Care and Protection of Children) Act, 2000, children, as defined in the above Act, were not only taking advantage of the same, but were also being used by criminals for their own ends. The Petitioner reiterated Mr. Bali's submission that after being awarded a maximum sentence of three years, a juvenile convicted of heinous offences, was almost likely to become a monster in society and pose a great danger to others, in view of his criminal propensities. Although, in the prayers to the Writ Petition, one of the reliefs prayed for was for quashing the provisions of the entire Act, Mr. Saurabh Prakash ultimately urged that some of the provisions thereof were such as could be segregated and struck down so as to preserve the Act as a whole. The Petitioner urged that, under Article 21 of the Constitution, every citizen has a fundamental right to live in dignity and peace, without being subjected to violence by other members of society and that by shielding juveniles, who were fully capable of understanding the consequences of their actions, from the sentences, as could be awarded under the Indian Penal Code, as far as adults are concerned, the State was creating a class of citizens who were not only prone to criminal activity, but in whose cases restoration or rehabilitation was not possible. Mr. Saurabh Prakash submitted that the provisions of Sections 15 and 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000, violated the rights guaranteed to a citizen under Article 21 of the Constitution and were, therefore, liable to be struck down.

10. Mr. Saurabh Prakash also submitted that the provisions of Section 19 of the Act, which provided for removal of disqualification attaching to conviction, were also illogical and were liable to be struck down. It was submitted that in order to prevent repeated offences by an individual, it was necessary to maintain the records of the inquiry conducted by the Juvenile Justice Board, in relation to juveniles so that such records would enable the authorities concerned to assess the criminal propensity of an individual, which would call for a different approach to be taken at the time of inquiry. Mr. Saurabh Prakash urged this Court to give a direction to the effect that the Juvenile Justice Board or courts or other high public authorities would have the discretion to direct that in a particular case, the provisions of the general law would apply to a juvenile and not those of the Act.

11. Mr. Vivek Narayan Sharma, learned Advocate, appeared for the petitioner in Writ Petition (Crl.) No. 6 of 2013, filed by one Shilpa Arora Sharma, and submitted that the Juvenile Justice Board should be vested with the discretion to impose punishment beyond three years, as limited by Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, in cases where a child, having full knowledge of the consequences of his/her actions, commits a heinous offence punishable either with life imprisonment or death. Mr. Sharma submitted that such a child did not deserve to be treated as a child and be allowed to re-mingle in society, particularly when the identity of the child is to be kept a secret under Sections 19 and 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000. Mr. Sharma submitted that in many cases children between the ages of sixteen to eighteen years were, in fact, being exploited by adults to commit heinous offences who knew full well that the punishment therefor would not exceed three years.

12. Mr. Sharma urged that without disturbing the other beneficient provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, some of the gray areas

pointed out could be addressed in such a manner as would make the Juvenile Justice (Care and Protection of Children) Act, 2000, more effective and prevent the misuse thereof.

13. In Writ Petition (C) No. 85 of 2013, filed by Krishna Dec Prasad, Dr. R.R. Kishor appeared for the Petitioner and gave a detailed account of the manner in which the Juvenile Justice Delivery System had evolved. Referring to the doctrine of doli incapax, rebuttable presumption and adult responsibility, Dr. Kishor contended that even Article 1 of the UN Convention on the Rights of the Child defines a child in the following terms:

"Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

14. Dr. Kishor contended that, as pointed out by Mr. Salil Bali, the expression "child" has been defined in various ways in different countries all over the world. Accordingly, the definition of a child in Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000, would depend on the existing laws in India defining a child. Dr. Kishor referred to the provisions of the Child Labour (Prohibition and Regulation) Act, 1986, as an example, to indicate that children up to the age of fourteen years were treated differently from children between the ages of fourteen to eighteen, for the purposes of employment in hazardous industries. Dr. Kishor re-asserted the submissions made by Mr. Bali and Mr. Saurabh Prakash, in regard to heinous crimes committed by children below the age of eighteen years, who were capable of understanding the consequences of their acts.

15. Dr. Kishor also referred to the provisions of Sections 82 and 83 of the Indian Penal Code, where the age of responsibility and comprehension has been fixed at twelve years and below. Learned counsel submitted that having regard to the above-mentioned provisions, it would have to be seriously considered as to whether the definition of a child in the Juvenile Justice (Care and Protection of Children) Act, 2000, required reconsideration. He urged that because a person under the age of 18 years was considered to be a child, despite his or her propensity to commit criminal offences, which are of a heinous and even gruesome nature, such as offences punishable under Sections 376, 307, 302, 392, 396, 397 and 398 IPC, the said provisions have been misused and exploited by criminals and people having their own scores to settle. Dr. Kishor urged that the definition of a "juvenile" or a "child" or a "juvenile in conflict with law", in Sections 2(k) and 2(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000, was liable to be struck down and replaced with a more meaningful definition, which would exclude such juveniles.

16. Mr. Vikram Mahajan, learned Senior Advocate appearing for the Petitioner, Vinay K. Sharma, in Writ Petition (C) No. 90 of 2013, urged that the right given to a citizen of India under Article 21 of the Constitution is impinged upon by the Juvenile Justice (Care and Protection of Children) Act, 2000. Mr. Mahajan urged that the Juvenile Justice (Care and Protection of Children) Act, 2000, operates in violation of Articles 14 and 21 of the Constitution and that Article 13(2), which relates to post Constitution laws, prohibits

the State from making a law which either takes away totally or abrogates in part a fundamental right. Referring to the United Nations Declaration on the Elimination of Violence against Women, adopted by the General Assembly on 20th December, 1993, Mr. Mahajan pointed out that Article 1 of the Convention describes “violence against women” to mean any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women. Referring to the alleged gang rape of a 23 year old para-medical student, in a moving bus, in Delhi, on 16th December, 2012, Mr. Mahajan tried to indicate that crimes committed by juveniles had reached large and serious proportions and that there was a need to amend the law to ensure that such persons were not given the benefit of lenient punishment, as contemplated under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000. From the figures cited by him, he urged that even going by statistics, 1% of the total number of crimes committed in the country would amount to a large number and the remedy to such a problem would lie in the Probation of Offenders Act, 1958, which made the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, redundant and ultra vires Article 21 of the Constitution.

17. Ms. Shweta Kapoor appeared in Transferred Case No. 82 of 2013 in- person and questioned the vires of Sections 16(1), 19(1), 49(2) and 52(2)(a) of the Juvenile Justice (Care and Protection of Children) Act, 2000, and submitted that they were liable to be declared as ultra vires the Constitution. Referring to Section 16 of the aforesaid Act, Ms. Kapoor submitted that even in the proviso to Sub-section (1) of Section 16, Parliament had recognized the distinction between a juvenile, who had attained the age of sixteen years, but had committed an offence which was so serious in nature that it would not be in his interest or in the interest of other juveniles in a special home, to send him to such special home. Considering that none of the other measures provided under the Act was suitable or sufficient, the Government had empowered the Board to pass an order for the juvenile to be kept in such place of safety and in such manner as it thought fit. Ms. Kapoor submitted that no objection could be taken to the said provision except for the fact that in the proviso to Section 16(2), it has been added that the period of detention order would not exceed, in any case, the maximum limit of punishment, as provided under Section 15, which is three years.

18. Ms. Kapoor contended that while the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, are generally meant for the benefit of the juvenile offenders, a serious attempt would have to be made to grade the nature of offences to suit the reformation contemplated by the Act.

19. As part of her submissions, Ms. Kapoor referred to the decision of this Court in Avishek Goenka Vs. Union of India [(2012) 5 SCC 321], wherein the pasting of black films on glass panes were banned by this Court on account of the fact that partially opaque glass panes on vehicles acted as facilitators of crime. Ms. Kapoor urged that in the opening paragraph of the judgment, it has been observed that “Alarming rise in heinous crimes like kidnapping, sexual assault on women and dacoity have impinged upon the right to life and the right to live in a safe environment which are within the contours of Article 21 of the Constitution of India”. Ms. Kapoor also referred to another decision of this Court in Abuzar Hossain Vs. State of West Bengal [(2012) 10 SCC 489], which dealt with a different question regarding the provisions of Section 7A of the Juvenile

Justice (Care and Protection of Children) Act, 2000, and the right of an accused to raise the claim of juvenility at any stage of the proceedings and even after the final disposal of the case.

20. In conclusion, Ms. Kapoor reiterated her stand that in certain cases the definition of a juvenile in Sections 2(k) and 2(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000, would have to be considered differently.

21. The next matter which engaged our attention is Writ Petition (Civil) No.90 of 2013 filed by one Vinay Kumar Sharma, praying for a declaration that the Juvenile Justice (Care and Protection of Children) Act, 2000, be declared ultra vires the Constitution and that children should also be tried along with adults under the penal laws applicable to adults.

22. Writ Petition (Civil) No.42 of 2013 has been filed by Kamal Kumar Pandey and Sukumar, Advocates, inter alia, for an appropriate writ or direction declaring the provisions of Sections 2(1), 10 and 17 of the Juvenile Justice (Care and Protection of Children) Act, 2000, to be irrational, arbitrary, without reasonable nexus and thereby ultra vires and unconstitutional, and for a Writ of Mandamus commanding the Ministry of Home Affairs and the Ministry of Law and Justice, Government of India, to take steps that the aforesaid Act operates in conformity with the Constitution. In addition, a prayer was made to declare the provisions of Sections 15 and 19 of the above Act ultra vires the Constitution.

23. The main thrust of the argument advanced by Mr. Pandey, who appeared in person, was the inter-play between International Conventions and Rules, such as the Beijing Rules, 1985, the U.N. Convention on the Rights of the Child, 1989, and the Juvenile Justice (Care and Protection of Children) Act, 2000. While admitting the salubirous and benevolent and progressive character of the legislation in dealing with children in need of care and protection and with children in conflict with law, Mr. Pandey contended that a distinction was required to be made in respect of children with a propensity to commit heinous crimes which were a threat to a peaceful social order. Mr. Pandey reiterated the submissions made earlier that it was unconstitutional to place all juveniles, irrespective of the gravity of the offences, in one bracket. Urging that Section 2(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000, ought not to have placed all children in conflict with law within the same bracket, Mr. Pandey submitted that the same is ultra vires Article 21 of the Constitution. Referring to the report of the National Crime Records Bureau (NCRB) for the years 2001 to 2011, Mr. Pandey submitted that between 2001 and 2011, the involvement of juveniles in cognizable crimes was on the rise. Mr. Pandey urged that it was a well-established medical- psychological fact that the level of understanding of a 16 year-old was at par with that of adults.

24. Mr. Pandey's next volley was directed towards Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2000, which provides for the removal of any disqualification attached to an offence of any nature. Mr. Pandey submitted that the said provisions do not take into account the fact relating to repeated offences being perpetrated by a juvenile whose records of previous offences are removed. Mr. Pandey contended that Section 19 of the Act was required to be amended to enable the concerned authorities to retain records of previous offences committed by a juvenile

for the purposes of identification of a juvenile with a propensity to repeatedly commit offences of a grievous or heinous nature.

25. Mr. Pandey submitted that Parliament had exceeded its mandate by blindly adopting eighteen as the upper limit in categorising a juvenile or a child, in accordance with the Beijing Rules, 1985, and the U.N. Convention, 1989, without taking into account the socio-cultural economic conditions and the legal system for administration of criminal justice in India. Mr. Pandey urged that the Juvenile Justice (Care and Protection of Children) Act, 2000, was required to operate in conformity with the provisions of the Constitution of India.

26. Ms. Hema Sahu, the petitioner in Writ Petition (Civil) No. 182 of 2013, also appeared in person and restated the views expressed by the other petitioners that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the "Beijing Rules", recognized and noted the difference in the nature of offences committed by juveniles in conflict with law. Referring to the decision of this Court in the case commonly known as the "Bombay Blasts Case", Ms. Sahu submitted that a juvenile who was tried and convicted along with adults under the Terrorist and Disruptive Activities Act (TADA), was denied the protection of the Juvenile Justice (Care and Protection of Children) Act, 2000, on account of the serious nature of the offence. Ms. Sahu ended on the note that paragraph 4 of the 1989 Convention did not make any reference to age.

27. Appearing for the Union of India, the Additional Solicitor General, Mr. Siddharth Luthra, strongly opposed the submissions made on behalf of the Petitioners to either declare the entire Juvenile Justice (Care and Protection of Children) Act, 2000, as ultra vires the Constitution or parts thereof, such as Sections 2(k), 2(1), 15, 16, 17, 19 and 21. After referring to the aforesaid provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, the learned ASG submitted that Parliament consciously fixed eighteen years as the upper age limit for treating persons as juveniles and children, taking into consideration the general trend of legislation, not only internationally, but within the country as well.

28. The learned ASG submitted that the Juvenile Justice (Care and Protection of Children) Act, 2000, was enacted after years of deliberation and in conformity with international standards as laid down in the U.N. Convention on the Rights of the Child, 1989, the Beijing Rules, 1985, the Havana Rules and other international instruments for securing the best interests of the child with the primary object of social reintegration of child victims and children in conflict with law, without resorting to conventional judicial proceedings which existed for adult criminals. In the course of his submissions, the learned ASG submitted a chart of the various Indian statutes and the manner in which children have been excluded from liability under the said Acts upto the age of 18 years. In most of the said enactments, a juvenile/child has been referred to a person who is below 18 years of age. The learned ASG submitted that in pursuance of international obligations, the Union of India after due deliberation had taken a conscious policy decision to fix the age of a child/juvenile at the upper limit of 18 years. The learned ASG urged that the fixing of the age when a child ceases to be a child at 18 years is a matter of policy which could not be questioned in a court of law, unless the same could be shown to have violated any of the fundamental rights, and in particular

Articles 14 and 21 of the Constitution. Referring to the decision of this Court in BALCO Employees Union Vs. Union of India [(2002) 2 SCC 333], the learned ASG submitted that at paragraph 46 of the said judgment it had been observed that it is neither within the domain of the Courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy was wise or whether something better could be evolved. It was further observed that the Courts were reluctant to strike down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. The learned ASG further urged that Article 15(3) of the Constitution empowers the State to enact special provisions for women and children, which reveals that the Juvenile Justice (Care and Protection of Children) Act, 2000, was in conformity with the provisions of the Constitution.

29. The learned ASG submitted that in various judgments, this Court and the High Courts had recognised the fact that juveniles were required to be treated differently from adults so as to give such children, who for some reason had gone astray, an opportunity to realize their mistakes and to rehabilitate themselves and rebuild their lives. Special mention was made with regard to the decision of this Court in Abuzar Hossain (supra) in this regard. The learned ASG also referred to the decision of this Court in State of Tamil Nadu Vs. K. Shyam Sunder [(2011) 8 sec 737], wherein it had been observed that merely because the law causes hardships or sometimes results in adverse consequences, it cannot be held to be ultra vires the Constitution, nor can it be struck down. The learned ASG also submitted that it was now well-settled that reasonable classification is permissible so long as such classification has a rational nexus with the object sought to be achieved. This Court has always held that the presumption is always in favour of the constitutionality of an enactment, since it has to be assumed that the legislature understands and correctly appreciates the needs of its own people and its discriminations are based on adequate grounds.

30. Referring to the Reports of the National Crime Reports Bureau, learned ASG pointed out that the percentage of increase in the number of offences committed by juveniles was almost negligible and the general public perception in such matters was entirely erroneous. In fact, the learned ASG pointed out that even the Committee appointed to review the amendments to the criminal law, headed by former CJI, J.S. Verma, in its report submitted on 23rd January, 2013, did not recommend the reduction in the age of juveniles in conflict with law and has maintained it at 18 years. The learned ASG pointed out that the issue of eduction in the age of juveniles from 18 to 16 years, as it was in the Juveniles Justice Act of 1986, was also raised in the Lok Sabha on 19th March, 2013, during the discussion on the Criminal Law (Amendment) Bill, 2013, but was rejected by the House.

31. The learned ASG submitted that the occurrence of 16th December, 2012, involving the alleged gang rape of a 23 year old girl, should not be allowed to colour the decision taken to treat all persons below the age of 18 years, as children.

32. Mr. Anant Asthana, learned Advocate appearing for HAQ : Centre for Child Rights, submitted that the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 and 2011, is a fairly progressive legislation, largely compliant with the Constitution of India and the minimum standards contained in the Beijing Rules.

Mr. Asthana contended that the reason for incidents such as the 16th December, 2012, incident, was not on account of the provisions of the aforesaid Act, but on account of failure of the administration in implementing its provisions. Learned counsel submitted that all the Writ Petitions appeared to be based on two assumptions, namely, (i) that the age of 18 years for juveniles is set arbitrarily; and (ii) that by reducing the age for the purpose of defining a child in the aforesaid Act, criminality amongst children would reduce. Mr. Asthana submitted that such an approach was flawed as it had been incorrectly submitted that the age of 18 years to treat persons as children was set arbitrarily and that it is so difficult to comprehend the causes and the environment which brings children into delinquency. Mr. Asthana submitted that the answer lies in effective and sincere implementation of the different laws aimed at improving the conditions of children in need of care and protection and providing such protection to children at risk. Mr. Asthana urged that the objective with which the Juvenile Justice (Care and Protection of Children) Act, 2000, was enacted was not aimed at delivering retributive justice, but to allow a rehabilitative, reformation-oriented approach in addressing juvenile crimes. Learned counsel submitted that the apathy of the administration towards juveniles and the manner in which they are treated would be evident from the fact that by falsifying the age of juveniles, they were treated as adults and sent to jails, instead of being produced before the Juvenile Justice Board or even before the Child Welfare Committees to be dealt with in a manner provided by the Juvenile Justice (Care and Protection of Children) Act, 2000, for the treatment of juveniles.

33. Mr. Asthana submitted that even as recently as 26th April, 2013, the Government of India has adopted a new National Policy for Children, which not only recognises that a child is any person below the age of eighteen years, but also states that the policy was to guide and inform people of laws, policies, plans and programmes affecting children. Mr. Asthana urged that all actions and initiatives of the national, State and local Governments in all sectors must respect and uphold the principles and provisions of this policy and it would neither be appropriate nor possible for the Union of India to adopt a different approach in the matter. Mr. Asthana, who appears to have made an in-depth study of the matter, submitted that on the question of making the provisions in the Juvenile Justice (Care and Protection of Children) Act, 2000, conform to the provisions of the Constitution and to allow the children of a specific age group to be treated as adults, it would be appropriate to take note of General Comment No.10 made by the U.N. Committee on the rights of the child on 25th April, 2007, which specifically dealt with the upper age limit for juveniles and it was reiterated that where it was a case of a child being in need of care and protection or in conflict with law, every person under the age of 18 years at the time of commission of the alleged offence must be treated in accordance with the Juvenile Justice Rules. Mr. Asthana submitted that any attempt to alter the upper limit of the age of a child from 18 to 16 years would have disastrous consequences and would set back the attempts made over the years to formulate a restorative and rehabilitative approach mainly for juveniles in conflict with law.

34. In Writ Petition (Civil) No.85 of 2013, a counter affidavit has been filed on behalf of the Ministry of Women and Child Development, Government of India, in which the submissions made by the ASG, Mr. Siddharth Luthra, were duly reflected. In paragraph

I of the said affidavit, it has been pointed out that the Juvenile Justice (Care and Protection of Children) Act, 2000, provides for a wide range of reformative measures under Sections 15 and 16 for children in conflict with law- from simple warning to 3 years of institutionalisation in a Special Home. In exceptional cases, provision has also been made for the juvenile to be sent to a place of safety where intensive rehabilitation measures, such as counselling, psychiatric evaluation and treatment would be undertaken.

35. In Writ Petition (C) No.10 of 2013 filed by Shri Salil Bali, an application had been made by the Prayas Juvenile Aid Centre (JAC), a Society whose Founder and General Secretary, Shri Amod Kanth, was allowed to appear and address the Court in person. Mr. Amod Kanth claimed that he was a former member of the Indian Police Service and Chairperson of the Delhi Commission for the Protection of Child Rights and was also the founder General Secretary of the aforesaid organisation, which came into existence in 1998 as a special unit associated with the Missing Persons Squad of the Crime and Railway Branch of the Delhi Police of which Shri Amod Kanth was the in-charge Deputy Commissioner of Police. Mr. Amod Kanth submitted that Prayas was created in order to identify and support the missing and found persons, including girls, street migrants, homeless, working and delinquent children who did not have any support from any organisation in the Government or in the non governmental organisation sector.

36. Mr. Kanth repeated and reiterated the submissions made by the learned ASG and Mr. Asthana and also highlighted the problems faced by children both in conflict with law and in need of care and protection. Mr. Kanth submitted that whatever was required to be done for the rehabilitation and restoration of juveniles to a normal existence has, to a large extent, been defeated since the various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules of 2007, were not being seriously implemented. Mr. Kanth urged that after the ratification by India of the United Nations Convention on the Rights of the Child on 11th December, 1992, serious thought was given to the enactment of the Juvenile Justice (Care and Protection of Children Act), 2000, which came to replace the Juvenile Justice Act, 1986. Taking a leaf out of Mr. Asthana's book, Mr. Kanth submitted that even after thirteen years of its existence, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, still remained unimplemented in major areas, which made it impossible for the provisions of the Act to be properly coordinated. Mr. Kanth submitted that one of the more important features of juvenile law was to provide a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the Act. Submitting that the Juvenile Justice (Care and Protection of Children) Act, 2000, was based on the provisions of the Indian Constitution, the United Nations Convention on the Rights of the Child, 1989, the Beijing Rules and the United Nations Rules for the Protection of the Juveniles Deprived of their Liberty, 1990, Mr. Kanth urged that the same was in perfect harmony with the provisions of the Constitution, but did not receive the attention it ought to have received while dealing with a section of the citizens of India comprising 42% of the country's population.

37. Various measures to deal with juveniles in conflict with law have been suggested by

Mr. Kanth, which requires serious thought and avoidance of knee-jerk reactions to situations which could set a dangerous trend and affect millions of children in need of care and protection. Mr. Kanth submitted that any change in the law, as it now stands, resulting in the reduction of age to define a juvenile, will not only prove to be regressive, but would also adversely affect India's image as a champion of human rights.

38. Having regard to the serious nature of the issues raised before us, we have given serious thought to the submissions advanced on behalf of the respective parties and also those advanced on behalf of certain Non- Government Organizations and have also considered the relevant extracts from the Report of Justice J.S. Verma Committee on "Amendments to the Criminal Law" and are convinced that the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006, and the Juvenile Justice (Care and Protection of Children) Rules, 2007, are based on sound principles recognized internationally and contained in the provisions of the Indian Constitution.

39. There is little doubt that the incident, which occurred on the night of 16th December, 2012, was not only gruesome, but almost maniacal in its content, wherein one juvenile, whose role is yet to be established, was involved, but such an incident, in comparison to the vast number of crimes occurring in India, makes it an aberration rather than the Rule. If what has come out from the reports of the Crimes Record Bureau, is true, then the number of crimes committed by juveniles comes to about 2% of the country's crime rate.

40. The learned ASG along with Mr. Asthana and Mr. Kanth, took us through the history of the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules subsequently framed thereunder in 2007. There is a definite thought process, which went into the enactment of the aforesaid Act. In order to appreciate the submissions made on behalf of the respective parties in regard to the enactment of the aforesaid Act and the Rules, it may be appropriate to explore the background of the laws relating to child protection in India and in the rest of the world.

41. It cannot be questioned that children are amongst the most vulnerable sections in any society. They represent almost one-third of the world's population, and unless they are provided with proper opportunities, the opportunity of making them grow into responsible citizens of tomorrow will slip out of the hands of the present generation. International community has been alive to the problem for a long time. After the aftermath of the First World War, the League of Nations issued the Geneva Declaration of the Rights of the Child in 1924. Following the gross abuse and violence of human rights during the Second World War, which caused the death of millions of people, including children, the United Nations had been formed in 1945 and on 10th December, 1948 adopted and proclaimed the Universal Declaration of Human Rights. While Articles 1 and 7 of the Declaration proclaimed that all human beings are born free and equal in dignity and rights and are equal before the law, Article 25 of the Declaration specifically provides that motherhood and childhood would be entitled to special care and assistance. The growing consciousness of the world community was further evidenced by the Declaration of the Rights of the Child, which came to be proclaimed by the United Nations on 20th November, 1959, in the best interests of the child. This was followed by the Beijing Rules of 1985, the Riyadh Guidelines of

1990, which specially provided guidelines for the prevention of juvenile delinquency, and the Havana Rules of 14th December, 1990. The said three sets of Rules intended that social policies should be evolved and applied to prevent juvenile delinquency, to establish a Juvenile Justice System for juveniles in conflict with law, to safeguard fundamental rights and to establish methods for social re- integration of young people who had suffered incarceration in prison or other corrective institutions. One of the other principles which was sought to be reiterated and adopted was that a juvenile should be dealt with for an offence in a manner which is different from an adult. The Beijing Rules indicated that efforts should be made by member countries to establish within their own national jurisdiction, a set of laws and rules specially applicable to juvenile offenders. It was stated that the age of criminal responsibility in legal systems that recognize the concept of the age of criminal responsibility for juveniles should not be fixed at too low an age-level, keeping in mind the emotional, mental and intellectual maturity of children.

42. Four years after the adoption of the Beijing Rules, the United Nations adopted the Convention on the Rights of the Child vide the Resolution of the General Assembly No. 44/25 dated 2oth November, 1989, which came into force on 2nd September, 1990. India is not only a signatory to the said Convention, but has also ratified the same on 11th December, 1992. The said Convention sowed the seeds of the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, by the Indian Parliament.

43. India developed its own jurisprudence relating to children and the recognition of their rights. With the adoption of the Constitution on 26th November 1949, constitutional safeguards, as far as weaker sections of the society, including children, were provided for. The Constitution has guaranteed several rights to children, such as equality before the law, free and compulsory primary education to children between the age group of six to fourteen years, prohibition of trafficking and forced labour of children and prohibition of employment of children below the age of fourteen years in factories, mines or hazardous occupations. The Constitution enables the State Governments to make special provisions for children. To prevent female foeticide, the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act was enacted in 1994. One of the latest enactments by Parliament is the Protection of Children from Sexual Offences Act, 2012.

44. The Juvenile Justice (Care and Protection of Children) Act, 2000, is in tune with the provisions of the Constitution and the various Declarations and Conventions adopted by the world community represented by the United Nations. The basis of fixing of the age till when a person could be treated as a child at eighteen years in the Juvenile Justice (Care and Protection of Children) Act, 2000, was Article 1 of the Convention of the Rights of the Child, as was brought to our notice during the hearing. Of course, it has been submitted by Dr. Kishor that the description in Article 1 of the Convention was a contradiction in terms. While generally treating eighteen to be the age till which a person could be treated to be a child, it also indicates that the same was variable where national laws recognize the age of majority earlier. In this regard, one of the other considerations which weighed with the legislation in fixing the age of understanding at eighteen years is on account of the scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age

of eighteen years and that it is at that point of time that he can be held fully responsible for his actions. Along with physical growth, mental growth is equally important, in assessing the maturity of a person below the age of eighteen years. In this connection, reference may be made to the chart provided by Mr. Kanth, wherein the various laws relating to children generally recognize eighteen years to be the age for reckoning a person as a juvenile/ child including criminal offences.

45. In any event, in the absence of any proper data, it would not be wise on our part to deviate from the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, which represent the collective wisdom of Parliament. It may not be out of place to mention that in the Juvenile Justice Act, 1986, male children above the age of sixteen years were considered to be adults, whereas girl children were treated as adults on attaining the age of eighteen years. In the Juvenile Justice (Care and Protection of Children) Act, 2000, a conscious decision was taken by Parliament to raise the age of male juveniles/children to eighteen years.

46. In recent years, there has been a spurt in criminal activities by adults, but not so by juveniles, as the materials produced before us show. The age limit which was raised from sixteen to eighteen years in the Juvenile Justice (Care and Protection of Children) Act, 2000, is a decision which was taken by the Government, which is strongly in favour of retaining Sections 2(k) and 2(1) in the manner in which it exists in the Statute Book.

47. One misunderstanding of the law relating to the sentencing of juveniles, needs to be corrected. The general understanding of a sentence that can be awarded to a juvenile under Section 15(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2000, prior to its amendment in 2006, is that after attaining the age of eighteen years, a juvenile who is found guilty of a heinous offence is allowed to go free. Section 15(1)(g), as it stood before the amendment came into effect from 22nd August, 2006, reads as follows:

"15(1)(g) make an order directing the juvenile to be sent to a special home for a period of three years:

(i) in case of juvenile, over seventeen years but less than eighteen years of age, for a period of not less than two years;

(ii) in case of any other juvenile for the period until he ceases to be a juvenile:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit."

It was generally perceived that a juvenile was free to go, even if he had committed a heinous crime, when he ceased to be a juvenile. The said understanding needs to be clarified on account of the amendment which came into force with effect from 22.8.2006, as a result whereof Section 15(1)(g) now reads as follows:

"Make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded

reduce the period of stay to such period as it thinks fit."

The aforesaid amendment now makes it clear that even if a juvenile attains the age of eighteen years within a period of one year he would still have to undergo a sentence of three years, which could spill beyond the period of one year when he attained majority.

48. There is yet another consideration which appears to have weighed with the worldwide community, including India, to retain eighteen as the upper limit to which persons could be treated as children. In the Bill brought in Parliament for enactment of the Juvenile Justice (Care and Protection of Children) Act of 2000, it has been indicated that the same was being introduced to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of delinquent juveniles. The essence of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules framed thereunder in 2007, is restorative and not retributive, providing for rehabilitation and re- integration of children in conflict with law into mainstream society. The age of eighteen has been fixed on account of the understanding of experts in child psychology and behavioural patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future. There are, of course, exceptions where a child in the age group of sixteen to eighteen may have developed criminal propensities, which would make it virtually impossible for him/her to be re-integrated into mainstream society, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and re-integrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future.

49. This being the understanding of the Government behind the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the amendments effected thereto in 2006, together with the Rules framed thereunder in 2007, and the data available with regard to the commission of heinous offences by children, within the meaning of Sections 2(k) and 2(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000, we do not think that any interference is necessary with the provisions of the Statute till such time as sufficient data is available to warrant any change in the provisions of the aforesaid Act and the Rules. On the other hand, the implementation of the various enactments relating to children, would possibly yield better results.

50. The Writ Petitions and the Transferred Case are, therefore, dismissed, with the aforesaid observations. There shall, however, be no order as to costs.

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[2013] 5 Supreme 232

IN THE SUPREME COURT OF INDIA

Madan B. Lokur and T.S. Thakur, JJ.

Jitendra Singh @ Babboo Singh & Anr. -Appellants
Versus
State of U.P. - Respondent

CRIMINAL APPEAL NO. 763 OF 2003
Decided on: 10-07-2013

As per Madan B. Lokur,J.

Juvenile Justice (Care and Protection of Children) Act, 2000-Section 2(k) - Death of appellant's wife by burn injuries in matrimonial home-Conviction of appellant under Section 304-B and Section 498-A of IPC-Appeai-Dismissed by High Court-Appeal-Plea of appellant that on the date of commission of the offence, he was a juvenile or child Documentary evidence to show from school admission register which had not been tampered with that date of birth of appellant was 31.08. 1974- That apart, medical examination of appellant conducted less than two months after incident, also showed his age to be about 17 years- On the basis of material before him,Additional Sessions Judge accepted the claim of appellant that he was younger than his wife at the time of marriage and that his date of birth was 31.8. 1974- No reason to reject report of Additional Sessions Judge -Hence held that appellant was a juvenile or a child within the meaning of that expression as defined in Section 2(k) of the Act (Para 21)

Dowry death-Appeal against conviction- Both the Trial Court as well as the High Court concurrently found that appellant had demanded dowry from Deceased and that she had been set on fire for not having complied with the demands for dowry- Before her demise, deceased had written a letter to her father about beating and harassment given to her due to the inability to meet dowry demands- The letter was proved by the prosecution and was relied on by the Trial Court as well as the High Court in accepting the version of the prosecution- Hence held that ingredients of Section 304-B of the IPC were made out- No apparent reason to disturb the concurrent findings of fact arrived at by the TrialCourt and the High Court (Paras 22 to 27)

Dowry death -Sentence to be awarded to Appellant convict who was a juvenile when he committed the offence- A perusal of 'punishments' provided for under the Juvenile Justice Act, 1986 indicate that given the nature of the offence committed by appellant, advising or admonishing him was hardly a 'punishment' that could be awarded since it was not at all commensurate with the gravity of the crime-Again, considering his age of about 40 years, it was completely illusory to expect the appellant to be released on probation of good conduct, to be placed under the care of any parent, guardian or fit person - The only realistic punishment that could possibly be awarded to appellant on the facts of the case was to require him to pay a fine - Matter remanded to jurisdictional Juvenile Justice Board for determining appropriate quantum of fine to be levied on appellant-Appeal partly allowed (Paras 44 to 46)

Facts of the Case :

Principal issues that arose for consideration in present appeal were whether the appellant was a juvenile or a child as defined by Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 on the date of occurrence of the offence he was charged with and whether the conviction of the appellant could be sustained on merits and, if so, the sentence to be awarded to the appellant.

Findings of the Court :

On the basis of material before him, Additional Sessions Judge accepted the claim of appellant that he was younger than his wife at the time of marriage and that his date of birth was 31.8. 1974.Held that there was no reason to reject report of Additional Sessions Judge .Hence held that appellant was a juvenile or a child within the meaning of that expression as defined in Section 2(k) of the Act.

B. Both the Trial Court as well as the High Court concurrently found that appellant had demanded dowry from Deceased and that she had been set on fire for not having complied with the demands for dowry. No apparent reason to disturb the concurrent findings of fact arrived at by the Trial Court and the High Court. The only realistic punishment that could possibly be awarded to appellant on the facts of the case was to require him to pay a fine . Matter was remanded to jurisdictional Juvenile Justice Board for determining appropriate quantum of fine to be levied on appellant. Appeal was partly allowed

Result : Appeal partly allowed

As perT.S. Thakur, J.

Juvenile Justice (Care and Protection of Children) Act, 2000-section 2(k) - Death of appellant's wife by bum injuries in matrimonial home-Conviction of appellant under Section 304-B and Section 498-A of IPC-Appeai-Dismissed by High Court-Appeal-Plea of appellant that on the date of commission of the offence, he was a juvenile or child-Held that there was no reason why the conviction of appellant should be interfered with, simply because he was under the 2000 Act a juvenile entitled to the benefit of being referred to the Board for an order under Section 15 of the said Act- Even if the appellant had been less than sixteen years of age, on the date of the occurrence, he would have been referred for trial to the Juvenile Court In terms of Section 8 of the 1986 Act- The Juvenile Court would then hold a trial and record a conviction or acquittal depending upon the evidence adduced before it- In an ideal situation a case filed before an ordinary Criminal Court when referred to the Board or Juvenile Court may culminate in a conviction at the hands of the Board also- But law does not countenance a situation where a full-fledged trial and even an appeal ends in a conviction of the accused but the same is set aside without providing for a trial by the Board (Paras 23, 24)

Facts of the Case :

Issue that arose for consideration in present appeal was whether the appellant was a juvenile or a child as defined by Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 on the date of occurrence of the offence he was charged with and whether the conviction of the appellant could be sustained on merits and, if so, the sentence to be awarded to the appellant.

Findings of the Court :

The Apex Court held that there was no reason why the conviction of appellant should be interfered with, simply because he was under the 2000 Act a juvenile entitled to the benefit of being referred to the Board for an order under Section 15 of the said Act. Even if the appellant had been less than sixteen years of age, on the date of the occurrence, he would have been referred for trial to the Juvenile Court in terms of Section 8 of the 1986 Act. The Juvenile Court would then hold a trial and record a conviction or acquittal depending upon the evidence adduced before it. In an ideal situation a case filed before an ordinary Criminal Court when referred to the Board or Juvenile Court may culminate in a conviction at the hands of the Board also. But law does not countenance a situation where a full-fledged trial and even an appeal ends in a conviction of the accused but the same is set aside without providing for a trial by the Board.

Result : Appeal partly allowed

Cases Referrred:

Pawan v. State of Uttaranchal, (2009) 15 SCC 259 (Para 11)

Jayendra v. State of Uttar Pradesh, (1981) 4 SCC 149, referred (Para 29)

Bhoop Ram v. State of U.P. (1989) 3 SCC 1. referred (Para 30)

Pradeep Kumar v. State of U.P., 1995 Supp (4) SCC 419, referred (Para 31)

Bhola Bhagat and other v. State of Bihar, (1997) 8 SCC 720, referred (Para 32)

Upendra Kumar v. State of Bihar, (2005) 3 SCC 592 , referred (Para 33)

Gurpreet Singh v. State of Punjab, (2005) 12 SCC 615, referred (Para 34)

Vijay Singh v. State of Delhi, (2012) 8 SCC 763, referred (Para 35)

Salish@ Dhanna v. State of Madhya Pradesh, (2009) 14 SCC 187, referred (Para 36)

Dharambir v. State (NCT of Delhi), (2010) 5 SCC 344, referred (Para 36)

Hari Ram v. State of Rajasthan, (2009) 13 SCC 211, referred (Para 37)

Daya Nand v. State of Haryana, (2011) 2 SCC 224, referred (Para 38)

Ashwani Kumar Saxena v. State of Madhya Pradesh, (2012) 9 SCC 750, relied (Para 39)

Ankush Shivaji Gaikwad v. State of Maharashtra, 2013 (6) SCALE 778, referred (Para 46)

Abuzar Hossain v. State of West Bengal, (2012) 10 SCC 489, referred (Para 60)

O.K. Basu v. State of West Bengal, (1997) 1 SCC 416, referred (Para 63)

Hari Ram v. State of Rajasthan (2009) 13 SCC 211, referred (Para 6)

Pratap Singh v. State of Jharkhand and Anr. (2005) 3 sec 551, referred (Para 13)

Bijender Singh v. State of Haryana and Anr. (2005) 3 SCC 685, referred (Para 14)

Dharambirv. State (NCTof Delhi) (2010) 5 SCC 344, referred (Para 15)

Daya Nand v. State of Haryana (2011) 2 SCC 224, referred (Para 16)

Kalu@ Amit v. State of Haryana (2012) 8 SCC 34, referred (Para 17)

Pradeep Kumar & Ors. v. State of U.P. 1995 Supp (4) SCC 419, referred (Para 22)

Bhola Bhagat & Ors. v. State of Bihar (1997) 8 SCC 720, referred (Para 22)

Upendra Kumar v. State of Bihar (2005) 3 SCC 592, referred (Para 22)

Vaneet Kumar Gupta@ Dharmindher v. State of Punjab (2009) 17 SCC 587), referred (Para 22)

JUDGMENT

Madan B. Lokur, J.

1. Three principal issues arise for consideration in this appeal. The first is whether the appellant was a juvenile or a child as defined by Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 on the date of occurrence of the offence he was charged with. On a consideration of the Report called for by this Court on this question, the issue must be answered in the affirmative.

2. The second is whether the conviction of the appellant can be sustained on merits and, if so, the sentence to be awarded to the appellant. In our opinion the conviction of the appellant must be upheld and on the quantum of sentence, he ought to be dealt with in accordance with the provisions of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Section 15 thereof.

3. The third question is whether any appropriate measures can be taken to prevent the recurrence of a situation, such as the present, where an accused is subjected to a trial by a regular Court having criminal jurisdiction but he or she is later found to be a juvenile. In this regard, we propose to give appropriate directions to all Magistrates which, we hope, will prevent such a situation from arising again.

The facts:

4. On the midnight of 23rd I 24th May 1988 it is alleged that Asha Devi was set on fire by the appellants and two other persons. A demand for dowry, which she was unable to meet, resulted in the unfortunate incident.

5. On 24th May 1988 at about 5 a.m., Asha Devi's uncle came to know of the incident and he lodged a complaint with the local police. In the meanwhile, Asha Devi had been taken to the District Hospital where she succumbed to the burns.

6. After completing the investigation, the local police filed a charge sheet on 10th July 1988 against the appellants and two other persons. The charge sheet alleged offences committed under Section 147, Section 302, Section 304-B and Section 498-A of the Indian Penal Code (for short the 'IPC').

7. Thereafter the case proceeded to trial and the Sessions Judge, Rae Bareli in S.T. No. 186 of 1988 delivered judgment on 3oth August 1990 convicting the appellants and acquitting the other two persons. The appellants were convicted under Section 304-B of the IPC (dowry death) and sentenced to undergo 7 years rigorous imprisonment. They were also convicted under Section 498-A of the IPC (husband or relative of husband of a woman subjecting her to cruelty) and sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.100/- each.

8. Feeling aggrieved by their conviction and sentence, the appellants preferred Criminal Appeal No. 464 of 1990 in the Lucknow Bench of the Allahabad High Court. By its judgment and order dated 23rd May 2003 the High Court dismissed the Criminal Appeal. This is reported as 2003 (3) ACR 2431=MANU/UP/2115/2003.

9. Against the judgment and order passed by the Allahabad High Court the appellants came up in appeal to this Court. It may be mentioned that during the pendency of this appeal the second appellant (father of the first appellant) died and therefore only the appeal filed by the first appellant, the husband of Asha Devi, survives.

10. During the pendency of these proceedings the appellant filed Criminal Miscellaneous Petition No. 16974 of 2010 for raising additional grounds. He sought to contend that on the date of commission of the offence, he was a juvenile or child within the meaning of that expression as defined in Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the 'Act'). According to the appellant his date of birth was 31st August 1974 and therefore, when the offence is alleged to have been committed, he was about 14 years of age.

11. The application for urging additional grounds was considered by this Court and by an order dated 19th November 2010 it was held, while relying upon Pawan v. State of Uttaranchal, (2009) 15 sec 259 that prima facie there was material which necessitated an inquiry into the claim of the appellant that he was a juvenile at the time of commission of the offence. Accordingly, the following direction was given:

    "In the result we allow the appellant to urge the additional ground regarding juvenility of the appellant on the date of the commission of the offence and direct the Trial Court to hold an enquiry into the said question and submit a report as expeditiously as possible, but not later than four months from today. We make it clear that the Trial Court shall be free to summon the concerned School, Panchayat or the Electoral office record or any other record from any other source which it considers necessary for a proper determination of the age of the appellant. We also make it clear that in addition to the above, the Trial Court shall be free to constitute a Medical Board comprising at least three experts on the subject for determination of the age of the appellant, based on medical tests and examination:

Report of the Additional Sessions Judge:

12. The Additional Sessions Judge, Rae Bareli acted on the order dated 19th November 2010 and registered the proceedings as Miscellaneous Case No. 1 of 2010. He then submitted his Report dated 18th February 2011 in which he accepted the claim of the appellant that his date of birth was 31st August 1974. As such, the appellant was a juvenile on the date of commission of the offence.

13. For the purposes of preparing his Report, the Additional Sessions Judge examined several witnesses including A.P.W. 1 Samar Bahadur Singh, Principal, Pre-Middle School, Sohal Bagh who produced the school admission register pertaining to the admission of the appellant in the school. The register showed the date of birth of the appellant as 31st August 1974 and the Additional Sessions Judge found that the register had not been tampered with.

14. The Additional Sessions Judge also examined A.P.W. 11 Dr. Birbal who was a member of the Medical Board constituted by him. The Medical Board examined the appellant on 24th December 2010 and gave his age as about 40 years. Reference in this context was also made to an ossification test conducted on the appellant while he was in judicial custody in the District Jail in Rae Bareli during investigation of the case. The ossification test was conducted on 8th July 1988 and that determined the appellant's

age as about 17 years.

15. At this stage, it may be mentioned that on the basis of the ossification test the appellant had applied for bail before the Additional Sessions Judge in Rae Bareli being Bail Application No. 435 of 1988. The Additional Sessions Judge noted that while the age of the appellant was determined at about 17 years by the Chief Medical Officer, there could be a difference of about 2 years either way and therefore by an order dated 13th July 1988 the application for bail was rejected.

16. The appellant then moved the Lucknow Bench of the Allahabad High Court by filing a bail application which was registered as Criminal Miscellaneous Case No. 1859(B) of 1988. By an order dated 25th November 1988 the Allahabad High Court granted bail to the appellant while holding, inter alia, that it was difficult to discard the opinion of the Chief Medical Officer regarding the appellant's age.

17. Coming back to the Report, the Additional Sessions Judge also examined A.P.W. 5 Pankulata the younger sister of deceased Asha Devi. She stated that Asha Devi was about 4 or 5 years older than the appellant and that it was not unknown, apparently in their community, for the wife to be older than the husband. The record of the case shows that Asha Devi died at the age of about 19 after having been married for about 4Y:z years. This would mean that the appellant was married to Asha Devi when he was about 9 years old and that on the date of the incident he was about 14 years old.

18. The Additional Sessions Judge also examined A.P.W. 8 Sanoj Singh, husband of Pankulata, who gave a statement in tune with that of his wife. The Additional Sessions Judge also examined A.P.W. 9 Narendra Bahadur Singh husband of A.P.W. 10 Kanti Singh. All these witnesses stated to the effect that apparently in their community the wife is normally older than the husband at the time of marriage. All these persons also produced proof of their age to show that the wife (A.P.W. 5 Pankulata and A.P.W. 10 Kanti Singh) was older than her husband at the time of their manriage.

19. On the basis of the material before him, the Additional Sessions Judge accepted the claim of the appellant that he was younger than his wife at the time of marriage and that his date of birth was 31st August 1974.

20. Objections have been filed to this Report by the State of Uttar Pradesh, but the only objection taken is that the documents pertaining to the education of the appellant were produced after a great delay and not immediately. It was also submitted that it is improbable that a girl of about 15 years of age would get manned to a boy of about 9 years of age.

21. The Report given by the Additional Sessions Judge has been examined with the assistance of leamed counsel and there is no reason to reject it. While the circumstances are rather unusual, the fact remains that there is documentary evidence to show from the school admission register (which has not been tampered with) that the date of birth of the appellant is 31st August 1974. That apart, the medical examination of the appellant conducted on 8th July 1988 less than two months after the incident, also shows his age to be about 17 years. This was not doubted by the Additional Session Judge while rejecting the bail application of the appellant and was also not doubted by the Allahabad High Court while granting bail to him. Therefore, it does appear that the appellant was about 17 years of age when the incident had occurred and that

he had set up a claim of being a juvenile or child soon after his arrest and before the charge sheet was filed. In other words, the appellant was a juvenile or a child within the meaning of that expression as defined in Section 2(k) of the Act.

Should the conviction be upheld:

22. The next question that arises is whether the conviction of the appellant is justified or not. Before examining the evidence on record, it is necessary to mention that both the Trial Court as well as the High Court have concurrently found that the appellants had demanded dowry from Asha Devi and that she had been set on fire for not having complied with the demands for dowry.

23. Section 304-B of the IPC which is the more serious offence for which the appellant has been found guilty, reads as follows:

"304-B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

24. A plain reading of this section, which explains a dowry death, makes it clear that its ingredients are (a) the death of a woman is caused by burns or a bodily injury or that it occurs otherwise than under normal circumstances; (b) the death takes place within seven years of her marriage; (c) the woman was subjected, soon before her death, to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry.

25. In the present case, both the Trial Court and the High Court have found that Asha Devi had died of burn injuries as per the medical evidence; she had been set on fire on the midnight of 23/24 May 1988 and taken to the hospital at about 4 a.m. on 24th May 1988 where she succumbed to the burn injuries at about 5.30 a.m.; she had been married to the appellant for about 4Y. years before her death; and that the evidence of PW-1 Ram Bahadur (uncle of Asha Devi) and PW-3 Tej Bahadur Singh (father of Asha Devi) disclosed that demands were being made by the appellants for dowry soon before her death. Apart from cash, a demand was made by the in-laws of Asha Devi for a gold chain and a horse. Since the demands were not complied with, Asha Devi was frequently beaten and harassed. She had brought this to the notice of her uncle as well as her father. In fact, before her demise, she had written a letter to her father about the beating and harassment given to her due to the inability to meet the dowry demands. The letter was proved by the prosecution and was relied on by the Trial Court as well as the High Court in accepting the version of the prosecution. Clearly, therefore, the ingredients of Section 304-B of the IPC were made out.

26. However, the case put up by the appellant was that Asha Devi had accidentally caught fire while she was cooking and therefore it was a case of accidental death. This was not accepted by both the Trial Court as well as the High Court since there was no explanation given for the delay of about 4 hours in taking Asha Devi to the hospital if the case was really one of accidental death. Moreover, there was nothing to suggest that the appellant or anyone in the family had made any attempt to extinguish the fire.

27. There is no doubt, on the basis of the facts found by the Trial Court as well as the High Court from the evidence on record that a case of causing a dowry death had convincingly been made out against the appellant. There is no apparent reason to disturb the concurrent findings of fact arrived at by the Trial Court and the High Court and so the conviction of the appellant must be upheld.

Sentence to be awarded:

28. On the sentence to be awarded to a convict who was a juvenile when he committed the offence, there is a dichotomy of views.

29. In the first category of cases, the conviction of the juvenile was upheld but the sentence quashed. In Jayendra v. State of Uttar Pradesh, (1981) 4 sec 149 the conviction of the appellant was confirmed though he was held to be a child as defined in Section 2(4) of the Uttar Pradesh Children Act, 1951. However, he was not sent to an 'approved school' since he was 23 years old by that time. His sentence was quashed and he was directed to be released forthwith.

30. Similarly, in Bhoop Ram v. State of U.P. (1989) 3 SCC 1 this Court followed Jayendra and while upholding the conviction of the appellant who was 28 years old by that time, the sentence awarded to him was quashed.

31. In Pradeep Kumar v. State of U.P., 1995 Supp (4) sec 419 yet another case under the Uttar Pradesh Children Act, 1951 the conviction of the appellant was upheld but since he was 30 years old by that time, his sentence was set aside.

32. In Bhola Bhagat and other v. State of Bihar, (1997) 8 SCC 720 the conviction of the appellant was upheld by this Court but the sentence was quashed keeping in mind the provisions of the Bihar Children Act, 1970 read with the Bihar Children Act, 1982 and the Juvenile Justice Act, 1986.

33. In Upendra Kumar v. State of Bihar, (2005) 3 SCC 592 this Court followed Bhola Bhagat and upheld the conviction of the appellant but quashed the sentence awarded to him.

34. In Gurpreet Singh v. State of Punjab, (2005) 12 sec 615 one of the appellants was a juvenile within the meaning of that expression occurring in Section 2(h) of the Juvenile Justice Act, 1986. This Court held that if the accused was a juvenile on the date of occurrence and continues to be so, then in that event he would have to be sentenced to a juvenile home. However, if on the date of sentence, the accused is no longer a juvenile, the sentence imposed on him would be liable to be set aside. In this context, reference was made to Bhoop Ram.

35. Finally in Vijay Singh v. State of Delhi, (2012) 8 sec 763 the conviction of the appellant was upheld but the sentence was quashed since he was about 30 years old by that time.

36. The second category of cases includes Satish @ Dhanna v. State of Madhya Pradesh,

C2009l 14 SCC 187 wherein the conviction of the appellant was upheld but the sentence awarded was modified to the period of detention already undergone. Similarly, in Dharambir v. State (NCT of Delhi), (2010) 5 sec 344 the conviction of the appellant was sustained but since the convict had undergone two years and four months of incarceration, the sentence awarded to him was quashed.

37. The third category of cases includes Hari Ram v. State of Rajasthan, (2009) 13 SCC 211 wherein the appellant was held to be a juvenile on the date of commission of the offence. His appeal against his conviction was allowed and the entire case remitted to the Juvenile Justice Board for disposal in accordance with law.

38. In Daya Nand v. State of Haryana, (2011) 2 SCC 224 this Court followed Hari Ram and directed the appellant to be produced before the Juvenile Justice Board for passing appropriate orders in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

39. The fourth category of cases includes Ashwani Kumar Saxena v. State of Madhya Pradesh, (2012) 9 sec 750 in which the conviction of the appellant was upheld and the records were directed to be placed before the Juvenile Justice Board for awarding suitable punishment to the appellant.

40. The sum and substance of the above discussion is that in one set of cases this Court has found the juvenile guilty of the crime alleged to have been committed by him but he has gone virtually unpunished since this Court quashed the sentence awarded to him. In another set of cases, this Court has taken the view, on the facts of the case that the juvenile is adequately punished for the offence committed by him by serving out some period in detention. In the third set of cases, this Court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty. In the fourth set of cases, this Court has examined the case on merits and after having found the juvenile guilty of the offence, remitted the matter to the jurisdictional Juvenile Justice Board on the award of sentence.

41. In our opinion, the course to adopt is laid down in Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. This reads as follows:

"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."

42. It is clear that the case of the juvenile has to be examined on merits. If it found that the juvenile is guilty of the offence alleged to have been committed, he simply cannot go unpunished. However, as the law stands, the punishment to be awarded to him or her must be left to the Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000. This is the plain requirement of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. In other words, Ashwani Kumar Saxena should be followed.

43. In the present case, the offence was committed by the appellant when the Juvenile Justice Act, 1986 was in force. Therefore, only the 'punishments' not greater than those postulated by the Juvenile Justice Act, 1986 ought to be awarded to him. This is the requirement of Article 20(1) of the Constitution. The 'punishments' provided under the Juvenile Justice Act, 1986 are given in Section 21 thereof and they read as follows:

"21. Orders that may be passed regarding delinquent juveniles.-(1) Where a Juvenile Court is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Juvenile Court may, if it so thinks fit,-

(a) allow the juvenile to go home after advice or admonition;

(b) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety as that Court may require, for the good behavior and well-being of the juvenile for any period not exceeding three years; Juvenile Justice Act, 1986

(c) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(d) make an order directing the juvenile to be sent to a special home,-

   (i) in the case of a boy over fourteen years of age or of a girl over sixteen years of age, for a period of not less than three years;

   (ii) in the case of any other juvenile, for the period until he ceases to be a juvenile: Provided that XXX XXX XXX.

   Provided further that xxx xxx xxx;

   (e) order the juvenile to pay a fine if he is over fourteen years of age and earns money.

(2) Where an order under clause (b), clause (c) or clause (e) of sub-section (1) is made, the Juvenile Court may, if it is of opinion that in the interests of the juvenile and of the public it is expedient so to do, in addition make an order that the delinquent juvenile shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the delinquent juvenile:

Provided that XXX XXX XXX.

(3) XXX XXX XXX.

(4) XXX XXX XXX."

44. A perusal of the 'punishments' provided for under the Juvenile Justice Act, 1986 indicate that given the nature of the offence committed by the appellant, advising or admonishing him [clause (a)] is hardly a 'punishment' that can be awarded since it is not at all commensurate with the gravity of the crime. Similarly, considering his age of about 40 years, it is completely illusory to expect the appellant to be released on probation of good conduct, to be placed under the care of any parent, guardian or fit person [clause (b)]. For the same reason, the appellant cannot be released on probation of good conduct under the care of a fit institution [clause (c)] nor can he be sent to a special home under Section 10 of the Juvenile Justice Act, 1986 which is intended to be for the rehabilitation and reformation of delinquent juveniles [clause (d)]. The only realistic punishment that can possibly be awarded to the appellant on the facts of this case is to require him to pay a fine under clause (e) of Section 21 (1) of the Juvenile Justice Act, 1986.

45. While dealing with the case of the appellant under the IPC, the fine imposed upon him is only Rs.100/-. This is ex facie inadequate punishment considering the fact that Asha Devi suffered a dowry death.

46. Recently, one of us (T.S. Thakur, J.) had occasion to deal with the issue of compensation to the victim of a crime. An illuminating and detailed discussion in this regard is to be found in Ankush Shivaji Gaikwad v. State of Maharashtra, 2013 (6) SCALE 778. Following the view taken therein read with the provisions of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 the appropriate course of action in the present case would be to remand the matter to the jurisdictional Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 for determining the appropriate quantum of fine that should be levied on the appellant and the compensation that should be awarded to the family of Asha Devi.

Avoiding a recurrence:

47. How can a situation such as the one that has arisen in this case (and in several others in the past) be avoided? We need to only appreciate and understand a few provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (the Act) and the Model Rules framed by the Government of India called the Juvenile Justice (Care and Protection of Children) Rules, 2007 (the Rules).

48. The preamble to the Act draws attention to the Convention on the Rights of the Child which was ratified by the Government of India on 11th December 1992. The Convention has prescribed, inter alia, a set of standards to be adhered to in securing the best interests of the child. For the present purposes, it is not necessary to detail those standards. However, keeping this in mind, several special procedures, over and above or despite the Criminal Procedure Code (for short the Code) have been laid down for the benefit of a juvenile or a child in conflict with law. These special procedures are to be found both in the Act as well as in the Rules. Some (and only some) of them are indicated below.

49. A Juvenile Justice Board is constituted under Section 6 of the Act to deal exclusively with all proceedings in respect of a juvenile in conflict with law. When a juvenile charged with an offence is produced before a Juvenile Justice Board, it is required to hold an inquiry (not a trial) and pass such orders as it deems fit in connection with the juvenile (Section 14 of the Act).

50. A juvenile or a child in conflict with law cannot be kept in jail but may be temporarily received in an Observation Home during the pendency of any inquiry against him (Section 8 of the Act). If the result of the inquiry is against him, the said juvenile may be received for reception and rehabilitation in a Special Home (Section 9 of the Act). The maximum period for reception and rehabilitation in a Special Home is three years (Section 15 of the Act). Even this, in terms of Article 37 of the Convention on the Rights of the Child, shall be a measure of last resort.

51. The provision dealing with bail (Section 12 of the Act) places the burden for denying bail on the prosecution. Ordinarily, a juvenile in conflict with law shall be released on bail, but he may not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

52. Orders that may be passed by a Juvenile Justice Board against a juvenile, if it is satisfied that he has committed an offence, are mentioned in Section 15 of the Act. One of the orders that may be passed, as mentioned above, is for his reception and rehabilitation in a Special Home for a period of three years, as a measure of last resort.

53. The Rules, particularly Rule 3, provide, inter alia, that in all decisions taken within the context of administration of justice, the principle of best interests of a juvenile shall be the primary consideration. What this means is that "the traditional objectives of criminal justice, that is retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice". The right to privacy and confidentiality of a juvenile is required to be protected by all means and through all the stages of the proceedings, and this is one of the reasons why the identity of a juvenile in conflict with law is not disclosed. Following the requirements of the Convention on the Rights of the Child, Rule 3 provides that institutionalization of a child or a juvenile in conflict with law shall be the last resort after a reasonable inquiry and that too for the minimum possible duration. Rule 32 provides that:

    "The primary aim of rehabilitation and social reintegration is to help children in restoring their dignity and self-worth and mainstream them through rehabilitation within the family where possible, or otherwise through alternate care programmes and long-term institutional care shall be of last resort."

54. It is quite clear from the above that the purpose of the Act is to rehabilitate a juvenile in conflict with law with a view to reintegrate him into society. This is by no means an easy task and it is worth researching how successful the implementation of the Act has been in its avowed purpose in this respect.

55. As regards procedurally dealing with a juvenile in conflict with law, the Rules require the concerned State Government to set up in every District a Special Juvenile Police Unit to handle the cases of juveniles or children in terms of the provisions of the Act

(Rule 84). This Unit shall consist of a juvenile or child welfare officer of the rank of Police Inspector having an aptitude and appropriate training and orientation to handle such cases. He will be assisted by two paid social workers having experience of working in the field of child welfare of which one of them shall be a woman.

56. Rule 75 of the Rules requires that while dealing with a juvenile or a child, except at the time of arrest, a police officer shall wear plain clothes and not his uniform.

57. The Act and the Model Rules clearly constitute an independent code for issues concerning a child or a juvenile, particularly a juvenile in conflict with law. This code is intended to safeguard the rights of the child and a juvenile in conflict with law and to put him in a category separate and distinct from an adult accused of a crime.

58. Keeping in mind all these standards and safeguards required to be met as per our international obligations, it becomes obligatory for every Magistrate before whom an accused is produced to ascertain, in the first instance or as soon thereafter as may be possible, whether the accused person is an adult or a juvenile in conflict with law. The reason for this, obviously, is to avoid a two-fold difficulty: first, to avoid a juvenile being subjected to procedures under the normal criminal law and de hors the Act and the Rules, and second, a resultant situation, where the "trial" of the juvenile is required to be set aside and quashed as having been conducted by a court not having jurisdiction to do so or a juvenile, on being found guilty, going 'unpunished'. This is necessary not only in the best interests of the juvenile but also for the better administration of criminal justice so that the Magistrate or the Sessions Judge (as the case may be) does not waste his time and energy on a "trial .

59. It must be appreciated by every Magistrate that when an accused is produced before him, it is possible that the prosecution or the investigating officer may be under a mistaken impression that the accused is an adult. If the Magistrate has any iota of doubt about the juvenility of an accused produced before him, Rule 12 provides that a Magistrate may arrive at a prima facie conclusion on the juvenility, on the basis of his physical appearance. In our opinion, in such a case, this prima facie opinion should be recorded by the Magistrate. Thereafter, if custodial remand is necessary, the accused may be sent to jail or a juvenile may be sent to an Observation Home, as the case may be, and the Magistrate should simultaneously order an inquiry, if necessary, for determining the age of the accused. Apart from anything else, it must be appreciated that such an inquiry at the earliest possible time, would be in the best interests of the juvenile, since he would be kept away from adult under trial prisoners and would not be subjected to a regimen in jail, which may not be conducive to his well being. As mentioned above, it would also be in the interests of better administration of criminal justice. It is, therefore, enjoined upon every Magistrate to take appropriate steps to ascertain the juvenility or otherwise of an accused person brought before him or her at the earliest possible point of time, preferably on first production.

60. It must also be appreciated that due to his juvenility, a juvenile in conflict with law may be presumed not to know or understand the legal procedures making it difficult for him to put forth his claim for juvenility when he is produced before a Magistrate. Added to this are the factors of poor education and poor economic set up that are jointly the main attributes of a juvenile in conflict with law, making it difficult for him to negotiate the legal procedures. We say this on the strength of studies conducted,

and which have been referred to by one of us (T.S. Thakur, J) in Abuzar Hossain v. State of West Bengal, C2012l 10 SCC 489. It is worth repeating what has been said:

"Studies conducted by National Crime Records Bureau (NCRB), Ministry of Home Affairs, reveal that poor education and poor economic set up are generally the main attributes of juvenile delinquents. Result of the 2011 study further show that out of 33,887 juveniles arrested in 2011, 55.8% were either illiterate (6,122) or educated only till the primary level (12,803). Further, 56.7% of the total juveniles arrested fell into the lowest income category. A similar study is conducted and published by B.N. Mishra in his Book 'Juvenile Delinquency and Justice System', in which the author states as follows:

"One of the prominent features of a delinquent is poor educational attainment. More than 63 per cent of delinquents are illiterate. Poverty is the main cause of their illiteracy. Due to poor economic condition they were compelled to enter into the labour market to supplement their family income. It is also felt that poor educational attainment is not due to the lack of intelligence but may be due to lack of opportunity."

61. Such being the position, it is difficult to expect a juvenile in conflict with law to know his rights upon apprehension by a police officer and if the precautions that have been suggested are taken, the best interests of the child and thereby of society will be duly served. Therefore, it may be presumed, by way of a benefit of doubt that because of his status, a juvenile may not be able to raise a claim for juvenility in the first instance and that is why it becomes the duty and responsibility of the Magistrate to look into this aspect at the earliest point of time in the proceedings before him. We are of the view that this may be a satisfactory way of avoiding the recurrence of a situation such as the one dealt with.

62. We may add that our international obligations as laid down in the Convention on the Rights of the Child and the Beijing Rules require the involvement of the parents or legal guardians in the legal process concerning a juvenile in conflict with law. For example, a reference may be made to Article 40 of the Convention and Principles 7, 10 and 15 of the Beijing Rules. That this is not unusual is clear from the fact that in civil disputes, our domestic law requires a minor to be represented by a guardian.

The remedy:

63. In O.K. Basu v. State of West Bengal, (1997) 1 SCC 416 this Court laid down some important requirements for being adhered to by the police in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures•. The Criminal Procedure Code has since been amended and some of the important requirements laid down by this Court have been given statutory recognition. These are equally applicable, mutatis mutandis, to a child or a juvenile in conflict with law.

64. Attention may be drawn to Section 41-B of the Code which requires a police officer making an arrest to prepare a memorandum of arrest which shall be attested by at least one witness who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made. The police officer is also mandated to inform the arrested person, if the memorandum of arrest is not attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest. Section 41-B of the Code reads as follows:

"41-B. Procedure of arrest and duties of officer making arrest.-Every police officer while making an arrest shall-

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be-

   (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

   (ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest."

65. Every police officer making an arrest is also obliged to inform the arrested person of his rights including the full particulars of the offence for which he has been arrested or other grounds for such arrest (Section 50 of the Code), the right to a counsel of his choice and the right that the police inform his friend, relative or such other person of the arrest. Section 50-A of the Code is relevant in this regard and it reads as follows:

"50-A. Obligation of person making arrest to inform about the arrest, etc., to a nominated person.-(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person."

66. When any person is arrested, it is obligatory for the arresting authority to ensure that he is got examined by a medical officer in the service of the Central or the State Government or by a registered medical practitioner. The medical officer or registered medical practitioner is mandated to prepare a record of such examination including any injury or mark of violence on the person arrested. Section 54 of the Code reads as follows:

"54. Examination of arrested person by medical officer.-(1) When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the

female medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person."

67. In our opinion, the procedures laid down in the Code, in as much as they are for the benefit of a juvenile or a child, apply with full rigour to an apprehension made of a juvenile in conflict with law under Section 10 of the Act. If these procedures are followed, the probability of a juvenile, on apprehension, being shown as an adult and sent to judicial custody in a jail, will be considerably minimized. If these procedures are followed, as they should be, along with the requirement of a Magistrate to examine the juvenility or otherwise of an accused person brought before him, subjecting a juvenile in conflict with law to a trial by a regular Court may become a thing of the past.

Conclusion:

68. The appellant was a juvenile on the date of the occurrence of the incident. His case has been examined on merits and his conviction is upheld. The only possible and realistic sentence that can be awarded to him is the imposition of a fine. The existing fine of Rs.100/ is grossly inadequate. To this extent, the punishment awarded to the appellant is set aside. The issue of the quantum of fine to be imposed on the appellant is remitted to the jurisdictional Juvenile Justice Board. The jurisdictional Juvenile Justice Board is also enjoined to examine the compensation to be awarded, if any, to the family of Asha Devi in terms of the decision of this Court in Ankush Shivaji Gaikwad.

69. Keeping in mind our domestic law and our international obligations, it is directed that the provisions of the Criminal Procedure Code relating to arrest and the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 being the law of the land, should be scrupulously followed by the concerned authorities in respect of juveniles in conflict with law.

70. It is also directed that whenever an accused, who physically appears to be a juvenile, is produced before a Magistrate, he or she should form a prima facie opinion on the juvenility of the accused and record it. If any doubt persists, the Magistrate should conduct an age inquiry as required by Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 to determine the juvenility or otherwise of the accused person. In this regard, it is better to err on the side of caution in the first instance rather than have the entire proceedings reopened or vitiated at a subsequent stage or a guilty person go unpunished only because he or she is found to be a juvenile on the date of occurrence of the incident.

71. Accordingly, the matter is remanded to the jurisdictional Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 for determining the appropriate quantum of fine that should be levied on the appellant and the compensation that should be awarded to the family of Asha Devi. Of course,

in arriving at its conclusions, the said Board will take into consideration the facts of the case as also the fact that the appellant has undergone some period of incarceration.

72. The appeal is partly allowed with the directions given above. T.S. Thakur, J.

1. I have had the advantage of going through the Judgment and Order proposed by my Esteemed Brother Madan B. Lokur, J. The draft judgment formulates three issues for determination and answers them with remarkable lucidity. While I agree with the view taken by Brother Lokur, J. that the appellant was a juvenile on the date of the commission of the offence within the meaning of Section 2(k) of the Juvenile Justice (Care & Protection of Children) Act, 2000 (in short, the "2000 Act'') and that his conviction ought to be upheld, I wish to add a few words of my own in support of that view. As regards issue of general directions for guidance of the Courts below, I do not have any serious conceptual or other disagreement with what has been proposed by my erudite Brother, for the proposed directions will promote the objects underlying the 2000 Act, and prevent anomalous situations in which juveniles in conflict with law may stand to get prejudiced because of their economic and other handicaps/because of proverbial law's delay.

2. The facts have been succinctly summarised in the draft judgment of Brother Lokur, J. which do not bear repetition except to the extent the same is absolutely necessary to elucidate the narrative in which the issues arise for our consideration. The appellant was, together with three others, tried for offences punishable under Sections 302, 304-B and 498-A of the IPC by the Sessions Judge, Rae Bareli, who by her judgment dated 30th August, 1990 convicted him and his father Lal Bahadur Singh (since deceased) under Section 304-B and sentenced both of them to undergo rigorous imprisonment for a period of seven years. They were also convicted under Section 498-A of the IPC and sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.200/- each. The prosecution case against the appellant and his co-accused was that they set on fire Asha Devi, who was none other than the wife of the appellant, on the night intervening 23rd and 24th May, 1988. The motive for the commission of the offence was the alleged failure of the deceased Asha Devi and her parents to satisfy the appellant's demand for dowry.

3. Aggrieved by their conviction and sentence the appellant and his co-accused filed Criminal Appeal No.464 of 1990, which failed and was dismissed by the High Court in terms of the order impugned in this appeal. Demise of the second appellant during the pendency of the present appeal abated the proceedings qua him, leaving the appellant to pursue the challenge mounted against the judgments and orders passed by the Courts below, by himself.

4. Seven years after the filing of the present appeal, the appellant for the first time filed Crl. Misc. Petition No.16974 of 2010 for permission to urge an additional ground to the effect that the appellant was on the date of the commission of the offence a juvenile within the meaning of Section 2 (k) of the 2000, Act. It was urged on the basis of a school certificate that the petitioner was on the date of commission of the offence hardly 14 years of age, and hence a juvenile entitled to the protection of the Act aforementioned. By an order dated 19th November, 2010, this Court allowed the Criminal Miscellaneous Petition, permitted the

appellant to raise the additional plea and directed an inquiry into the claim of juvenility of the appellant by the Trial Court.

5. The Trial Court accordingly conducted an inquiry, examined the relevant school record and, based on the entirety of the evidence including the medical evidence adduced in the course of the inquiry, held that according to the school certificate the age of the appellant on the date of the incident in question was around 13 years 8 months on the date of the incident. In doing so the trial Court gave credence to the school certificate in preference to the medical examination and other equally compelling records touching upon the age of the appellant like the Family Register maintained by the Panchayat and the Electoral rolls according to which the appellant's age was above 16 years and below 17 % years on the date of the occurrence. Although the respondent has objected to the finding of the Trial Court and the assessment of the age as on the date of the commission of the offence, I am inclined to go along with Lokur, J's finding as to age of the appellant when His Lordship says:

".....Therefore, it does appear that the appellant was about 17 years of age when the incident had occurred and that he had set up a claim of being a juvenile or child soon after his arrest and before the charge sheet was filed. In other words, the appellant was a juvenile or a child within the meaning of that expression as defined in Section 2(k) of the Act.•

6. I may, independent of the conclusion drawn by my esteemed brother, briefly state my reasons for holding that the appellant was above sixteen years as on the date of the commission of the offence, no matter the enquiry report submitted by the Trial Court has held him to be less than 16 years on that date. But before I do so, it is important to mention that the question whether the appellant was less or more than 16 is important not because the benefit of the 2000 Act depends on that question, but because the answer to that question has a bearing on whether the conviction of the appellant was itself illegal, hence liable to be set aside. I say so because, the benefit of the 2000 Act, would be in any case available to the appellant, so long as he was less than 18 years of age on the crucial date, and it is nobody's case that he was above that age on that date. The decision of this Court in Hari Ram v. State of Rajasthan (2009) 13 sec 211 authoritatively settles the legal position in that regard when it says:

"A juvenile who had not completed eighteen years on the dale of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act."

7. Equally important is the fact that the jurisdiction of the Court to try the appellant, as indeed any other person accused of commission of an offence would have to be determined by reference to the legal position that prevailed as on the dale the Court tried, convicted and sentenced the appellant. It is common ground that as on the date of the commission of the offence and right up to the dale the trial Court convicted and sentenced the appellant to imprisonment, the provisions of Juvenile Justice Act, 1986 (in short, the "1986 Act") held the field. Apart from the fact that the upper age limit for claiming juvenility was 16 years for boys, the

question whether a person was or was not a juvenile could be decided by the Court on the basis of documentary or medical evidence or on a fair assessment of both of them. That is because, the provisions of 1986 Act, did not, prioritise the basis on which such determination could be made. It was left for the accused to produce evidence or the Court to direct a medical examination for determining his age. The weightage which the Rules framed under the 2000 Act provide and the order of preference settled for purposes of placing reliance upon evidence coming from different sources were not in vogue while the 1986 Act held the field. The result was that the Court was free to determine the question on the basis of one such piece of evidence or on a cumulative effect and on such evidence that may have been produced before it. It is necessary to bear in mind this dichotomy in the legal framework while determining whether the trial Court had committed an error of jurisdiction in holding the appellant to be not a juvenile and hence triable by it.

8. The question whether the appellant was a juvenile was first raised before the trial Court at a very early stage of the case. The appellant had prayed for bail on that basis, which appears to have led the Court to direct assessment of his age on the basis of a medical examination. The medical examination, however, determined the age of the appellant to be 17 years, which took him beyond the upper age of juvenility under the 1986 Act. What is noteworthy is that no attempt was made by the appellant to adduce any evidence to support his claim of being a juvenile nor was any documentary evidence in the form of school certificate or otherwise adduced. As a matter of fact the chapter was totally forgotten, and the trial allowed to proceed to its logical conclusion without the appellant raising his little finger against the competence of the Court or agitating the issue regarding his age in any higher forum. The conviction and sentence recorded by the trial Court was also assailed on merits before the High Court but not on the ground that the trial was vitiated on account of the appellant being a juvenile, not triable by an ordinary criminal Court. It was only in this Court that long after the appeal was filed that a fresh claim for benefit under the 2000 Act was made by the appellant in which this Court directed a fresh enquiry that was conducted in terms of Rule 12 of the Rules framed under the 2000 Act. The enquiry report submitted supports the appellant's claim of his being a juvenile under Section 2(k) of the 2000 Act, hence, entitled to the benefits admissible thereunder. Although an attempt was made by the respondent-State to assail the finding that the appellant was less than 18 years of age on the date of the occurrence, we do not see any cogent reason to hold that the appellant was more than 18 years on the dale of the occurrence. In my view, the determination of age of the appellant, by the trial Court, on the basis of the first medical examination is fully supported and corroborated by the medical examination of the appellant conducted in the course of the enquiry directed by this Court by our order dated 19th November, 2010. The medical examination conducted by the Board of Doctors has determined the appellant's age to be 40 years as on 24th December, 2010 which implies that he was around 17 '1:. years old on the date of the occurrence. Superadded to the medical evidence is the documentary evidence that has come to light in the course of the enquiry in the form of the Family Register (Ex. Ka-3) maintained by the Panchayat and proved

by A.P.W.2-Gokaran Nath Tiwari, Gram Panchayat Officer. According to this witness who spoke from the register, the appellant was bom in the year 1969. The Electoral roll for the year 2009 for the constituency in which the appellant's village falls, also mentions this age to be 37 years, implying thereby that he was around 17 years old on the dale of the occurrence. Deposition of the Gram Sabha Head examined as PW-12 in the course of the enquiry is supportive of the age of the appellant as given in the Electoral roll. The two medical examinations and the documents referred to above come from proper custody and lend complete corroboration to the appellant's age being above 16 years on the date of the occurrence. Besides, what cannot be lightly brushed away is the fact that the appellant was a married man on the date of the occurrence and that the charge levelled against him was one of dowry harassment and dowry death of his wife who was 19 years old at the time of her demise. If the appellant was only 13 years and 8 months old as suggested by the school certificate the question of his harassing the deceased almost six years his senior would not arise for he would be only an adolescent while his wife-the deceased was a grown up girl who could hardly get harassed by a mere child so young in age that he had barely cut his teeth. The trial Court did not in that view commit any error of jurisdiction in trying the appellant for the offences alleged against him.

9. The upshot of the above discussion is that while the appellant was above 16 years of age on the date of the commission of the offence, he was certainly below 18 years and hence entitled to the benefit of the 2000 Act, no matter the later enactment was not on the statute book on the date of the occurrence. The difficulty arises when we examine whether the trial and the resultant order of conviction of the appellant, would also deserve to be set aside as illegal and without jurisdiction. The conviction cannot however be set aside for more than one reason. Firstly because there was and is no challenge to the order of conviction recorded by the Courts below in this case either before the High Court or before us. As a matter of fact the plea of juvenility before this Court by way of an additional ground stopped short of challenging the conviction of the appellant on the ground that the Court concerned had no jurisdiction to try the appellant.

10. Secondly because the fact situation in the case at hand is that on the date of the occurrence i.e. on 24th May, 1988 the appellant was above 16 years of age. He was, therefore, not a juvenile under the 1986 Act that covered the field at that point of time, nor did the 1986 Act deprive the trial Court of its jurisdiction to try the appellant for the offence he was charged with. Repeal of the 1986 Act by the 2000 Act raised the age of juvenility to 18 years. Parliament provided for cases which were either pending trial or were, after conclusion of the trial, pending before an appellate or a revisional Court by enacting Section 20 of the Juvenile Justice (Care and Protection) Act, 2000 which is to the following effect:

"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."

11. A plain reading of the above brings into bold relief the following features that have a significant bearing on the controversy at hand:

    (i) The provision starts with a non-obstante clause, which implies that the provisions have an overriding effect on all other provisions contained in the enactment.

    (ii) The provision deals with proceedings pending against a juvenile in any court.

    (iii) The provision sanctions the continuance of such pending proceedings in the very same court, as if the 2000 Act had not been enacted.

    (iv) The provision requires the Court seized of the matter to record a finding as to whether the juvenile has committed an offence.

    (v) If the finding is against the juvenile in that he is found to have committed an offence, the court is required to forebear from passing an order of sentence and instead forward the juvenile to the Board, which shall then pass an order in accordance with the provisions of the Act, as if it had been satisfied on inquiry under the Act that the juvenile had committed an offence.

    (vi) In all pending cases including trial, revision, appeal or any other criminal proceedings the determination of juvenility shall be in terms of clause (I) of Section 2 even if the juvenile ceases to be so on or before the date of commencement of the 2000 Act.

12. It is manifest, that a case that was pending before 'any Court' (which expression would include both the trial Court and the High Court) would continue in that Court, who would not only proceed with the trial and/or hearing of the case as if the 2000 Act was not on the Statute book but also record a finding as to the guilt or innocence of the juvenile. Far from stipulating a specific prohibition, the provisions of Section 20, make it obligatory for the Court concerned to proceed with the matter and record its conclusion as to the guilt or otherwise of the juvenile. The prohibition is against the Court passing an order of sentence against the juvenile, for which purpose the juvenile has to be forwarded to the Board for

appropriate orders. That is precisely the view which this Court has taken in a line of decisions to which I may briefly refer at this stage.

13. In Pratap Singh v. State of Jharkhand and Anr. C2005l 3 SCC 551, this Court while interpreting the provisions of Section 20 (supra) held that the same is attracted to cases where the person, if male, has ceased to be a juvenile under the 1986 Act being more than 16 years of age but had not yet crossed the age of 18 years. Such cases alone were within the comprehension of Section 20 of the Act, observed the Court, in which the Court seized of the matter was bound to record its conclusion, as to the guilt or innocence of the accused. The Court said:

"30. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with non-obstante clause. The sentence "Notwithstanding anything contained in this Act all proceedings in respect of a juvenile pending in any Court in any area on date of which this Act came into force" has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act is relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term "any courtR would include even ordinary criminal courts. If the person was a "juvenileft under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that Court as if the 2000 Act has 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, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile." (emphasis supplied)

14. To the same effect is the decision of this Court in Bijender Singh v. State of Haryana and Anr. C2005l 3 SCC 685. where this Court reiterated the legal position as to the true purpose of Section 20 in the following words:

"8. One of the basic distinctions between the 1986 Act and the 2000 Act relates to age of males and females. Under the 1986 Act, a juvenile means a male juvenile who has not attained the age of 16 years, and a female juvenile who has not attained the age of 18 years. In the 2000 Act, the distinction between male and female juveniles on the basis of age has not been maintained. The age-limit is 18 years for both males and females.

9. A person above 16 years in terms of the 1986 Act was not a juvenile. In that view of the matter the question whether a person above 16 years becomes "juvenile" within the purview of the 2000 Act must be answered having regard to the object and purport thereof.

10.In terms of the 1986 Act, a person who was not juvenile could be tried in any court. Section 20 of the 2000 Act takes care of such a situation stating that despite the same the trial shall continue in that court as if that Act has not been passed and in the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead

of passing any sentence in relation to the juvenile, he would be forwarded to the Juvenile Justice Board (in short the 'Board') which shall pass orders in accordance with the provisions of the Act as if it has been satisfied on inquiry that a juvenile has committed the offence. A legal fiction has, thus, been created in the said provision...

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12.Thus, by reason of legal fiction, a person, although not a juvenile, has to be treated to be one by the Board for the purpose of sentencing which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose." (emphasis supplied)

15. Reference may also be made to the decision of this Court in Dharambir v. State (NCT of Delhi) (2010) 5 SCC 344 where too this Court interpreted Section 20 of the Act, and the explanation appended to the same, to declare that the provision enables the Court to determine the juvenility of the accused even after conviction and while maintaining the conviction to set aside the sentence imposed upon him and to forward the case to the Board for passing an appropriate order in accordance with the provisions of the Act. This Court observed:

"11. It is plain from the language of the Explanation to Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of Clause (I) of Section 2, even if the juvenile ceases to be a juvenile on or before 1st April, 2001, when the Act of 2000 came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. Clause (I) of Section 2 of the Act of 2000 provides that "juvenile in conflict with law'' means a "juvenile" who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Section 20 also enables the Court to consider and determine the juvenility of a person even after conviction by the regular Court and also empowers the Court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Act of 2000."

16. Two recent decisions of this Court are a timely reminder of the legal position on the subject to which I may gainfully refer at this stage. In Daya Nand v. State of Haryana (2011) 2 sec 224, this Court, reiterated the law on the subject in the following words.

"11. The Juvenile Justice Act, 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 that came into force on April 1, 2001. The 2000 Act defined 'juvenile or child' in Section 2(k) to mean a person who has not completed eighteenth years of age. Section 69 of the 2000 Act, repealed the Juvenile Justice Act, 1986. The 2000 Act, in Section 20 also contained a provision in regard to cases that were pending when it came into force and in which the accused at the time of commission of offence was below 18 years of age but above sixteen

years of age (and hence, not a juvenile under the 1986 Act) and consequently who was being tried not before a juvenile court but a regular court." (emphasis supplied)

17. Similarly in Kalu @ Amit v. State of Haryana (2012) 8 sec 34, this Court summed up the law in the following passage:

    "16. Section 20 makes a special prov1s1on in respect of pending cases. It states that notwithstanding anything contained in the Juvenile Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which Juvenile Act comes into force in that area shall be continued in that court as if the Juvenile 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 the Juvenile Act as if it had been satisfied on inquiry under the Juvenile Act that the juvenile has committed the offence. The Explanation to Section 20 makes it clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of Clause (I) of Section 2, even if the juvenile ceased to be a juvenile on or before 1/4/2001, when the Juvenile Act came into force, and the provisions of the Juvenile Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed..."

18. The settled legal position, therefore, is that in all such cases where the accused was above 16 years but below 18 years of age on the date of occurrence, the proceedings pending in the Court concerned will continue and be taken to their logical end except that the Court upon finding the juvenile guilty would not pass an order of sentence against him. Instead he shall be referred to the Board for appropriate orders under the 2000 Act. Applying that proposition to the case at hand the trial Court and the High Court could and indeed were legally required to record a finding as to the guilt or otherwise of the appellant. All that the Courts could not have done was to pass an order of sentence, for which purpose, they ought to have referred the case to the Juvenile Justice Board.

19. The matter can be examined from another angle. Section 7A (2) of the Act prescribes the procedure to be followed when a claim of juvenility is made before any Court. Section 7A (2) is as under:

    "?A. Procedure to be followed when claim of juvenility is made before any court.- (1) xxx xxx (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.

20. A careful reading of the above would show that although a claim of juvenility can be raised by a person at any stage and before any Court, upon such Court finding the person to be a juvenile on the date of the commission of the offence, it has to forward the juvenile to the Board for passing appropriate orders and

the sentence, if any, passed shall be deemed to have effect. There is no provision suggesting, leave alone making it obligatory for the Court before whom the claim for juvenility is made, to set aside the conviction of the juvenile on the ground that on the date of commission of the offence he was a juvenile, and hence not triable by an ordinary criminal court. Applying the maxim of expressio unius est exclusio alterious, it would be reasonable to hold that the law in so far as it requires a reference to be made to the Board excludes by necessary implication any intention on the part of the legislature requiring the Courts to set aside the conviction recorded by the lower court. The Parliament, it appears, was content with setting aside the sentence of imprisonment awarded to the juvenile and making of a reference to the Board without specifically or by implication requiring the court concerned to alter or set aside the conviction. That perhaps is the reason why this Court has in several decisions simply set aside the sentence awarded to the juvenile without interfering with the conviction recorded by the court concerned and thereby complied with the mandate of Section 7A(2) of the Act.

21. In Kalu @ Amit's case (supra), the plea of juvenility was raised before this Court for the first time as is the position in the present case also. This Court while dealing with the options available noticed the absence of plea on the ground of juvenility and held that even if such a plea had been raised before the High Court, the High Court would have had to record its finding that Kalu @ Amit was guilty, confirm his conviction, set aside the sentence and forward the case to the Board for passing an order under Section 15 of the Juvenile Act. The Court observed:

"24. The instant offence took place on 7-4-1999. As we have already noted Kalu alias Amit was a juvenile on that date. He was convicted by the trial court on 7-9-2000. The Juvenile Act came into force on 1-4-2001. The appeal of Kalu alias Amit was decided by the High Court on 11-7-2006. Had the defence of juvenility been raised before the High Court and the fact that Kalu alias Amit was a juvenile at the time of commission of the offence has come to light the High Court would have had to record its finding that Kalu alias Amit was guilty, confirm his conviction, set aside the sentence and forward the case to the Board and the Board would have passed any appropriate order permissible under Section 15 of the Juvenile Act (see Hari Ram)."

22. That procedure has been followed in several other cases where this Court has, after holding the accused to be a juvenile as on the date of the commission of offence, set aside the sentence awarded to him without interfering with the order of conviction. (See: Pradeep Kumar & Ors. v. State of U.P. 1995 Supp (4) SCC 419, Bhola Bhagat & Ors. v. State of Bihar. (1997) 8 SCC 720. Upendra Kumar v. State of Bihar (2005) 3 SCC 592, Vaneet Kumar Gupta@ Dharmindher v.State of Punjab (2009> 17 SCC 587).

23. In the totality of the above circumstances, there is no reason why the conviction of the appellant should be interfered with, simply because he is under the 2000 Act a juvenile entitled to the benefit of being referred to the Board for an order under Section 15 of the said Act. There is no gainsaying that even if the appellant had

been less than sixteen years of age, on the date of the occurrence, he would have been referred for trial to the Juvenile Court in terms of Section 8 of the 1986 Act. The Juvenile Court would then hold a trial and record a conviction or acquittal depending upon the evidence adduced before it. In an ideal situation a case filed before an ordinary Criminal Court when referred to the Board or Juvenile Court may culminate in a conviction at the hands of the Board also. But law does not countenance a situation where a full-fledged trial and even an appeal ends in a conviction of the accused but the same is set aside without providing for a trial by the Board.

24. With the above observations, I agree with the Order proposed by brother Lokur, J.

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"Humanity has the Stars in its future and that future is too important to be lost under the burden of juvenile folly and ignorant superstition."

Isaac Asimov

In the Supreme Court of India

Civil Original Jurisdiction

Writ Petition (C) No. 75 of 2012

Bachpan Bachao Andolan ...Petitioner(s)
Versus
Union of India & Ors. ...Respondent(s)

With Contempt Petition (C) No.186/2013 in Writ Petition (C) No.75/2012

ORDER

This matter has been listed pursuant to the direction given on 26th April, 2013, when the contempt petition filed in the writ petition by the petitioner, complaining of the manner in which a complaint made regarding a missing child was sought to be handled by the concerned police station, was being considered. It has also come up on account of the other directions which had been given for implementing the various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 ['Juvenile Act', for short].

On 17th January, 2013, when this matter came up for consideration, we had given an interim direction that in case a complaint with regard to any missing children was made in a police station, the same should be reduced into a First Information Report and appropriate steps should be taken to see that follow up investigation was taken up immediately thereafter.

An element of doubt has been raised on behalf of the State of Madhya Pradesh regarding the recording of First Information Report relating to a missing child, having regard to the provisions of Section 154 of the Code of Criminal Procedure, 1*373 ["Cr.P.C.1, for short], which relates to information in cognizable cases. We do not, however, see any difficulty in the orders, which we have already passed. We make it clear that, in case of every missing child reported, there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise. Accordingly, whenever any complaint is filed before the police authorities regarding a missing child, the same must be entertained under Section 154 Cr.P.C. However, even in respect of complaints made otherwise with regard to a child, which may come within the scope of Section 155 Cr.P.C. , upon making an entry in the Book to be maintained for the purposes of Section 155 Cr.P.C., and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint. The Magistrate, upon receipt of the information recorded under Section 155 Cr.P.C., shall proceed, in the meantime, to take appropriate action under sub-section (2), especially, if the complaint relates to a child and, in particular, a girl child.

On the last occasion, when.- the matter was taken up, we were informed by some of the States that the directions, which we had given in our Order dated 17th January, 2013, had been duly implemented and affidavits to that effect have also been filed. Some of the information given therein is seriously objected by Mr. H.S. Phoolka, learned counsel appearing for the petitioner. In any event, even if the figures shown are incorrect, in order to rectify the situation, we are inclined to accept the suggestion made by Ms. Shobha, learned advocate, appearing for the National Human Rights Commission, that each police station should have, at least, one Police Officer, especially instructed and trained and designated as

a Juvenile Welfare Officer in terms of Section 63 of the Juvenile Act. We are also inclined to accept the suggestion that there should be, in shifts, a Special Juvenile Officer on duty in the police station to ensure that the directions contained in this Order are duly implemented. To acfd a further safeguard, we also direct the National Legal Services Authority, which is being represented by its Member Secretary through Ms. Anitha Shenoy, learned advocate, that the para-legal volunteers, who have been recruited by the Legal Services Authorities, should be utilized, so that there is, at least, one paralegal volunteer, in shifts, in the police station to keep a watch over the manner in which the complaints regarding missing children and other offences against children, are dealt with.

Ms. Shobha learned counsel, has also made another useful suggestion regarding a computerized programme, which would create a network between the Central Child Protection Unit as the Head of the Organization and all State Child Protection Units, District Child Protection Units, City Child Protection Units, Block Level Child Protection Units, all Special Juvenile Police Units, all Police stations, all Juvenile Justice Boards and all Child Welfare Committees. The said suggestion should be seriously taken up and explored by the National Legal Services Authority with the Ministry of Women and Child Development. Once introduced, the website link should also be made known to the/publicat large. The State Legal Services Authorities should also work out a network of NGOs, whose services could also be availed of at all levels for the purpose of tracing and re-integrating missing children with their families which, in fact, should be the prime object when a missing child is recovered.

Various other suggestions have been made by Ms. Shobha in her written submission, regarding installation of computerized cameras, which can also be considered by all the concerned authorities.

A similar response has been made on behalf of the National Legal Services Authority, and similar suggestions have been made. The details as indicated in the response can always be worked out in phases by the Juvenile Justice Board and the Child Welfare Committees in consultation with the National Legal Services Authority, since each have a responsible role to play in the welfare of children, which, if the statistics given are to be believed, are difficult to accept. In fact, as has been pointed out by Mr. Phoolka, out of more than 3,000 children missing in 2011, only 517 First Information Reports had been lodged. The remaining children remain untraced and are mere slips of paper in the police stations.

One of the submissions, which has been made in the response filed by the NALSA, is with regard to the role of the police and the directions given by this Court, from time to time, in the case of Sampurna Behura vs. Union of India & Ors. [Writ Petition (C) No.473 of 2005]. Accordingly, in addition to what has been recorded, as far as the suggestions made on behalf of the National Human Rights Commission is concerned, we add that, as suggested on behalf of the NALSA, every found/recovered child must be immediately photographed by the police for purposes of advertisement and to make people aware of the missing child. Photographs of the recovered child should be published on the website and through the newspapers and even on the T.V. so that the parents of the missing child could locate their missing child and recover him or her from the custody of the police. The Ministry of Home Affairs shall provide whatever additional support by way oj costs that may be necessary for the purpose of installing such photographic material and equipment lii the police stations. Apart from the above, all the parties involved shall have due regard to the various directions

given in Sampurna Behura's case [supra] where also provision has been made for a child to be sent to a Home and for taking photographs and publishing the same so that recovery could be effected as early as possible.

The other suggestion of NALSA is that a Standard Operating Procedure must be developed to handle the cases of missing children and to invoke appropriate provisions of law where trafficking, child labour, abduction, exploitation and similar issues are disclosed during investigation or after the recovery of the child, when the information suggests the commission of such offences. As part of the Standard Operating Procedure, a protocol should be established by the local police with the High Courts and also with the State Legal Services Authorities for monitoring the case of a missing child. In Delhi, such a protocol could be established with the help of the All India Legal Aid Cell on Child Rights, set up by NALSA, in association with the Delhi State Legal Services Authority, and the petitioner herein, Bachpan Bachap Andolan. In fact, the same could be treated as a nodal agency of the All India Legal Aid Cell on Child Rights.

We have given directions in regard to the utilization of the para-legal volunteers, which is one of the suggestions made on behalf of the NALSA.

As has been pointed out by Mr. Phoolka, learned counsel appearing on behalf of petitioner, an Office Memorandum was issued on 31st January, 2012, by the Ministry of Home Affairs, Government of India, by way of an advisory on missing children and the measures needed to prevent trafficking and for tracing of such children. In the said Office Memorandum missing child has been defined as a person below eighteen years of age, whose where abouts are not known to the parents, legal gardians and any other person, who may be legally entrusted with the custody of the child, whatever may be the circumstances/causes of disappearance. The child will be considered missing and in need of care and protection within the meaning of the later part of the Juvenile Act, until located and/or his/her safety/ well being is established. In case a missing child is not recovered within four months from the date of filing of the First Information Report, the matter may be forwarded to the Anti-Human Trafficking Unit in each State in order to enable the said Unit to take up more intensive investigation regarding the missing child. The Anti-Human Trafficking Unit shall file periodical status reports after every three months to keep the Legal Services Authorities updated. It may also be noted that, in cases where First Information Reports have not been lodged at all and the child is still missing, an F.I.R, should be lodged within a month from the date of communication of this Order and further investigation may proceed on that basis. Once a child is recovered, the police authorities shall carry out further investigation to see whether there is an involvement of any trafficking in the procedure by which the child went missing and if, on investigation, such links are .found, the police shall take appropriate action thereupon.

The State authorities shall arrange for adequate Shelter Homes to be provided for missing children, who are recovered and do not have any place to go to. Such Shelter Homes or After care Homes will have to be set up by the State Government concerned and funds to run the same will also have to be provided by the State Government together with proper infrastructure; Such Homes should be put in "place withirrthree"months, at the latest. Any private Home, being run for the purpose of sheltering children, shall not be entitled to receive a child, unless forwarded by the Child Welfare Committee and unless they comply with all the provisions of the Juvenile Justice Act, including registration.

Having regard to the order passed herein, the contempt proceedings, which have been initiated by the petitioner, are dropped. In the event, all the States have not yet filed their status reports, the time for filing the same is extended till the next date.

We appreciate the efforts of the petitioner-organisation, Mr. H.S. Phoolka, learned counsel appearing on behalf of the petitioner, all the other counsel, who have appeared in this matter on behalf of the different Authorities, including NALSA and the National Human Rights Commission, and we hope that such interest will continue to subsist hereafter.

Let this matter be listied agairl "after three months.

..........................CJI.
[ALTAMAS KABIR]
.........................J.
[VIKRAMAJIT SEN]
.........................J.
[S.A. BOBDE]
New Delhi, May 10, 2013.

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"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace."

Kofi Annan

In the Supreme Court of India
Criminal Appellate Jurisdiction

CRIMINAL APPEAL NOS. 628-629 OF 2013

(Arising out of S.L.P (Crl.) Nos.5059-60 of 2012)

Bharat Bhushan ...Appellant

Versus

State of Himachal Pradesh ...Respondent

JUDGMENT

T.S. THAKUR, J.

1. Delay condoned.
2. Leave granted.
3. These appeals arise out of judgments and orders dated 8th April, 2010 and 30th April, 2010 passed by the High Court of Himachal Pradesh at Shimla whereby Criminal Appeal No.406 of 1995 has been allowed, the order of acquittal passed by the trial Court set aside, the appellant convicted for an offence punishable under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of five years besides a fine of Rs.50,000/-. In default of payment of fine, the appellant has been directed to undergo further imprisonment for a period of one year.
4. The appellant was charged with commission of an offence of rape upon a girl hardly 11 years old while she was working in the fields along with another girl aged around 10 years in Village Kanda, District Shimla, Himachal Pradesh. At the trial, the prosecution examined not only the prosecutrix who supported the charge but also other witnesses including PW-2-her companion whose name is withheld to protect her identity and who had escaped an attempted assault by the co-accused, Dinesh Kumar. An alarm raised by PW-2 appears to have attracted the attention of PW-3-Piar Devi, mother of PW-2, who had rushed to the spot to rescue the girls, whereupon both the accused appears to have fled away. PW-5-Misru-the father of the prosecutrix and PWs-7, 8 and 9 namely Dr. Ajay Negi, Dr. Suresh Bansal and Dr. D.C. Negi were also examined at the trial all of whom have supported the prosecution case in their respective depositions. The trial Court, however, came to the conclusion that the prosecution had failed to prove its case against the appellant, the deposition of the witnesses mentioned above notwithstanding and, accordingly, acquitted both the accused persons of the charges framed against them.
5. Criminal Appeal No.406 of 1995 was then filed by the State of Himachal Pradesh against the order of acquittal to assail the view taken by the trial Court qua the appellant as also his companion Dinesh Kumar. The High Court has by its judgment and order dated 8th April, 2010 allowed the appeal in part, reversed the view taken by the trial Court and convicted the appellant for rape, punishable under Section 376 of the Indian Penal Code. As regards Dinesh Kumar, the High Court was of the view that the order of acquittal passed in his favour was justified. The High Court was of the view that the prosecution story was reliable and inspired confidence not only because of the inherent worth of the deposition of the prosecutrix but also because of the fact that her story was fully corroborated by PW-2, the other girl who escaped from the clutches

of Dinesh Kumar, the co-accused and that of PW-3 Piar Devi who had rushed to the place of occurrence to rescue the victim after hearing an alarm raised by her daughter. More importantly, the High Court found that the deposition of Dr. Suresh Bansal who had examined the prosecutrix establish the commission of rape upon the victim. The appellant was on such re-appraisal of evidence convicted under Section 376 of the Indian Penal Code.

6. The High Court next examined the question of sentence to be awarded to the appellant and by separate order dated 30th April, 2010 sentenced the appellant to rigorous imprisonment for five years and a fine of Rs.50,000/- and a default sentence of one year as already noticed above. What is important is that while doing so the High Court noticed and rejected the contention urged on behalf of the appellant that he was only 16 years and 4 months old at the time offence was committed, hence, entitled to the benefit of provisions of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. Relying upon the decision of a Constitution Bench of this Court in Pratap Singh v. State of Jharkhand and Anr. (2005) 3 SCC 551, the High Court held that the benefit of the Act was not legally available to the petitioner.

7. The High Court also relied upon the decisions of this Court in Jameel v. State of Maharashtra (2007) 11 SCC 420, where this Court held that since the appellant in that case had completed 16 years of age as on the date of the occurrence, the Juvenile Justice (Care and Protection of Children) Act, 2000, Act had no application. Reliance was also placed by the High Court upon the decision of this Court in Ranjit Singh v. State of Haryana (2008) 9 SCC 453 where this Court had relying upon the Judgment in Jameel's case (supra) rejected the contention that the petitioner was entitled to the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000, since he was below 18 years as on the date of the commission of the offence. In conclusion, the High Court held that Section 20 of the 2000 Act was inapplicable since the accused was over 16 years of age at the time of commission of the offence i.e. 22nd June, 1993 and over 18 years of age on 01-04-2001, the date when the 2000 Act came into force. The present appeal filed by the appellant assails the correctness of the above two orders as already noticed earlier.

8. We have heard learned Counsel for the parties at some length. The legal position regarding the entitlement of the appellant who was more than 16 years but less than 18 years of age as on the date of commission of the offence on 22nd June, 1993, is in our view settled by the decision of this Court in Hari Ram v. State of Rajasthan (2009) 13 SCC 211. This Court has in that case traced the history of the legislation and reviewed the entire case law on the subject. Relying upon the decision of the Constitution Bench of this Court in Pratap Singh's case (supra), this Court in Hari Ram's case (supra) reiterated that the question of juvenility of a person in conflict with law has to be determined by reference to the date of the incident and not the date on which cognizance is taken by the Magistrate. Having said that, this Court held that the effect of the pronouncement in Pratap Singh's case (supra) on the second question, viz. whether the 2000 Act was applicable in a case where the proceedings were initiated under the 1986 Act and were pending when the 2000 Act came into force, stood neutralised by the amendments to Juvenile Justice (Care and Protection of Children) Act, 2000, by Act 33 of 2006. The amendments made the provisions of the Act applicable even to juveniles who had not completed the age of 18 years on the date of the commission of offence said this Court. Speaking for the Court Altamas Kabir, J. (as His Lordship then was) observed:

"58. Of the two main questions decided in Pratap Singh case, one point is now well established that the juvenility of a person in conflict with law has to be reckoned from the date of the incident and not from the date on which cognizance was taken by the Magistrate. The effect of the other part of the decision was, however, neutralised by virtue of the amendments to the Juvenile Justice Act, 2000, by Act 33 of 2006, whereunder the provisions of the Act were also made applicable to juveniles who had not completed eighteen years of age on the date of commission of the offence.

59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted.

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68. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act."

9. These decisions have been followed in several other subsequent pronouncements of this Court including the decisions of this Court in Raju and Anr. v. State of Haryana (2010) 3 SCC 235, Dharambir v. State (NCT of Delhi) and Anr. (2010) 5 SCC 344, Mohan Mali and Anr. v. State of M.P. (2010) 6 SCC 669, Jitendra Singh @ Babboo Singh and Anr. v. State of U.P. (2010) 13 SCC 523, Daya Nand v. State of Haryana (2011) 2 SCC 224, Shah Nawaz v. State of U.P. and Anr. (2011) 13 SCC 751 and Amit Singh v. State of Maharashtra and Anr. (2011) 13 SCC 744.

10. The attention of the High Court was, it is obvious, not drawn to the decision in Hari Ram's case (supra), although the same was pronounced on 5th May, 2009 i.e. almost a year earlier to the pronouncement of the impugned judgment in this case. Be that as it may, as on the date the offence was committed the appellant was admittedly a juvenile having regard to the provisions of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98 of the Rules framed under the Juvenile Justice (Care and Protection of Children) Act, 2000. He was, therefore, entitled to the benefit of the said provision, which benefit, it is evident, has been wrongly denied by the High Court only because the High Court remained oblivious of the pronouncement of this Court in Hari Ram's case (supra).

11. The question then is whether the High Court could have at all recorded a conviction against the appellant who as seen above was a juvenile on the date of the commission of the offence. The answer to that question, in our opinion, lies in Section 20 of the 2000 Act which 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."

12. The above makes it manifest that proceedings pending against a juvenile in any Court as on the date the 2000 Act came into force had to continue as if the 2000 Act had not been enacted. More importantly Section 20 (supra) obliges the Court concerned to record a finding whether the juvenile has committed any offence. If the Court finds the juvenile guilty, it is required under the above provision to forward the juvenile to the Board which would then pass an order in accordance with the provisions of the Act as if it had been satisfied on enquiry under the Act that the juvenile had committed an offence.

13. Even in Pratap Singh's case (supra), this Court had interpreted Section 20 of the 2000 Act, and held that Section 20 was attracted to cases where the person, if male, had ceased to be a juvenile under the 1986 Act being more than 16 years of age but had not yet crossed the age of 18 years. This Court declared that it was only in such cases that Section 20 was attracted and the Court required to record its conclusion as to the guilt or innocence of the accused. This Court observed:

"31. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with non-obstante clause. The sentence "Notwithstanding anything contained in this Act all proceedings in respect of a juvenile pending in any Court in any area on date of which this Act came into force" has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act is relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term "any court" would include even ordinary criminal courts. If the person was a "juvenile" under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that Court as if the 2000 Act has 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, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile. (emphasis supplied)

14. Reference may also be made to the decision of this Court in Bijender Singh v. State of Haryana and Anr. (2005) 3 SCC 685, where this Court reiterated the legal position while interpreting the provisions of the Act and said:

"8. One of the basic distinctions between the 1986 Act and the 2000 Act relates to age of males and females. Under the 1986 Act, a juvenile means a male juvenile who has not attained the age of 16 years, and a female juvenile who has not attained the age of 18

years. In the 2000 Act, the distinction between male and female juveniles on the basis of age has not been maintained. The age-limit is 18 years for both males and females.

9. A person above 16 years in terms of the 1986 Act was not a juvenile. In that view of the matter the question whether a person above 16 years becomes "juvenile" within the purview of the 2000 Act must be answered having regard to the object and purport thereof.

10. In terms of the 1986 Act, a person who was not juvenile could be tried in any court. Section 20 of the 2000 Act takes care of such a situation stating that despite the same the trial shall continue in that court as if that Act has not been passed and in the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead of passing any sentence in relation to the juvenile, he would be forwarded to the Juvenile Justice Board (in short the 'Board') which shall pass orders in accordance with the provisions of the Act as if it has been satisfied on inquiry that a juvenile has committed the offence. A legal fiction has, thus, been created in the said provision...

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12. Thus, by reason of legal fiction, a person, although not a juvenile, has to be treated to be one by the Board for the purpose of sentencing which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose." (emphasis supplied)

15. Section 20 of the 2000 Act fell for interpretation even in Dharambir v. State (NCT of Delhi) (2010) 5 SCC 344, where too this Court held that the explanation appended to the same enables the Court to determine the juvenility of the accused even after conviction and that the Court can while maintaining the conviction set aside the sentence imposed upon him and to forward the case to the Board for passing an appropriate order under the Act. This Court observed:

"11. It is plain from the language of the Explanation to Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of Clause (l) of Section 2, even if the juvenile ceases to be a juvenile on or before 1st April, 2001, when the Act of 2000 came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. Clause (l) of Section 2 of the Act of 2000 provides that "juvenile in conflict with law" means a "juvenile" who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Section 20 also enables the Court to consider and determine the juvenility of a person even after conviction by the regular Court and also empowers the Court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Act of 2000."

16. The above position was restated in Daya Nand v. State of Haryana (2011) 2 SCC 224 and Kalu @ Amit v. State of Haryana (2012) 8 SCC 34.

17. In the present case, the appellant was not a juvenile under the 1986 Act as he had crossed the age of 16 years. This case was, however, pending before the High Court in appeal on the date the 2000 Act came into force and had, therefore, to be dealt with under Section 20 of the Act which required the High Court to record a finding about

the guilt of the accused but stop short of passing an order of sentence against him. Inasmuch as the High Court convicted the appellant, it did not commit any mistake for the power to do so was clearly available to the High Court under the provisions of Section 20. What was not permissible was passing of a sentence for which purpose the High Court was required to forward the juvenile to the Juvenile Board constituted under the Act. The order of sentence is, therefore, unsustainable and shall have to be set aside.

18. The next question then is whether the conviction recorded by the High Court was justified on merits and, if it was, whether we ought to refer the appellant to the Juvenile Justice Board at this stage. Our answer is in the affirmative qua the first part and negative qua the second. The High Court has, in our opinion, properly appreciated the evidence on record especially the deposition of the prosecutrix, her companion PW-2 and her aunt Piar Devi-PW-3 as also her parents. The High Court has also correctly appreciated the medical evidence available on record especially the deposition and the report of PW-8-Dr. Suresh Bansal, the relevant portion of whose report reads as under:

"...On examination I found that the female child had not started menstruating. There was painful separation of thighs. No marks of violence were present. Clotted blood was present on labia majora and on thighs. Secondary sexual characters were developed. Breasts were developed according to age. Pubic and axillary hairs were present but were scanty. Hymen was freshly fractured. Posterior fourchette was torn. The chid admitted one little finger with pain. The vagina was congested..... Injury mentioned in MLC Ext. PW-8/C appeared on the prosecutrix was subject to sexual intercourse..."

19. The prosecutrix was between 9 to 12 years according to the deposition of PW-9-Dr. D.C. Negi and deposition of PW-13 who proved her date of birth to be 13th April, 1982. The presence of human blood on the cap with which the appellant appears to have wiped the blood after the sexual assault is also an incriminating circumstance which the High Court has rightly taken into consideration while finding the appellant guilty. We, therefore, see no reason to interfere with the order of conviction as recorded by High Court on merits.

20. Coming then to the question of reference to the Juvenile Justice Board, we are of the view that such a reference is unnecessary at this distant point of time. The appellant is nearly 36 years old by now and a father of three children. He has already undergone nearly three years of imprisonment awarded to him by the High Court. In the circumstances, reference to the Juvenile Justice Board at this stage of his life would, in our opinion, serve no purpose. The only option available is to direct his release from custody.

21. In the result, we dismiss criminal appeal arising out of SLP (Crl.) No.5059 of 2012 directed against the order of the High Court dated 8th April, 2010 and uphold the conviction of the appellant for the offence under Section 376 IPC. Criminal appeal arising out of SLP (Crl.) No.5060 of 2012 is, however, allowed and the order dated 30th April, 2010 passed by the High Court is set aside with a direction that the appellant shall be released from custody unless he is required in connection with any other case.

……………….…………J. (T.S. THAKUR)

……….…………..……..…J.(DIPAK MISRA)

New Delhi, April 26, 2013

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1193 OF 2006

Abuzar Hossain @ Gulam Hossain …. Appellant
Versus
State of West Bengal ….Respondent

WITH
CRIMINAL APPEAL NO. 1397 OF 2003
SLP (Crl.) NO. 1451 OF 2003
R.P. (Criminal) No. 390 OF 2010 IN SLP(Crl.) No. 2542 OF 2010
SLP(Crl.) NO. 8768 OF 2011
SLP(Crl.) NO. 8855 OF 2011
CRIMINAL APPEAL NO. 654 OF 2002
SLP (Crl.) No. 616 OF 2012

JUDGMENT

R.M. Lodha, J.

Delinquent juveniles need to be dealt with differently from adults. International covenants and domestic laws in various countries have prescribed minimum standards for delinquent juveniles and juveniles in conflict with law. These standards provide what orders may be passed regarding delinquent juveniles and the orders that may not be passed against them. This group of matters raises the question of when should a claim of juvenility be recognised and sent for determination when it is raised for the first time in appeal or before this Court or raised in trial and appeal but not pressed and then pressed for the first time before this Court or even raised for the first time after final disposal of the case.

2. It so happened that when criminal appeal preferred by Abuzar Hossain @ Gulam Hossain came up for consideration before a two-Judge Bench (Harjit Singh Bedi and J.M. Panchal, JJ) on 10.11.2009, on behalf of the appellant, a plea of juvenility on the date of incident was raised. In support of the contention that the appellant was juvenile on the date of incident and as such he could not have been tried in a normal criminal court, reliance was placed on a decision of this Court in Gopinath Ghosh v. State of West Bengal[1]. On the other hand, on behalf of the respondent, State of West Bengal, in opposition to that plea, reliance was placed on a later decision of this Court in Akbar Sheikh and others v. State of West Bengal[2]. The Bench found that there was substantial discordance in the approach of the matter on the question of juvenility in Gopinath Ghosh[1] on the one hand and the two decisions of this Court in Akbar Sheikh[2] and Hari Ram v. State of Rajasthan and Another[3]. The Bench was of the opinion that as the issue would arise in a very large number of cases, it was required to be referred to a larger Bench as the judgment in Akbar Sheikh2 and Gopinath Ghosh1 had been rendered by co-ordinate Benches of this Court. This is how these matters have come up before us.

1 1984 (Supp) SCC 228
2 (2009) 7 SCC 415
3 (2009) 13 SCC 211

3. The Parliament felt it necessary that uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country and there was also need for larger involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles and with these objectives in mind, it enacted Juvenile Justice Act, 1986 (for short, '1986 Act').

4. 1986 Act was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, '2000 Act'). 2000 Act has been enacted to carry forward the constitutional philosophy engrafted in Articles 15(3), 39(e) and (f), 45 and 47 of the Constitution and also incorporate the standards prescribed in the Convention on the Rights of the Child, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and all other relevant international instruments. Clause (k) of Section 2 defines "juvenile" or "child" to mean a person who has not completed eighteenth year of age. Clause (l) of Section 2 defines "juvenile in conflict with law" to mean a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age on the date of commission of such offence.

5. Section 3 of 2000 Act provides for continuation of inquiry in respect of juvenile who has ceased to be a juvenile. It reads as under:

   "S.3 . Continuation of inquiry in respect of juvenile who has ceased to be a juvenile.—Where an inquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or the child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child."

6. Chapter II of 2000 Act deals with juvenile in conflict with law. This Chapter comprises of Sections 4 to 28. Section 4 provides for constitution of juvenile justice board and its composition. Section 5 provides for procedure, etc. in relation to juvenile justice board. Section 6 deals with the powers of juvenile justice board. Section 6 reads as under :

   "S.6 . Powers of Juvenile Justice Board.—(1) Where a Board has been constituted for any district, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

   (2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise."

7. By Act 33 of 2006, the Parliament brought in significant changes in 2000 Act. Inter alia, Section 7A came to be inserted. This Section is lynchpin around which the debate has centered around in these matters. Section 7A provides for procedure to be followed when claim of juvenility is raised before any court. It reads as follows:

   "S.7A. Procedure to be followed when claim of juvenility is raised before any court.—

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect."

8. Section 49 of 2000 Act deals with presumption and determination of age. This Section reads as under:

"49 . Presumption and determination of age.—(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit)and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly 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 or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person."

9. Sections 52 and 53 deal with appeals and revision. Section 54 provides for procedure in inquiries, appeals and revision proceedings, which reads as follows:

"S.54 . Procedure in inquiries, appeals and revision proceedings.—(1)Save as otherwise expressly provided by this Act, a competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trials in summons cases.

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973(2 of 1974)."

10. In exercise of powers conferred by the proviso to sub-section (1) of Section 68 of the 2000 Act, the Central Government has framed the rules entitled "The Juvenile Justice (Care and Protection of Children) Rules, 2007" (for short, "2007 Rules"). The relevant rule for the purposes of consideration of the issue before us is Rule 12 which provides for procedure to be followed in determination of age. Since this Rule has a direct

bearing for consideration of the matter, it is quoted as it is. It reads as under :

"R. 12. Procedure to be followed in determination of Age.— (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i),(ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i),(ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusion proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the

Act for passing appropriate order in the interest of the juvenile in conflict with law."

11. It is not necessary to refer to facts of criminal appeal preferred by Abuzar Hossain @ Gulam Hossain or the other referred matters. Suffice it to say that in criminal appeal of Abuzar Hossain @ Gulam Hossain, in support of the argument that he was juvenile on the date of incident and as such he could not have been tried in the normal criminal court, his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'the Code') was pressed into service. It was, however, found from the evidence as well as the judgments of the trial court and the High Court that the issue of juvenility was not pressed at any stage and no evidence whatsoever was led by him to prove the age. It was in the backdrop of these facts that Gopinath Ghosh1 was relied upon in support of the proposition that notwithstanding the fact that the plea of juvenility had not been pressed, it was obligatory on the court to go into the question of juvenility and determine his age.

12. Gopinath Ghosh1 was a case where he was convicted along with two others for an offence under Section 302 read with Section 34 of IPC and sentenced to suffer imprisonment for life by the trial court. He and two co-accused preferred criminal appeal before Calcutta High Court. In the appeal, two accused were acquitted while the conviction and sentence of Gopinath Ghosh was maintained. Gopinath Ghosh filed appeal by special leave before this Court. On his behalf, the argument was raised that on the date of offence, i.e. on 19.8.1974 he was aged below 18 years and he is therefore a "child" within the meaning of the expression in the West Bengal Children Act, 1959 and, therefore, the court had no jurisdiction to sentence him to suffer imprisonment after holding a trial. Having regard to the contention raised on behalf of the appellant, this Court framed an issue for determination; what was the age of the accused Gopinath Ghosh (appellant) on the date of offence for which he was tried and convicted? The issue was remitted to the Sessions Judge, Nadia to ascertain his age and submit the finding. The Additional Sessions Judge, First Court, Nadia, accordingly, held an inquiry and after recording the evidence and calling for medical report and after hearing parties certified that Gopinath Ghosh was aged between 16 and 17 years on the date of the offence. The finding sent by the Additional Sessions Judge was not questioned before this Court. The Court examined the scheme of West Bengal Children Act, 1959 and also noted Section 24 thereof which had an overriding effect taking away the power of the court to impose the sentence of imprisonment unless the case was covered by the proviso thereto. Then in paragraph 10 (pg. 231) of the Report, this Court held as under:

"10. Unfortunately, in this case, appellant Gopinath Ghosh never questioned the jurisdiction of the Sessions Court which tried him for the offence of murder. Even the appellant had given his age as 20 years when questioned by the learned Additional Sessions Judge. Neither the appellant nor his learned counsel appearing before the learned Additional Sessions Judge as well as at the hearing of his appeal in the High Court ever questioned the jurisdiction of the trial court to hold the trial of the appellant, nor was it ever contended that he was a juvenile delinquent within the meaning of the Act and therefore, the Court had no jurisdiction to try him, as well as the Court had no jurisdiction to sentence him to suffer imprisonment for life. It was for the first time that this contention was raised before this Court. However, 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 contention that this 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."

13. In paragraph 13 (pgs. 232-233) of the Report, the Court observed as under:

"13. Before we part with this judgment, we must take notice of a developing situation in recent months in this Court that the contention about age of a convict and claiming the benefit of the relevant provisions of the Act dealing with juvenile delinquents prevalent in various States is raised for the first time in this Court and this Court is required to start the inquiry afresh. Ordinarily this Court would be reluctant to entertain a contention based on factual averments raised for the first time before it. However, the Court is equally reluctant to ignore, overlook or nullify the beneficial provisions of a very socially progressive statute by taking shield behind the technicality of the contention being raised for the first time in this Court. A way has therefore, to be found from this situation not conducive to speedy disposal of cases and yet giving effect to the letter and the spirit of such socially beneficial legislation. We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where special Acts dealing with juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be, for obtaining creditworthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law. This procedure, if properly followed, would avoid a journey upto the Apex Court and the return journey to the grass-root court. If necessary and found expedient, the High Court may on its administrative side issue necessary instructions to cope with the situation herein indicated."

14. In Bhoop Ram v. State of U.P.[4], a two-Judge Bench of this Court was concerned with the question as to whether the appellant Bhoop Ram should have been treated as a "child" within the meaning of Section 2(4) of the U.P. Children Act, 1951 and sent to an approved school for detention therein till he attained the age of 18 years instead of being sentenced to undergo imprisonment in jail. In Bhoop Ram[4], the Chief Medical Officer, Bareilly gave a certificate that as per the radiology examination and physical features, he appeared to be 30 years of age as on 30.4.1987. Bhoop Ram 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 commission of the offences. The Sessions judge rejected the school certificate produced by him on the ground that "it is not unusual that in schools ages are understated by one or two years for future benefits". As regards medical certificate the Sessions Judge observed that as he happened to be about 28-29 years of age on 1.6.1987, he would have completed 16 years on the date of occurrence. Before the Court, on behalf of the appellant, Bhoop Ram, it was contended

4 (1989) 3 SCC 1

that school certificate produced by him contained definite information regarding date of birth and that should have prevailed over the certificate of the doctor and the Sessions Judge committed wrong in doubting the correctness of the school certificate. This Court on consideration of the matter held that appellant Bhoop Ram 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 "child" within the meaning of Section 2(4) of the U.P. Children Act, 1951 and dealt with under Section 29 of the Act. The Court gave the following reasons for holding appellant, Bhoop Ram, a "child" on the date of occurrence of the incident:

"7. …….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 securing 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 Judge would lend credence to the appellant's case that he was less than 10 (sic 16) 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 the offences were committed…….."

15. A three-Judge Bench of this Court in Pradeep Kumar v. State of U.P.[5] was concerned with the question whether each of the appellants was a "child" within the meaning of Section 2(4) of the U.P. Children Act, 1951 and as such on conviction under Section 302/34 IPC, they should have been sent to approved school for detention till the age of 18 years. The Court dealt with the matter in its brief order thus:

"2. At the time of granting special leave, Jagdish appellant produced High School Certificate, according to which he was about 15 years of age at the time of occurrence. Appellant Krishan Kant produced horoscope which showed that he was 13 years of age at the time of occurrence. So far as appellant Pradeep is concerned a medical report was called for by this Court which disclosed that his date of birth as January 7, 1959 was acceptable on the basis of various tests conducted by the medical authorities.

3. It is thus proved to the satisfaction of this Court that on the date of occurrence,

5 1995 Supp (4) SCC 419

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."

16. The above three decisions came up for consideration before this Court in Bhola Bhagat v. State of Bihar[6]. The plea raised on behalf of the appellants that they were 'children' as defined in the Bihar Children Act, 1970 on the date of occurrence and their trial along with adult accused by the criminal court was not in accordance with law was rejected by the High Court observing 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 Code, there was no other material in support of the appellants' claim that they were below 18 years of age. This Court flawed the approach of the High Court and observed as follows :

    "8. 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."

17. Gopinath Ghosh1, Bhoop Ram[4] and Pradeep Kumar[5] were elaborately considered in paragraphs 10, 11 and 12 of the Report. The Court also considered a decision of this Court in State of Haryana v. Balwant Singh[7] and held that the said decision was not a good law. In paragraph 15 of the Report, the Court followed the course adopted in Gopinath Ghosh1 , Bhoop Ram4 and Pradeep Kumar5 and held as under :

    "15. 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 squarely 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…..".

18. Mr. Pradip Kr. Ghosh, learned senior counsel for the appellant Abuzar Hossain @ Gulam Hossain, relying heavily upon the above cases, submitted that what was earlier established by judicial interpretation in Gopinath Ghosh1, Bhoop Ram4 and Pradeep Kumar5 became the statutory law with the enactment of Section 7A of 2000 Act and Rule 12 of the 2007 Rules and in view thereof a different approach is required with

6 (1997) 8 SCC 720

7 1993 (Supp) 1 SCC 409

regard to the delinquent juveniles as and when plea of juvenility is raised before the court. Learned senior counsel would submit that the courts have to ensure that the beneficial provisions contained in Section 7A and Rule 12 are not frustrated by procedural rigidity. It was submitted that while enacting Section 7A, the Legislature has taken note of socio-economic ground realities of the country and had kept in view juveniles who come from amongst the poorest of the poor, slum dwellers, street dwellers and some of those having no shelter, no means of sustenance and for whom it would be a far cry to have any documents as they would have neither any schooling nor any birth registration. The law has to be applied in the manner so that its benefits are made available to all those who are entitled to it. He contended that the very fact that Rule 12 provided for every possible opportunity to establish the juvenility and when everything fails there is the mandate of holding the medical examination of the delinquent, shows the legislative intent.

19. Mr. Pradip Kr. Ghosh, learned senior counsel also submitted that the law with regard to juvenile delinquents by insertion of Section 7A has been given retrospective effect and made applicable even after disposal of the case and, therefore, in all such cases, those who had no occasion to claim the benefit of juvenility in the past deserve fresh opportunity to be given and they should be allowed to produce such materials afresh as may be available in support of the claim. He submitted that a purposive interpretation to Section 7A and Rule 12 must be given to bring within their fold not only documents which are contemplated in terms of sub-rule (3) of Rule 12 but also cases in which no such document is available but if the accused is referred to a medical board, his age would eventually be found to be such as would make him a juvenile.

20. Mr. Pradip Kr. Ghosh, learned senior counsel did not dispute that for the purpose of making a claim with regard to juvenility, the delinquent has to produce some material in support of his claim and in the absence of any documentary evidence, file at least a supporting affidavit affirmed by one of his parents or an elder sibling or other relation who is competent to depose as to his age so as to make the court to initiate an inquiry under Rule 12(3). He did concede that a totally frivolous claim of juvenility which on the face of it is patently absurd and inherently improper may not be entertained by the court but at the same time the court must not be hyper-technical and must ensure that beneficial provision is not defeated by undue technicalities.

21. Learned senior counsel submitted that the statement under Section 313 of the Code or the voters' list may not be decisive but the documents of such nature may be adequate for the court to initiate an inquiry in terms of Rule 12(3). According to him, what is decisive is the result of the inquiry under Rule 12(3). However, semblance of material must justify an order to cause an inquiry to be made to determine the claim of juvenility.

22. Mr. Abhijit Sengupta, learned counsel for the State of West Bengal, submitted that although the provisions of 2000 Act as amended in 2006, and the Rules must be given full effect as these are beneficial provisions for the benefit of juveniles, but at the same time this Court must ensure that the provisions are not abused and a floodgate of cases does not start. He submitted that in Pawan v. State of Uttaranchal[8], a Judge Bench of this Court had emphasized on the need for satisfactory, adequate and prima facie material before an inquiry under Rule 12 could be commenced and the law laid down

in Pawan[8] must be followed as and when claim of juvenility is raised before this Court. He submitted that claim of juvenility must be credible before ordering an inquiry under Rule 12.

23. Mr. Nagendra Rai, learned senior counsel for the petitioner in the connected Special Leave Petition being SLP (Criminal) No. 616 of 2012, Ram Sahay Rai v. State of Bihar submitted that by amendment brought in 2006, 2000 Act has been drastically amended. The Legislature by bringing in Section 7A has clearly provided that the claim of juvenility may be raised before any court and it shall be recognised at any stage, even after the final disposal of the case and such claim shall be determined in terms of the provisions contained in 2000 Act and the Rules made thereunder, even if the juvenile has ceased to be so on or before the commencement of the Act. He would submit that even if the question of juvenility had not been raised by the juvenile even upto this Court and there is some material to show that a person is a juvenile on the date of commission of crime, it can be recognised at any stage even at the stage of undergoing sentence. He agreed that inquiry cannot be initiated on the basis of mere assertion of the claim. There must be prima facie material to initiate the inquiry and once the prima facie test is satisfied, the determination may be made in terms of Rule 12. With reference to Rule 12, learned senior counsel would submit that appearance, documents and medical evidence are the only materials which are relevant for determining the age and as such only such materials should form the basis for forming an opinion about the prima facie case. The oral evidence should rarely form the basis for initiation of proceeding as in view of Rule 12, the said material can never be used in inquiry and thus forming an opinion on that oral evidence will not serve the purposes of the Act.

24. Learned counsel for the State of Bihar on the other hand submitted that Legislature never intended to make Section 7A applicable to this Court after the final disposal of the case. He submitted that there was no provision in the Supreme Court Rules to re-open the concluded appeals or SLPs. Moreover, when SLP is filed, it is mandatory that no new ground or document shall be relied upon which has not been the part of record before the High Court and, therefore, if plea of juvenility has not been raised before the High Court, it cannot be raised before this Court. According to him, the power under the 2000 Act can be exercised only by the Juvenile Board, Sessions Court or High Court after final disposal of the case but not this Court. He, however, submitted that the Supreme Court in exercise of its power under Article 142 may remand the matter to such forums, if it appears expedient in the interest of justice.

25. The amendment in 2000 Act by the Amendment Act, 2006, particularly, introduction of Section 7A and subsequent introduction of Rule 12 in the 2007 Rules, was sequel to the Constitution Bench decision of this Court in Pratap Singh v. State of Jharkhand and Another[9]. In Hari Ram[3], a two-Judge Bench of this Court extensively considered the scheme of 2000 Act, as amended by 2006 Amendment Act. With regard to sub-rules (4) and (5) of Rule 12, this Court observed as follows :

"27. Sub-rules (4) and (5) of Rule 12 are of special significance in that they provide that once the age of a juvenile or child in conflict with law is found to be less than 18 years on the date of offence on the basis of any proof specified in sub-rule (3) the court or the

8 (2009) 15 SCC 259

9 (2005) 3 SCC 551

Board or as the case may be the Child Welfare Committee appointed under Chapter IV of the Act, has to pass a written order stating the age of the juvenile or stating the status of the juvenile, and no further inquiry is to be conducted by the court or Board after examining and obtaining any other documentary proof referred to in sub-rule (3) of Rule 12. Rule 12, therefore, indicates the procedure to be followed to give effect to the provisions of Section 7-A when a claim of juvenility is raised."

26. This Court observed that the scheme of the 2000 Act was to give children, who have, for some reason or the other, gone astray, to realize their mistakes, rehabilitate themselves and rebuild their lives and become useful citizens of the society, instead of degenerating into hardened criminals. In paragraph 59 of the Report, the Court held as under :

"59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted."

27. The Court observed in Hari Ram[3] that often parents of children, who come from rural backgrounds, are not aware of the actual date of birth of a child, but relate the same to some event which might have taken place simultaneously. In such a situation, the Board and the Courts will have to take recourse to the procedure laid down in Rule 12.

28. The judgment in the case of Hari Ram[3] was delivered by this Court on 5.5.2009. On that very day, judgment in Akbar Sheikh[2] was delivered by a two-Judge Bench of which one of us (R.M. Lodha, J.) was a member. In Akbar Sheikh[2] on behalf of one of the appellants, Kabir, a submission was made that he was juvenile on the date of occurrence. While dealing with the said argument, this Court observed that no such question had ever been raised. Even where a similar question was raised by five other accused, no such plea was raised even before the High Court. On behalf of the appellant, Kabir, in support of the juvenility, two documents were relied upon, namely, (i) statement recorded under Section 313 of the Code and (ii) voters' list. As regards the statement recorded under Section 313, this Court was of the opinion that the said document was not decisive. In respect of voters' list, this Court observed that the same had been prepared long after the incident occurred and it was again not decisive. In view of these findings, this Court did not find any merit in the claim of Kabir, one of the appellants, that he was juvenile and the submission was rejected. From a careful reading of the judgment in the matter of Akbar Sheikh[2], it is clear that the two documents on which reliance was placed in support of claim of juvenility were not found decisive and, consequently, no inquiry for determination of age was ordered. From the consideration of the matter by this Court in Akbar Sheikh[2], it is clear that the case turned on its own facts.

29. As a matter of fact, prior to the decisions of this Court in Hari Ram[3] and Akbar Sheikh[2], a three-Judge Bench of this Court speaking through one of us (R.M. Lodha, J.) in Pawan8 had considered the question relating to admissibility of claim of juvenility for the first time in this Court with reference to Section 7A. The contention of juvenility was raised for the first time before this Court on behalf of the two appellants, namely, A-1 and

A-2. The argument on their behalf before this Court was that they were juvenile within the meaning of 2000 Act on the date of incident and the trial held against them under the Code was illegal. With regard to A-1, his school leaving certificate was relied on while as regards A-2, reliance was placed on his statement recorded under Section 313 and the school leaving certificate. Dealing with the contention of juvenility, this Court stated that the claim of juvenility could be raised at any stage, even after final disposal of the case. The Court then framed the question in paragraph 41 of the Report as to whether an inquiry should be made or report be called for from the trial court invariably where juvenility is claimed for the first time before this Court. It was held that where the materials placed before this Court by the accused, prima facie, suggested that he was 'juvenile' as defined in 2000 Act on the date of incident, it was necessary to call for the report or an inquiry to be made for determination of the age on the date of incident. However, where a plea of juvenility is found unscrupulous or the materials lack credibility or do not inspire confidence and even prima facie satisfaction of the court is not made out, further exercise in this regard may not be required. It was also stated that if the plea of juvenility was not raised before the trial court or the High Court and is raised for the first time before this Court, the judicial conscience of the court must be satisfied by placing adequate material that the accused had not attained the age of 18 years on the date of commission of offence. In absence of adequate material, any further inquiry into juvenility would not be required.

30. Having regard to the general guidelines highlighted in paragraph 41 with regard to the approach of this Court where juvenility is claimed for the first time, the court then considered the documents relied upon by A-1 and A-2 in support of the claim of juvenility on the date of incident. In respect of the two documents relied upon by A-2, namely, statement under Section 313 of the Code and the school leaving certificate, this Court observed that the statement recorded under Section 313 was a tentative observation based on physical appearance which was hardly determinative of age and insofar as school leaving certificate was concerned, it did not inspire any confidence as it was issued after A-2 had already been convicted and the primary evidence like entry from the birth register had not been produced. As regards school leaving certificate relied upon by A-1, this Court found that the same had been procured after his conviction and no entry from the birth register had been produced. The Court was, thus, not prima facie impressed or satisfied by the material placed on behalf of A-1 and A-2. Those documents were not found satisfactory and adequate to call for any report from the Board or trial court about the age of A-1 and A-2.

31. In Jitendra Singh alias Babboo Singh and another v. State of Uttar Pradesh[10], on behalf of the appellant, a plea was raised that he was minor within the meaning of Section 2(k) of 2000 Act on the date of commission of the offence. The appellant had been convicted for the offences punishable under Sections 304-B and 498A IPC and sentenced to suffer seven years' imprisonment under the former and two years under the latter. The appellant had got the bail from the High Court on the ground of his age which was on medical examination certified to be around seventeen years on the date of commission of the offence. One of us (T.S. Thakur, J.) who authored the judgment for the Bench held that in the facts and circumstances of the case, an enquiry for determining the age of the appellant was necessary. This Court referred to the earlier decisions in Gopinath

10 (2010) 13 SCC 523

Ghosh[1], Bhoop Ram[4], Bhola Bhagat6 , Hari Ram3 and Pawan8 and then held that the burden of making out the prima facie case had been discharged. In paragraphs 9, 10 and 11 of the Report, it was held as under:

"9. The burden of making out a prima facie case for directing an enquiry has been in our opinion discharged in the instant case inasmuch as the appellant has filed along with the application a copy of the school leaving certificate and the marksheet which mentions the date of birth of the appellant to be 24-5-1988. The medical examination to which the High Court has referred in its order granting bail to the appellant also suggests the age of the appellant being 17 years on the date of the examination. These documents are sufficient at this stage for directing an enquiry and verification of the facts.

10. We may all the same hasten to add that the material referred to above is yet to be verified and its genuineness and credibility determined. There are no doubt certain telltale circumstances that may raise a suspicion about the genuineness of the documents relied upon by the appellant. For instance, the deceased Asha Devi who was married to the appellant was according to Dr. Ashok Kumar Shukla, Pathologist, District Hospital, Rae Bareilly aged 19 years at the time of her death. This would mean as though the appellant husband was much younger to his wife which is not the usual practice in the Indian context and may happen but infrequently. So also the fact that the appellant obtained the school leaving certificate as late as on 17-11-2009 i.e. after the conclusion of the trial and disposal of the first appeal by the High Court, may call for a close scrutiny and examination of the relevant school record to determine whether the same is free from any suspicion, fabrication or manipulation. It is also alleged that the electoral rolls showed the age of the accused to be around 20 years while the extract from the panchayat register showed him to be 19 years old.

11. All these aspects would call for close and careful scrutiny by the court below while determining the age of the appellant. The date of birth of appellant Jitendra Singh's siblings and his parents may also throw considerable light upon these aspects and may have to be looked into for a proper determination of the question. Suffice it to say while for the present we consider it to be a case fit for directing an enquiry, that direction should not be taken as an expression of any final opinion as regards the true and correct age of the appellant which matter shall have to be independently examined on the basis of the relevant material."

32. In Daya Nand v. State of Haryana[11], this Court found that on the date of occurrence the age of the appellant was sixteen years five months and nineteen days and, accordingly, it was held that he could not have been kept in prison to undergo the sentence imposed by the Additional Sessions Judge and affirmed by the High Court. This Court set aside the sentence imposed against the appellant and he was directed to be released from prison.

33. In Lakhan Lal v. State of Bihar[12], the question was about the applicability of 2000 Act where the appellants were not juveniles within the meaning of 1986 Act as they were above 16 years of age but had not completed 18 years of age when offences were committed and even when claim of juvenility was raised after they had attained 18

11 (2011) 2 SCC 224
12 (2011) 2 SCC 251

years of age. This Court gave benefit of 2000 Act to the appellants and they were directed to be released forthwith.

34. In Shah Nawaz v. State of Uttar Pradesh and another[13], the matter reached this Court from the judgment and order of the Allahabad High Court. An F.I.R. was lodged against the appellant, Shah Nawaz, and three others for the offences punishable under Sections 302 and 307 of IPC. The mother of the appellant submitted an application before the Board stating that Shah Nawaz was minor at the time of alleged occurrence. The Board after holding an enquiry declared Shah Nawaz a juvenile under the 2000 Act. The wife of the deceased filed criminal appeal against the judgment of the Board before the Additional Sessions Judge, Muzaffarnagar. That appeal was allowed and the order of the Board was set aside. Shah Nawaz preferred criminal revision before the High Court against the order of the Additional Sessions Judge which was dismissed giving rise to appeal by special leave before this Court. This Court considered Rule 12 of 2007 Rules and also noted, amongst others, the decision in Hari Ram3 and then on consideration of the documents, particularly entry relating to the date of birth entered in the marksheet held that Shah Nawaz was juvenile on the date of occurrence of the incident. This Court in paragraphs 23 and 24 of the Report held as under:

"23. The documents furnished above clearly show that the date of birth of the appellant had been noted as 18-6-1989. Rule 12 of the Rules categorically envisages that the medical opinion from the Medical Board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any panchayat or municipality is not available. We are of the view that though the Board has correctly accepted the entry relating to the date of birth in the marksheet and school certificate, the Additional Sessions Judge and the High Court committed a grave error in determining the age of the appellant ignoring the date of birth mentioned in those documents which is illegal, erroneous and contrary to the Rules.

24. We are satisfied that the entry relating to date of birth entered in the marksheet is one of the valid proofs of evidence for determination of age of an accused person. The school leaving certificate is also a valid proof in determining the age of the accused person. Further, the date of birth mentioned in the High School marksheet produced by the appellant has duly been corroborated by the school leaving certificate of the appellant of Class X and has also been proved by the statement of the clerk of Nehru High School, Dadheru, Khurd-o-Kalan and recorded by the Board. The date of birth of the appellant has also been recorded as 18-6-1989 in the school leaving certificate issued by the Principal of Nehru Preparatory School, Dadheru, Khurd-o- Kalan, Muzaffarnagar as well as the said date of birth mentioned in the school register of the said School at Sl. No. 1382 which have been proved by the statement of the Principal of that School recorded before the Board."

In paragraph 26 of the Report, this Court observed that Rule 12 has described four categories of evidence which gave preference to school certificate over the medical report.

35. In Pawan8, , a 3-Judge Bench has laid down the standards for evaluating claim of juvenility raised for the first time before this Court. If Pawan8 had been cited before the Bench when criminal appeal of Abuzar Hossain @ Gulam Hossain came up for

13 (2011) 13 SCC 751

hearing, perhaps reference would not have been made. Be that as it may, in light of the discussion made above, we intend to summarise the legal position with regard to Section 7A of 2000 Act and Rule 12 of the 2007 Rules. But before we do that, we say a word about the argument raised on behalf of the State of Bihar that claim of juvenility cannot be raised before this Court after disposal of the case. The argument is so hopeless that it deserves no discussion. The expression, 'any court' in Section 7A is too wide and comprehensive; it includes this Court. Supreme Court Rules surely do not limit the operation of Section 7A to the courts other than this Court where the plea of juvenility is raised for the first time after disposal of the case.

36. Now, we summarise the position which is as under:

(i) A claim of juvenility may be raised at any stage even after final disposal of the case. It may be raised for the first time before this Court as well after final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in appeal court.

(ii) For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

(iii) As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rule 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh2 and Pawan8 these documents were not found prima facie credible while in Jitendra Singh10 the documents viz., school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7A and order an enquiry for determination of the age of the delinquent.

(iv) An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of age of the delinquent.

(v) The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in 2000 Act are not defeated by hyper-technical approach and the persons who are entitled to get benefits of 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

(vi) Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at threshold whenever raised.

37. The reference is answered in terms of the position highlighted in paragraph 36 (i) to (vi). The matters shall now be listed before the concerned Bench(es) for disposal.

……………………... J.

(R.M. Lodha)

………………………….J.

(Anil R. Dave)

NEW DELHI OCTOBER 10, 2012.

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"We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot; right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer 'tomorrow'. His name is 'today'."

Gabrial Mistral

IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1403 OF 2012

Special Leave Petition (Crl) No. 7271 of 2011

Ashwani Kumar Saxena ……. Appellant
Versus
State of M.P. ……. Respondent

JUDGMENT

K. S. RADHAKRISHNAN, J.

1. Leave granted.

2. We notice that large number of cases are being brought before this Court against orders passed by the criminal courts, on the claim of juvenility under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the J.J. Act') read with Rule 12 of The Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short 'the 2007 Rules'), primarily for the reason that many of the criminal courts are not properly appraised of the scope of enquiry contemplated under those statutory provisions. We find it appropriate in this case to examine the nature of inquiry contemplated under Section 7A of the J.J. Act read with Rule 12 of the 2007 Rules, for future guidance and application by the Courts, Boards and the Committees functioning under the J.J. Act and Rules.

3. Before considering the above question and other related issues, we may examine, what transpired in the case on hand.

   Appellant – Ashwani Kumar Saxena and two others, namely, Jitender and Ashish were charge-sheeted for the offences punishable under Section 302 of the Indian Penal Code (for short 'the IPC') read with Section 27 of Arms Act and Section 302 IPC read with Section 34 of the IPC, respectively, for an offence committed on 19.10.2008 at 12.30 am in front of Krishna Restaurant, Chhatarpur which resulted in the death of one Harbal Yadav for which Sessions Case No.28/09 was pending before the First Additional Sessions Judge, Chhatarpur, Madhya Pradesh (M.P.). On 11.11.2008 the appellant filed an application before Chief Judicial Magistrate (CJM) Court, Chhatarpur under Sections 6 and 7 of the J.J. Act claiming that he was juvenile on the date of the incident and hence, the criminal court had no jurisdiction to entertain this case and the case be referred to Juvenile Justice Board and he be granted bail.

4. The appellant stated that his date of birth is 24.10.1990 and hence on the date of the incident i.e. on 19.10.2008, he was aged only 17 years, 11 months and 25 days and was thus a juvenile. In support of this contention, he produced the attested mark sheets of the High School of the Board of Secondary Education, M.P. Bhopal as well as Eighth standard Board Examination, wherein the date of birth was mentioned as 24.10.1990.

5. Smt. Kiran, widow of victim raised objection to the application contending that no evidence had been adduced to show that the entry made in the school Register was correct and normally parents would not give correct date of birth on the admission Register. Further, it was also stated that on physical appearance, as well, he was over

21 years of age and therefore the application be dismissed. Ram Mohan Saxena, father of the appellant, was examined as PW1 and he deposed that the date of birth of his son was 24.10.1990 and that he was born in the house of Balle Chaurasia in Maharajpur and his son was admitted in Jyoti Higher Secondary School, wherein his date of birth was also entered as 24.10.1990. Reference was also made to the transfer certificate issued by the above-mentioned school, since the appellant had studied from 8th standard to 10th standard in another school, namely, Ceiling Home English School. Further reliance was also placed on a horoscope, which was prepared by one Daya Ram Pandey, marked as exhibit P-4. Savitri Saxena, the mother of the appellant was also examined as PW-4, who also deposed that his son was born on 24.10.1990 and had his education at Jyoti Higher Secondary School and the School Admission Register kept in the school would also indicate his correct date of birth.

6. The C.J.M. court thought of conducting an ossification test for determination of the age of the appellant. Dr. R.P. Gupta, PW-2 conducted age identification of the body of the appellant by X ray and opined that epiphysis of wrist, elbow, knee and iliac crest was fused and he was of the opinion that the appellant was more than 20 years of age on 14.11.2008 and a report exhibited as P-5 was submitted to that extent. Dr. S.K. Sharma, Medical Officer, District Hospital, Chhatarpur was examined as PW-3, who conducted teeth test on the appellant for age identification. PW-3 had found that all 32 teeth were there including all wisdom teeth, so the age of the appellant was more than 21 years.

7. Dr. R.P. Gupta (PW-2) and Dr. S.K. Sharma (PW-3) were cross- examined by the counsel for the appellant. Dr. R.P. Gupta (PW-2) stated that there might be margin of 3 years on both side while Dr. S.K. Sharma (PW-3) had denied the said statement and he was of the opinion that wisdom teeth never erupt before the age of 17 years and might be completed upto the age of 21 years. Dr. S.K. Sharma (PW-3) concluded since all four wisdom teeth were found erupted, the appellant would be more than 21 years as on 14.11.2008.

8. The C.J.M. Court felt that school records including mark sheets etc. cannot be relied upon since teacher, who entered those details, was not examined and stated as follows:

   "The date of birth mentioned in all the certificates is 24.10.1990. But it is significant that such date of birth was recorded on the basis of the date of birth disclosed by the father while getting him admitted in the school and neither the school admission form, admission register in original were called for and even statement of no teacher, who got admitted in the school, was got recorded in the court to determine on the basis of which document actually the date of birth was got recorded as per the principle of law laid down by the Honourable Supreme Court that the date of birth should be relied only when it was recorded in the school on the basis of our authenticated documents and the parents used to get the date of birth of the children recorded for some with variation for some benefit and therefore same cannot be held as authenticated."

9. The C.J.M., therefore, placing reliance on the report of the ossification test took the view that the appellant was more than 18 years of age on the date of the incident. Consequently, the application was dismissed vide order dated 1.01.2009. The appellant aggrieved by the above mentioned order filed Criminal Appeal No. 15 of 2009 before

the First Additional Sessions Judge, Chhatarpur.

10. The appellant again placed considerable reliance on school records including mark sheets, transfer certificate etc. and submitted that the reliance placed on the odontology report was wrongly appreciated to determine the age of the appellant.

    The First Additional Sessions Judge stated as follows:

    "On the perusal of entire record it appears that the evidence of Ram Mohan Saxena who is father of the appellant is not reliable as he says that the date of birth of appellant was mentioned by him at the time of admission in school on the basis of Horoscope. It does not bear the date when it was prepared. Papers of the Horoscope are crispy. The Pandit who prepared the Horoscope was not examined for the reason best known to the appellant. Therefore, the best evidence has been withheld by the appellant. Therefore, adverse inference is to be drawn against the appellant. The Horoscope is manufactured and fabricated and tailored for ulterior motive." (emphasis added)

11. The First Additional Sessions Judge though summoned the original register of Jyoti English School, wanted to know on what basis the date of birth of the appellant was entered in the School Admission Register. PW1, the father of the appellant had therefore to rely upon the horoscope on which First Additional Sessions Judge has commented as follows:

    "Horo-Scope was found to be recently made which does not mention the date when it was prepared and it appears to be recently made and original register of the Jyoti Higher Secondary School also does not mention that on what basis the date of birth of the appellant was recorded first time in the school register. Therefore, the version of the Ram Mohan Saxena that the date of birth of the appellant was recorded on the basis of Horoscope is not supported by the register No.317 of the school. The Horoscope does not bear the date when it was prepared. It appears to be recently made. The original school admission form and the person who made the entries first time in the school has not been examined in this Court. Therefore, no credence can be given to such entry in the school." (emphasis added)

12. Learned First Additional Sessions Judge, on the above reasoning, dismissed the appeal though the Principal of Jyoti Higher Secondary School himself had appeared before the Court with the School Admission Register, which showed the date of birth as 24.10.1990. Aggrieved by the same, the appellant approached the High Court and the High Court confirmed the order passed by the C.J.M. Court as well as the First Additional Sessions Judge stating that the appellant had failed to establish his onus that his age was below 18 years on the date of the incident.

13. We are unhappy in the manner in which the C.J.M. Court, First Additional Sessions Judge's Court and the High Court have dealt with the claim of juvenility. Courts below, in our view, have not properly understood the scope of the Act particularly, meaning and content of Section 7A of the J.J. Act read with Rule 12 of the 2007 Rules Before examining the scope and object of the above mentioned provisions, it will be useful to refer some of the decided cases wherein the above mentioned provisions came up for consideration, though on some other context.

14. In Arnit Das v. State of Bihar , [(2000) 5 SCC 488], this Court held that while dealing with the question of determination of the age of the accused for the purpose of finding out, whether he is a juvenile or not, hyper technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile and if two views are possible on the same evidence, the court should lean in favour of holding the accused to be juvenile in borderline cases. In Arnit Das case, this Court has taken the view that the date of production before the Juvenile Court was the date relevant in deciding whether the appellant was juvenile or not for the purpose of trial. The law laid down in Arnit Das to that extent was held to be not good law, in Pratap Singh v. State of Jharkhand [(2005) 3 SCC 551], wherein a five Judge Bench of this Court decided the scope of sections 32 and 2(h), 3, 26, 18 of the Juvenile Justice Act, 1986 and took the view that it was the date of the commission of the offence and not the date when the offender was produced before the competent court was relevant date for determining the juvenility.

15. In Pratap Singh case, this Court held that section 20 of the Act would apply only in cases in which accused was below 18 years of age on 01.04.2001 i.e. the date of which the 2000 Act came into force, but it would have no application in case the accused had attained the age of 18 years on date of coming into force of the 2000 Act. Possibly to get over the rigor of Pratap Singh, a number of amendments were introduced in 2000 Act w.e.f 28.02.2006 by Act 33 of 2006, the scope of which came up for consideration in Hari Ram v. State of Rajasthan and Another [(2009) 13 SCC 211]. In Hari Ram, this court took the view that the Constitution Bench judgment in Pratap Singh case was no longer relevant since it was rendered under the unamended Act. In Hari Ram while examining the scope of Section 7A of the Act, this Court held that the claim of juvenility can be raised before any court at any stage and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act. It was held that a juvenile, who had not completed 18 years of age on the date of commission of the offence, was also entitled to the benefits of Juvenile Justice Act, 2000 as the provisions of section 2(k) had always been in existence even during the operation of the 1986 Act.

16. Further, it was also held that on a conjoint reading of sections 2(k), 2(l), 7A, 20 and 49 r/w Rules 12 and 98 places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1.4.2001 would be treated as juveniles even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted. With regard to the determination of age, this Court held that the determination of age has to be in the manner prescribed in Rule 12 of the 2007 Rules and opined that the determination of age is an important responsibility cast upon the Juvenile Justice Boards.

17. The scope of Section 7A of the Act and Rule 12 of the 2007 Rules again came up for consideration before this Court in Dharambir v. State (NCT of Delhi) and Another [(2010) 5 SCC 344]. That was a case where the appellant was convicted for offences under section 302/34 and 307/34 IPC for committing murder of one of his close relatives

and for attempting to murder his brother. The appellant was not a juvenile within the meaning of 1986 Act, when the offences were committed but had not completed 18 years of age on that date.

18. This court held from the language of the Explanation to Section 20 that in all pending cases, which would include not only trial but even subsequent proceedings by way of revision or appeal etc., the determination of juvenility of a juvenile has to be in terms of clause (l) of Section 2, even if the juvenile ceases to be a juvenile on or before 1st April 2001, when the Act of 2000 came into force, and the provisions of the Act would have applied as if the said provision had been in full force for all purposes and for all material times when the alleged offence was committed. This Court held clause (l) of Section 2 of the Act 2000 provides that "juvenile in conflict with law" means a "juvenile" who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of the commission of such offence. Section 20 also enables the Court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the Court, while maintaining the conviction to set aside the sentence imposed and forward the case to the J.J. Board concerned for passing sentence in accordance with the provisions of the 2000 Act.

19. This Court in Mohan Mali and Another v. State of Madhya Pradesh [(2010) 6 SCC 669] has again considered the scope of Section 7A of the Act. That was a case where plea of juvenility was raised before this court by the convict undergoing sentence. The appellant therein was convicted under sections 302/34, 326/34 and 324/34 IPC and was sentenced to life imprisonment and had already undergone 9 years of imprisonment. In that case a copy of the birth certificate issued by the Chief Registrar (Birth and Death) Municipal Corporation, Dhar u/s 12 of the Birth and Death Registration Act 1969 maintained by the Corporation was produced. This Court noticed that as per that certificate the date of birth of the accused was 12.11.1976. After due verification, it was confirmed by the State of Madhya Pradesh that he was a juvenile on the date of commission of the offence and had already undergone more than the maximum sentence provided under Section 15 of the 2000 Act by applying Rule 98 of the 2007 Rules read with Section 15 and 64 of the 2000 Act. The accused was ordered to be released forthwith.

20. In Jabar Singh v Dinesh and Another [(2010) 3 SCC 757], a two Judge Bench of this Court while examining the scope of Section 7A of the Act and Rule 12 of the 2007 Rules and Section 35 of the Indian Evidence Act took the view that the trial court had the authority to make an enquiry and take necessary evidence to determine the age. Holding that the High Court was not justified in exercise of its revisional jurisdiction to upset the finding of the trial court, remitted the matter to the trial court for trial of the accused in accordance with law treating him to be not a juvenile at the time of commission of the alleged offence. The court noticed that the trial court had passed the order rejecting the claim of juvenility of respondent No.1 therein on 14.02.2006, the Rules, including Rule 12 laying down the procedure to be followed in determination of the age of a juvenile in conflict with law, had not come into force. The court opined that the trial court was not required to follow the procedure laid down in Section 7A of the Act or Rule 12 of the Rules and therefore in the absence of any statutory provision

laying down the procedure to be followed in determining a claim of juvenility raised before it, the Court had to decide the claim of juvenility on the materials or evidence brought on record by the parties and section 35 of the Evidence Act.

21. The court further stated that the entry of date of birth of respondent No.1 in the admission form, the school records and transfer certificates did not satisfy the condition laid down in Section 35 of the Evidence Act in as much as the entry was not in any public or official register and was not made either by a public servant in the discharge of his official duty or by any person in performance of a duty specially enjoined by the law of the country and therefore, the entry was not relevant under section 35 of the Evidence Act for the purpose of determining the age of respondent no.1 at the time of commission of the alleged offence. We have our own reservations on the view expressed by the bench in Jabar Singh's case. (supra).

22. In Dayanand v. State of Haryana [(2011) 2 SCC 224]., this Court considered the scope of sections 2(k), 2(l), 7-A 20 and 64 (as amended by Act 33 of 2006 w.e.f. 22.08.2006]. This Court dealt with a case where the appellant was aged 16 years 5 months and 19 days on the date of occurrence, the Court held that he was a juvenile and thus could not be compelled to undergo the rigorous imprisonment as imposed by the trial court and affirmed by High Court. This Court set aside the sentence and ordered that the appellant be produced before the J.J. Board for passing appropriate sentence in accordance with 2000 Act.

23. In Anil Agarwal and Another v. State of West Bengal [(2011) 2 SCALE 429], this Court was examining the claim of juvenility made at a belated stage stating that the appellants were minors at the time of the alleged offence and hence should not be tried along with the adult co- accused. The trial court dismissed the appellant's application as not maintainable as it had been filed at a belated stage. The High Court, in revision, while holding that the application had been made belatedly, granted liberty to appellants to raise their plea of juvenility and to establish the same before the Sessions Judge at the stage of the examination under section 313 Cr.P.C.

24. Reversing the finding recorded by the High Court, this Court took the view that Section 7A of the Act, as it now reads, gives right to any accused to raise the question of juvenility at any point of time and if such an issue is raised, the Court is under an obligation to make an inquiry and deal with that claim. The court held Section 7A has to be read along with Rule 12 of the 2007 Rules. This Court, therefore, set aside the order of the High Court and directed the trial court to first examine the question of juvenility and in the event, the trial court comes to a finding that the appellants were minors at the time of commission of the offence, they be produced before the J.J. Board for considering their cases in accordance with the provisions of the 2000 Act.

25. We may in the light of the judgments referred to herein before and the principles laid down therein while examining the scope of Section 7 A of the Act, Rule 12 of the 2007 Rules and Section 49 of the Act examine the scope and ambit of inquiry expected of a court, the J.J. Board and the Committee while dealing with a claim of juvenility.

26. We may, however, point out that none of the above mentioned judgments referred to earlier had examined the scope, meaning and content of Section 7A, Rule 12 of the

2007 Rules and the nature of the inquiry contemplated in those provisions. For easy reference, let us extract Section 7A of the Act and Rule 12 of the 2007 Rules:

"Section 7A - Procedure to be followed when claim of juvenility is raised before any court.

(1)Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary(but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."

Rule 12. Procedure to be followed in determination of Age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining – (a)

(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat; (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record

a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub- rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in subrule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law. (emphasis added)

27. Section 7A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the J.J. Act. Criminal Courts, JJ Board, Committees etc., we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. Statute requires the Court or the Board only to make an 'inquiry' and in what manner that inquiry has to be conducted is provided in JJ Rules. Few of the expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7A has used the expression "court shall make an inquiry", "take such evidence as may be necessary" and "but not an affidavit". The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence need not be oral evidence.

28. Rule 12 which has to be read along with Section 7A has also used certain expressions which are also be borne in mind. Rule 12(2) uses the expression "prima facie" and "on the basis of physical appearance" or "documents, if available". Rule 12(3) uses the expression "by seeking evidence by obtaining". These expressions in our view re-emphasize the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word 'inquiry' has not been defined under the J.J. Act, but Section 2(y) of the J.J. Act says that all words and expressions used and not defined in the J.J. Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

29. Let us now examine the meaning of the words inquiry, enquiry, investigation and trial

as we see in the Code of Criminal Procedure and their several meanings attributed to those expressions.

"Inquiry" as defined in Section 2(g), Cr.P.C. reads as follows:

"Inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

The word "enquiry" is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary.

"Investigation" as defined in section 2(h), Cr.P.C. reads as follows: "Investigation includes all the proceedings under this code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

The expressions "trial" has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions "inquiry" or "investigation" as contained in sections 2(g) and 2(h) of the Code of Criminal Procedure."

30. The expression "trial" has been generally understood as the examination by court of issues of fact and law in a case for the purpose of rendering the judgment relating some offences committed. We find in very many cases that the Court /the J.J. Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the J.J. Act, following the procedure laid under Rule 12 and not following the procedure laid down under the Code.

31. The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Indian Penal Code or under other Penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold inquiry.

32. Consequently, the procedure to be followed under the J.J. Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under section 7A of the Act.

    Many of the cases, we have come across, it is seen that the Criminal Courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the Penal laws forgetting the fact that the specific procedure has been laid down in section 7A read with Rule 12.

33. We also remind all Courts/J.J. Board and the Committees functioning under the Act

that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12 (3) (a) (i) to (iii). The courts in such situations act as a parens patriae because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

34. "Age determination inquiry" contemplated under section 7A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

35. Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.

36. Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination.

37. We have come across several cases in which trial courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for odontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted.

38. We notice that none of the above mentioned principles have been followed by the

courts below in the instant case. The court examined the question of juvenility of the appellant as if it was conducting a criminal trial or inquiry under the Code. Notice was issued on the application filed by the juvenile and in response to that State as well as the widow of the victim filed objection to the application. The father of the appellant was cross examined as PW 1 and was permitted to produce several documents including the mark sheet of class five marked as exhibit P-1, mark sheet of class eight marked as exhibit P-2, mark sheet of Intermediate Education Board, MP, marked as exhibit P-3, horoscope prepared by Daya Ram Pandey marked as exhibit P-4. Further, the mother of the appellant was examined as PW 4, Transfer Certificate was produced on the side of the appellant which was marked as exhibit P-6. Noticing that the parents of the appellant were attempting to show a lesser age of the child so as to escape from the criminal case, the Court took steps to conduct ossification test. Dr. R.P. Gupta was examined as PW 2 who had submitted the report. Dr. S.K. Sharma was examined as PW 3. Placing considerable reliance on the report submitted after conducting ossification test, the application was dismissed by the trial court.

39. We find that the appellate court, of course, thought it necessary to summon the original register of Jyoti English School where the appellant was first admitted and the same was produced by the Principal of the School. We have called for the original record from the Court and perused the same. On 4.09.2009, the Sessions Judge passed the following order:

04.02.09. Court found it necessary to call for the Admission Register of the appellant in Jyoti High Secondary School and ordered the production of the Register of Admission, from the concerned school in ST. No. 29/09.

Sd/- Judge

On 09.02.2009, another order was passed as follows: From Jyoti High Secondary School, the Principal of the school was present along with the concerned admission register. He produced the copy of the admission register before the court after proving its factum. Register was returned after the perusal. The Counsel is directed that if he wants to produce any other evidence/documents, he may do so. (emphasis added)

Sd/- Judge

On 11.02.09, after hearing the counsel on either side, the Court passed the order:

The counsel for the state Shri Nayak, APG stated/conceded that in respect to refute/ rebuttal of the Admission Register the state do not wish to file further Evidence/ documents. (emphasis added) Sd/- Judge

On 12.02.2009, after hearing counsel on either side, the Court again passed the order:

In presence of the advocates, order pronounced in the open court that this Appeal is hereby Dismissed.

Sd/- Judge

40. We fail to see, after having summoned the admission register of the Higher Secondary School where the appellant had first studied and after having perused the same produced by the principal of school and having noticed the fact that the appellant was born on

24.10.1990, what prompted the Court not to accept that admission register produced by the principal of the school. The date of birth of the appellant was discernible from the school admission register. Entry made therein was not controverted or countered by the counsel appearing for the State or the private party, which is evident from the proceedings recorded on 11.02.2009 and which indicates that they had conceded that there was nothing to refute or rebut the factum of date of birth entered in the School Admission Register. We are of the view the above document produced by the principal of the school conclusively shows that the date of birth was 24.10.1990 hence section 12(3)(a)(i)(ii) has been fully satisfied.

41. The Sessions Judge, however, has made a fishing inquiry to determine the basis on which date of birth was entered in the school register, which prompted the father of the appellant to produce a horoscope. The horoscope produced was rejected by the Court stating that the same was fabricated and that the Pandit who had prepared the horoscope was not examined. We fail to see what types of inquiries are being conducted by the trial courts and the appellate courts, when the question regarding the claim of juvenility is raised.

42. Legislature and the Rule making authority in their wisdom have in categorical terms explained how to proceed with the age determination inquiry. Further, Rule 12 has also fixed a time limit of thirty days to determine the age of the juvenility from the date of making the application for the said purpose. Further, it is also evident from the Rule that if the assessment of age could not be done, the benefit would go to the child or juvenile considering his / her age on lower side within the margin of one year.

43. The Court in Babloo Parsi v. State of Jharkhand and Another [(2008) 13 SCC 133] held, in a case where the accused had failed to produce evidence/certificate in support of his claim, medical evidence can be called for. The court held that the medical evidence as to the age of a person, though a useful guiding factor is not conclusive and has to be considered along with other cogent evidence. This court set aside the order of the High Court and remitted the matter to the Chief Judicial Magistrate heading the Board to re-determine the age of the accused.

44. In Shah Nawaz v. State of Uttar Pradesh and Another [(2011) 13 SCC 751], the Court while examining the scope of Rule 12, has reiterated that medical opinion from the Medical Board should be sought only when matriculation certificate or equivalent certificate or the date of birth certificate from the school first attended or any birth certificate issued by a Corporation or a municipal authority or a panchayat or municipal is not available. The court had held entry related to date of birth entered in the mark sheet is a valid evidence for determining the age of the accused person so also the school leaving certificate for determining the age of the appellant.

45. We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.

46. We are, therefore, of the view that the appellant has successfully established his juvenility on the date of occurrence of the crime i.e. 19.10.2008 on which date he was aged only 17 years 11 months 25 days. The appellant has already faced the criminal trial in sessions case No. 28 of 2009 and the Court found him guilty along with two others under section 302 IPC and has been awarded life imprisonment which is pending in appeal, before the Hon'ble Court at Jabalpur as Crime Appeal No. 1134 of 2009.

47. We notice that the accused is also involved in few other criminal cases as well. Since we have found that the appellant was a juvenile on the date of the incident, in this case, we are inclined to set aside the sentence awarded in sessions case No. 28/2009 by Sessions Court and direct the High Court to place the records before J.J. Board for awarding appropriate sentence in accordance with the provisions of Act, 2000, and if the appellant has already undergone the maximum sentence of three years as prescribed in the Act, needless to say he has to be let free, provided he is not in custody in any other criminal case. We are informed that the appellant is involved in few other criminal cases as well, those cases will proceed in accordance with law.

48. The appeal is allowed. Sentence awarded by the court below is accordingly set aside and the case records be placed before the concerned J.J. Board for awarding appropriate sentence.

..……………………………J. (K.S. Radhakrishnan)

……………………………..J. (Madan B. Lokur)

New Delhi; September 13, 2012

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"This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity".

[2012] 6 Supreme 330/ [2012] 0 CrLJ 4527/ [2012] 8 SCC 763/ [2012] 0 AIR(SC) 3437/ [2012] 3 CaiCriLR 506/ [2012] 132 DRJ(SC) 9/ [2012] 8 Scale 406

SUPREME COURT OF INDIA

T.S. THAKUR & FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.

VIJAY SINGH- Appellant
VERSUS
STATE OF DELHI- Respondent

Criminal Appeal No. 1322 of 2012 [@ SLP (Crl} No. 5503 of 2011]
Decided on : 29-08-2012.

(a) Juvenile Justice Act, 1986 (as repealed by the Juvenile Justice (Care & Protection of Children) Act, 2000) - Section 2(k), 2(1), 7-A, 20 and 49 r/w Rules 12 and 98, Juvenile Justice (Care and Protection of Children) Rules, 2007 - Claim of juvenility on the date of commission of the offence- Can be raised even after attaining the age of 18 years. (Para 12)

(2009) 13 SCC 211 - Relied upon

(b) Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rule 12 (3)(a)(ii) - Determination of age - Non-matriculate person - School leaving certificate - Genuine and proved- To be relied upon.(Para 15)

(2009) 13 SCC 211 - Relied upon

(c) Juvenile Justice Act, 1986 (as repealed by the Juvenile Justice (Care & Protection of Children) Act, 2000) - Section 7A- Appellant found juvenile on the date of commission of offence -Offence committed 10 years ago -Conviction upheld- Sentence set aside. (Para 23)

(1981) 4 sec 149: (1989) 3 sec 1: (1997) 8 sec 720:1995 suppl.(4) sec 419; (2005) 3 SCC 592: (2009) 17 SCC 587 - Relied upon

Facts of the case:

Appellant convicted and sentenced u/s 3071PC.

Claimed juvenility before Supreme Court. Claim found to be genuine.Relief. Finding of the Court:

The Juvenile Act applies in full force.

Result : Appeal allowed.

Cases Referrred:

Hari Ram v. State of Rajasthan, (2009) 13 SCC 211 -Relied upon[Para 10]

Jayendra v. State of Uttar Pradesh, (1981} 4 SCC 149- Relied upon[Para 16]

Bhoop Ram v. State of U.P., (1989} 3 SCC 1 -Relied upon[Para 16]

Bhola Bhagat v. State of Bihar, (1997} 8 SCC 720- Relied upon[Para 16]

Pradeep Kumar v. State of U.P., 1995 Suppl.(4} SCC 419- Relied upon[Para 16]

Upendra Kumar v. State of Bihar, (2005) 3 SCC 592- Relied upon[Para 16]

Vaneet Kumar Gupta alias Dharminder v. State of Punjab, (2009} 17 SCC 587- Relied upon

[Para 16]

JUDGMENT

Fakkir Mohamed Ibrahim Kalifulla, J.-Leave granted. The sole accused is the appellant herein. The challenge is to the judgment of the High Court of Delhi in Cri.A.669/1999 dated 07.01.2011 by which the conviction and sentence of rigorous imprisonment for a period of five years imposed on the appellant for an offence punishable under Section 307, IPC and a fine of Rs.200/-with a default sentence of further rigorous imprisonment for 15 days came to be confirmed.

2. At the time of filing of the Special Leave Petition in this matter, the point raised was that the petitioner (appellant) was a juvenile on the date of commission of the offence and reliance was placed upon the School Leaving Certificate issued by the Principal/ Head Master of Primary School, Chitayan, Distt. Mainpuri, Uttar Pradesh. The date of birth of the petitioner was noted as 01.12.1981. The alleged offence was stated to have been committed on 11.03.1998 and if the date of birth noted in the certificate is found to be true, the petitioner would have been 16 years 3 months and 10 days on the date of incident, namely, 11.03.1998.

3. On hearing the learned counsel for the appellant, by an order dated 01.08.2011, while taking the said certificate on record, since for the first time such a claim was raised, the District and Sessions Judge, ltawa, Uttar Pradesh was directed to summon the Principal along with the original admission/School Leaving Registers and was directed to submit a report. Thereafter a report was received from the District and Sessions Judge, ltawa stating that prima facie the date of birth of the appellant appeared to be 01.12.1981. However, after examining the original records forwarded by the learned District Judge, ltawa, it was noticed that the report was not a full-fledged one.

4. The learned District Judge was, therefore, directed to examine the issue as to whether the appellant was a juvenile on 11.03.1998, by summoning the parties before it and also examine any other document, to adduce and submit a report within a period of six weeks to the Court. The said order was passed on 30.01.2012. Pursuant to the said directions, the learned District Judge has now filed a detailed report dated 26.03.2012. A perusal of the report discloses that the Principal/Head Master of Primary School, Chitayan, Distt. Mainpuri, Uttar Pradesh was examined as CW-1 on 05.03.2012, who is stated to have produced the counter foil of the School Leaving Certificate relating to the appellant marked as Exhibit CW-1/A according to which the date of birth of the appellant was 01.12.1981. The document also disclosed that the appellant was admitted to the school on 01.08.1989 and relieved from the school on 01.07.1992 after passing 5th standard. According to him, the Admission Register also disclosed that the date of birth of the appellant was noted as 01.12.1981.

5. The learned District Judge, apart from ascertaining the said facts from the records, stated to have referred the appellant for examination by the Medical Board consisting of Dr. Sunil Kakkar (CW- 2), Dr. Akansha (CW-3), Dr. Sameer Dhari (CW-4) and Dr. Kumar Narender Mohan (CW5). Dr. Sunil Kakkar (CW-2), HOD Radiology, Chairman, Standing Committee Age Determination Record stated before the learned District Judge that the appellant was examined by the Board on 01.03.2012 by the members of the Board consisting of a Physician, Dentist and another radiologist. On such examination, as per the bone age report (Exhibit CW2/A), the Board opined that the age of the appellant was above 22 years and below 25 years as on the date of his examination, namely, on 01.03.2012. The other members of the Medical Board also confirmed the said view of the Medical Board.

6. Based on the above factors, the District Judge has returned a finding that as on the date of the incident, namely, 11.03.1998, the age of the appellant was less than 18 years and, therefore, he was a 'juvenile' on that date. The offence alleged against the appellant was that on 11.03.1998, he gave knife blows on the person of Shiv Shankar (PW-4) who demanded repayment of the money (Rs.3,000/-) lent to the appellant; that immediately after the occunrence since the injured was not fit for giving any statement, based on the statement of Subhash (PW-2), the FIR was registered and after the completion of investigation, the charge sheet was filed.

7. Having regard to the overwhelming evidence led before the trial Court and on being convinced of the proof of guilt against the appellant, the appellant was convicted for the offence under Section 307, IPC imposing a sentence of five years' rigorous imprisonment with a fine of Rs.200/- with a default sentence of 15 days' rigorous imprisonment. The High Court, on a detailed analysis of the evidence available on record and the injuries sustained by the vicitim-PW-4, which was supported by medical evidence, dismissed the appeal. In such circumstances, we do not find any scope to interfere with the order of conviction imposed on the appellant.

8. In fact, as stated earlier this Special Leave Petition was entertained on 30.09.2011 since it was for the first time argued before this Court that the appellant was a juvenile on the date of occurrence as per the date of birth recorded in the School Leaving Certificate. When we consider the said submission in the light of the provisions of the Juvenile Justice Act, 1986 (hereinafter called the Act) as repealed by the Juvenile Justice (Care & Protection of Children) Act, 2000, as well as, the subsequent amendment of 2006 read along with the Juvenile Justice (Care and Protection of Children) Rules, 2007, it has now become incumbent upon this Court to consider the said contention raised on behalf of the appellant in order to find out the correctness of the benefit claimed as a 'juvenile'.

9. The relevant provision which is required to be noted is Section 7A of the Act in the present form which came to be inserted by the amendment Act of 33/2006 w.e.f. 22.08.2006. The other provisions are Section 2 (I) the definition of 'juvenile in conflict with law', Section 20 of the Act and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 which prescribe the procedure to be followed in the matter of determination of age.

10. The application of the above provisions in the light of the subsequent amendment to the Act introduced in the year 2006 and the Rules introduced in the year 2007 came to be considered in detail by this Court in the reported decision in Hari Ram v. State of Rajasthan and Anr.- 2009 (13) SCC 211. While dealing with Section 7-A, this Court has held as under in paragraph 23:

"23. Section 7-A makes provision for a claim of juvenility to be raised before any court at any stage, even after final disposal of a case and sets out the procedure which the court is required to adopt, when such claim of juvenility is raised. It provides for an inquiry, taking of evidence as may be necessary (but not affidavit) so as to determine the age of a person and to record a finding whether the person in question is a juvenile or not:

11. By making a reference to Rule 12 vis-a-vis Section 7-A of the Act, Sub-rules(4) and (5) of Rule 12 were examined and the position has been set out as under in paragraph 27 of the judgment:

"27.Sub-rules (4) and (5) of Rule 12 are of special significance in that they provide that once the age of a juvenile or child in conflict with law is found to be less than 18 years on the date of offence on the basis of any proof specified in sub-rule (3) the court or the Board or as the case may be the Child Welfare Committee appointed under Chapter IV of the Act, has to pass a written order stating the age of the juvenile or stating the status of the juvenile, and no further inquiry is to be conducted by the Court or Board after examining and obtaining any other documentary proof referred to in sub- rule (3) of Rule 12. Rule 12, therefore, indicates the procedure to be followed to give effect to the provisions of Section 7-A when a claim of juvenility is raised."

12. Again in paragraph 39 by making reference to the explanation to Section 20 which was introduced by Amendment Act 33/2006, the applicability of the benefit of amended definition of Section 2 (I) was considered and the position was clarified as under in the said paragraph:

"39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (I) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000."

Ultimately in para 59, the position was set at rest to the following effect.

"59. The law as now crystallized on a conjoint reading of Section 2(k), 2(1), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below

the age of 18 years on the date of commission of the offence even prior to 1.4.2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted."

13. In the light of the said legal position, the claim of the appellant had to be necessarily considered and ascertain whether he had been a 'juvenile', as claimed by him, on the date of occurrence, namely, 11.03.1998.

14. Going by Rule 12 of the Rules, in particular, sub-Rule (3), the age determination inquiry should be conducted by the Court or by the Board or the Committee by seeking evidence by obtaining (a) (i) the matriculation or equivalent certificate, if it is available; and in the absence whereof; ii) the date of birth certificate from the School (other than a play school) first attended; and in the absence whereof; iii) the birth certificate given by a corporation or municipal authority or a panchayat; b) and in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

15. Going by sub-rule 3(a)(ii) of aforesaid Rule 12, the date of birth certificate from the school (other than a play school) first attended, comes at the second stage in the order of priority for consideration to ascertain the age of accused claiming to be a juvenile. In the case on hand, the appellant does not claim to be a matriculate. Therefore, the question of matriculation or equivalent certificate and its availability does not arise. The present claim as a juvenile is based on the School Leaving Certificate issued by the school in which the appellant stated to have studied up to 5th class, namely, Primary School, Chitayan, Distt. Mainpuri, Uttar Pradesh. As per the said certificate, the date of birth recorded in the school admission register and the corresponding entry in the School Leaving Certificate was 01.12.1981. The appellant stated to have joined the school on 01.08.1989 and left the school after subsequently completing his 5th standard on 01.07.1992. The correctness of the said certificate was examined by the learned District Judge, ltawa as directed by this Court as to be seen from the report dated 26.03.2012. The Principal/Head Master of the School also verified the admission register. The counterfoil of the said School Leaving Certificate is placed before this Court. A perusal of the report also discloses that the certificate was genuine, that the date of birth record therein has been found to be correct and once the said position could be ascertained based on the above report, applying Rule 12 (3) as well as sub-rules (4) and (5) the said Rule read along with Section 7A of the Act the appellant on 11.03.1998 was 16 years 3 months and 10 days old. The appellant, therefore, is covered by the decision of this Court in Hari Ram (supra). Since the appellant was below 18 years of age on the date of commission of the offence, the provisions of the Act would apply in full force in his case.

16. Having regard to the above conclusion, in the normal course we would have remitted

the matter to the Juvenile Justice Court, ltawa for disposal in accordance with law. However, since the offence was alleged to have been committed more than 10 years ago and having regard to the course adopted by this Court in certain other cases reported in Jayendra & Anr. v. State of Uttar Pradesh - 1981 (4) SCC 149, Bhoop Ram v. State of U.P. - 1989 (3) SCC 1 which were subsequently followed in Bhola Bhagat v. State of Bihar- 1997 C8l SCC 720. Pradeep Kumar v. State of U.P.- 1995 Supp1.(4) SCC 419, Upendra Kumar v. State of Bihar - 2005 (3) SCC 592 and Vaneet Kumar Gupta alias Dharminder v. State of Punjab- 2009 (17) SCC 587, we are of the view that at this stage when the appellant would have now crossed the age of 30 years, there is no point in remitting the matter back to the Juvenile Justice Court. Instead, following the above referred to decisions, appropriate orders can be passed by this Court itself.

17. In Jayendra (supra) the challenge arose under Uttar Pradesh Children Act, 1951 which contained Section 27 which mandated that no child shall be sentenced to any term of imprisonment and if a child had been found to have committed an offence punishable with imprisonment then he could be sent to an approved school. However, it had been determined by the Supreme Court through the reports of medical officers taking into account the general appearance, physical examination and radiological findings of the appellant Jayendra, that he had been a 'child' under the definition in the Act at the time of commission of the offence. However, at the time of hearing of the SLP by the Supreme Court, he had already attained the age of 23. In the light of that, the Court upheld the conviction of the appellant Jayendra, but quashed the sentence imposed on him and directed that he be released forthwith. The Court observed as under:-

"3. Section 2(4) of the Uttar Pradesh Children Act, 1951 (U.P. Act 1 of 1952) defines a child to mean a person under the age of 16 years. Taking into account the various circumstances on the record of the case we are of the opinion that the appellant Jayendra was a child within the meaning of this provision on the date of the offence. Section 27 of the aforesaid Act says that notwithstanding anything to the contrary in any law, no court shall sentence a child to imprisonment for life or to any term of imprisonment. Section 2 provides, insofar as it is material, that if a child is found to have committed an offence punishable with imprisonment, the court may order him to be sent to an approved school for such period of stay as will not exceed the attainment by the child of the age of 18 years. In the normal course, we would have directed that the appellant Jayendra should be sent to an approved school but in view of the fact that he is now nearly 23 years of age, we cannot do so.

4. For these reasons, though the conviction of the appellant Jayendra has to be upheld, we quash the sentence imposed upon him and direct that he shall be released forthwith."

18. In Bhoop Ram (supra) also the case arose under the Uttar Pradesh Children Act, 1951. The controversy there was surrounding the question whether the appellant had actually been a juvenile/child under the definition of the Act at the time of commission of the offence. Although such a plea had been taken before both the trial Court as also the Sessions Court, the trial Court had merely taken into account such a plea for the purpose of awarding a reduced sentence of life imprisonment instead of death

penalty for the offences he had been charged with and convicted for. When the appeal reached the Supreme Court, this Court directed an enquiry by the Sessions Judge to determine if the appellant had been actually been a child at the time of the incident. The Sessions Judge conducted an enquiry, taking into account the opinion of the Chief Medical Officer and the school certificate that had been produced by the appellant, and concluded that the appellant had not been a 'child' at the concerned time. However, the Supreme Court rejected the finding of the Sessions Judge being based on surmises and essentially relying upon the school certificate produced by the appellant to conclude that he indeed had been a 'child' at the time when the offence had been committed. On the question of sentencing, this Court followed the precedent in Jayendra (supra) and quashed the sentence, observing:-

"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 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. The appeal is therefore partly allowed insofar as the sentence imposed upon the appellant are quashed."

19. In Bhola Bhagat (supra) this Court had discussed the present issue at hand at quite some length. Three of the appellants had taken the plea of juvenility in assailing the order of the High Court sentencing them to imprisonment for life for offences under Section 302/149, IPC. The Supreme Court agreed with the findings of the lower Courts as regards the involvement of the appellants in the commission of the offence and held that the same had been established beyond reasonable doubt. However, on the question of sentencing, the Court looked into the plea of juvenility as had been claimed by the appellants. The Court had noted the interplay of the two Acts in question viz. The Bihar Children Act, 1982 and the Juvenile Justice Act, 1986 and that the Bihar Act had already been in force at the time of the commission of the offence. It took note of the decisions of this Court in Bhoop Ram (supra) and Jayendra (supra) and emphasized that in these cases although the conviction was sustained the sentence had been quashed taking into account the fact that the appellants had crossed the age of juvenility and could not be sent to an 'approved school' as had been contemplated under the relevant Children's Act. The Court proceeded to discuss the three Judge Bench decision of this Court in Pradeep Kumar (supra) and quoted the following from that case:-

"12............ "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 of 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 the 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: (SCC p. 420, paras 3 and 4)

"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 Sections 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)

20. The Court in its final conclusion in Bhola Bhagat (supra), adopted the same course as had been done in the aforementioned cases and observed:-

"15. 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 squarely 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 cases while sustaining the conviction of the appellants under all the charges we quash the sentences awarded to them.

16. 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."

21. In Upendra Kumar (supra), this Court reiterated the position that has been adopted in the aforementioned cases. The appellant had been handed down a life imprisonment for his conviction under Section 302 of the IPC. He had been a juvenile, as under the Juvenile Justice (Care & Protection of Children) Act, 2000, on the day of the commission of the offence but, however, the protection of the Act had not been afforded to him.

Through the report of the Medical Board, it had been fully established that the appellant was between the age of 17 and 18 years on the date of the report which was dated some three months after the day of incident in question. Even the order of sentence recorded the age of the appellant as 17 years. The Court thus concluded that the appellant was liable to be granted the protection of the Juvenile Justice Act, 2000. As regards the course to be adopted as a sequel to such conclusion, this Court referred to the earlier decisions such as in the case of Bhola Bhagat (supra), Bhoop Ram (supra) etc. The Court observed in this regard:-

"4. Mr Sharan has cited various decisions but reference may be made only to the case of Bhola Bhagat v. State of Bihar since earlier decisions on the issue in question have been noticed therein. In Bhola Bhagat case referring to the decisions in the case of Gopinath Ghosh v. State of W.B., Bhoop Ram v. State of U.P. and Pradeep Kumar v. State of U.P. this Court came to the conclusion that the accused who were juvenile could not be denied the benefit of the provisions of the Act then in force, namely, the Juvenile Justice Act, 1986.

5. The course this Court adopted in Gopinath Ghosh case as also in Bhola Bhagat case was to sustain the conviction but, at the same time, quash the sentence awarded to the convict. In the present case, at this distant time, the question of referring the appellant to the Juvenile Board does not arise. Following the aforesaid decisions, we would sustain the conviction of the appellant for the offences for which he has been found guilty by the Court of Session, as affirmed by the High Court, at the same time, however, the sentence awarded to the appellant is quashed and the appeal is allowed to this extent. Resultantly, the appellant is directed to be released forthwith if not required in any other case."

22. Similar course of action was taken in a recent decision of this Court in Vaneet Kumar Gupta alias Dharrninder (supra). Challenge in that appeal was mainly on the award of sentence of life imprisonment to the appellant and to determine whether adequate material had been available on record to hold that the appellant had not attained the age of 18 years on the date of commission of the offence. Upon an affidavit filed by the Deputy Superintendent of Police pursuant to inquiries made by him, it was reported that the age of the appellant as on the date of occurrence had been about 15 years. The inquiry report inspired confidence of the Court and the Court held that the appellant cannot be denied the benefits of the Juvenile Justice (Care & Protection of Children) Act, 2000. As regards the question of sentence, this Court observed:-

"12. The inquiry report, which inspires confidence, unquestionably establishes that as on the date of occurrence, the appellant was below the age of eighteen years; was thus, a "juvenile" in terms of the Juvenile Justice Act and cannot be denied the benefit of the provisions of the said Act. Therefore, having been found to have committed the aforementioned offence, for the purpose of sentencing, he has to be dealt with in accordance with the provisions contained in Section 15 thereof. As per clause (g) of subsection (1) of Section 15 of the Juvenile Justice Act, the maximum period for which the appellant could be sent to a special home is a period of three years. 13. Under the given circumstances, the question is what relief should be granted to the appellant at

this juncture. Indisputably, the appellant has been in prison for the last many years and, therefore, at this distant time, it will neither be desirable nor proper to refer him to the Juvenile Justice Board. Accordingly, we follow the course adopted in Bhola Bhagat v. State of Bihar; sustain the conviction of the appellant for the offence for which he has been found guilty by the Sessions Court, as affirmed by the High Court and at the same time quash the sentence awarded to him. 14. Resultantly, the appeal is partly allowed to the extent indicated above. We direct that the appellant shall be released forthwith, if not required in any other case."

23. Having regard to such a course adopted by this Court in the above reported decisions, and in the case on hand based on the report of the District and Sessions Judge, we are also convinced that the appellant was below 18 years of age on the date of commission of offence and the Juvenile Justice Act would apply in full force in his case also. While upholding the conviction imposed on the appellant, we set aside the sentence imposed on him and direct that he be released forthwith, if not required in any other case. The appeal is partly allowed to the extent indicated above.

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"Child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child........Neglecting the children means loss to the society as a whole. If children are deprived of their childhood - socially, economically, physically and mentally - the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. The founding fathers of the Constitution, therefore, have bestowed the importance of the role of the child in its best for development".

[2012] 3 Supreme 9/ [2012] 0 AIR (SC) 1608/ [2012] 5 SCC 201/ [2012] 3 BBCJ (SC) 93/ [2012] 1 NCC (SC) 833/ [2012] 77 AllCriC(SC) 654/ [2012] 3 BomCR(Cri)(SC) 345/ [2012] 2 CalCriLR 228/ [2012] 2 CCR(SC) 152/ [2012] 2 Crimes (SC) 113/ [2012] 0 CrLJ 2266/ [2012] 3 JCC 1747/ [2012] 4 JT 94/ [2012] 3 MLJ(Cri)(SC) 135/ [2012] 4 Scale 348

2012 (3) Supreme 9

SUPREME COURT OF INDIA

G.S. Singhvi & Gyan Sudha Misra, JJ.

OM PRAKASH ..Appellant
Versus
STATE OF RAJASTHAN & ANR. ..Respondents

CRIMINAL APPEAL NO . OF 2012
(Arising out of S.L.P.(Crl.) No. 2411/2011)
Decided on : 13-04-2012

Juvenile Justice (Care and Protection of Children) Act 2000- Section 49 -Prosecution of Respondent accused 2 along with one other for committing rape of a minor girl aged 13½ years- Application filed Respondent accused 2 stating that he being a juvenile offender may be sent to Juvenile Court for trial- Allowed-Revision Petition-Dismissed-Appeal-Held trial court as well as High Court while passing the impugned order could not arrive at any finding at all as to whether the accused was a major or minor on the date of the incident and yet gave the benefit of the principle of benevolent legislation to an accused whose plea of minority that he was below the age of 18 years itself was in doubt-Respondent No. 2 and his father failed to prove that Respondent No. 2 was a minor at the time of commission of offence and hence could not have been granted the benefit of the Juvenile Justice Act which undoubtedly is a benevolent legislation but cannot be allowed to be availed of by an accused who has taken the plea of juvenility merely as an effort to hide his real age so as to create a doubt in the mind of the courts –Impugned judgment and order passed by High Court as also the courts below set aside- Appeal allowed (Paras 20 to 26)

Protection under the Juvenile Justice Act–Entitlement to-If there is a clear and unamblguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled for this special protection under the Juvenile Justice Act- But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenily or not cannot be permitted-Under such circumstance, the medical evidence based on scientific investigation will have to be given due weight and precendence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused (Para 18)

Benefit of Juvenile Justice Act-Entitlement to -The benefit of benevolent legislation under the Juvenile Justice Act obviously will offer protection to a genuine child accused/ juvenile who does not put the court into any dilemma as to whether he is a juvenile or not by adducing evidence in support of his plea of minority but in absence of the same, reliance placed merely on shaky evidence like the school admission register which is

not proved or oral evidence based on conjecutive leading to further ambiguity, cannot be relied upon in preference to the medical evidence for assessing the age of the accused (Para 23)

Facts of the Case :

The questions which arose for consideration in present appeal were :-

(i) whether the respondent/accused herein who is alleged to have committed an offence of rape under Section 376 IPC and other allied sections along with a co-accused who already stands convicted for the offence under Section 376 IPC, can be allowed to avail the benefit of protection to a juvenile in order to refer him for trial to a juvenile court under the Juvenile Justice (Care and Protection of Children) Act, 2000 althougjh the trial court and the High Court could not record a conclusive finding of fact that the respondent-accused was below the age of 18 years on the date of the incident ?

(ii) whether the principle and benefit of 'benevolent legislation' relating to Juvenile Justice Act could be applied in cases where two views regarding determination of the age of child/accused was possible and the so-called child could not be held to be a juvenile on the basis of evidence adduced ?

(iii) whether medical evidence and other attending circumstances would be of any value and assistance while determining the age of a juvenile, if the academic record certificates do not conclusively prove the age of the accused ?

(iv) whether reliance should be placed on medical evidence if the certificates relating to academic records is deliberately with held in order to conceal the age of the accused and authenticity of the medical evidence regarding the age is under challenge ?

Findings of the Court :

A. Respondent No. 2 Vijay Kumar and his father have failed to prove that Respondent No. 2 was a minor at the time of commission of offence and hence could not have been granted the beneft of the Juvenile Justice Act which undoubtedly is a benevolent legislation but cannot be allowed to be availed of by an accused who has taken the plea of juvenility merely as an effort to hide his real age so as to create a doubt in the mind of the courts below who thought it appropriate to grant him the benefit of a juvenily merely by adopting the principle of benevolent legislation but missing its vital implication that although the Juvenile Justice Act by itself is a piece of benevolent legislation, the protection under the same cannot be made available to an accused whoin fact is not a juvenily but seeks shelter merely by using it as a protective umbrella or statutory shield.

B. Juvenile Justice Act which is certainly meant to treat a child accused with care and sensitivity offering him a chance to reform and settle into the mainstream of society, the same cannot be allowed to be used as a ploy to dupe the course of justice while conducting trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and hence cannot be encouraged. The Court held just and appropriate to set aside the judgment and order passed by the High Court as also the courts below. Appeal was allowed.

Case Referred :

Case Referred :

Ramdeo Chauhan @ Raj Nath vs. State of Assam, reported in (2001) 5 SCC 714, Referred. (Para 22)

JUDGEMENT

GYAN SUDHA MISRA , J . — The Judgment and order dated 19.08.2010 passed by the High Court of Rajasthan at Jodhpur in SBCRR No.597 of 2009 is under challenge in this appeal at the instance of the appellant Om Prakash who is a hapless father of an innocent girl of 13 ½ years who was subjected to rape by the alleged accused-Respondent No.2 Vijay Kumar @ Bhanwroo who has been allowed to avail the benefit of protection under Juvenile Justice (Care and Protection of Children) Act 2000, although the courts below could not record a finding that he, in fact, was a juvenile since he had not attained the age of 18 years on the date of incident. Hence this Special Leave Petition in which leave has been granted after condoning the delay.

2. Thus the questions inter alia which require consideration in this appeal are:-

(i) whether the respondent/accused herein who is alleged to have committed an offence of rape under Section 376 IPC and other allied sections along with a co-accused who already stands convicted for the offence under Section 376 IPC, can be allowed to avail the benefit of protection to a juvenile in order to refer him for trial to a juvenile court under the Juvenile Justice (Care and Protection of Children) Act, 2000 (shortly referred to as the 'Juvenile Justice Act') although the trial court and the High Court could not record a conclusive finding of fact that the respondent-accused was below the age of 18 years on the date of the incident?

(ii) whether the principle and benefit of 'benevolent legislation' relating to Juvenile Justice Act could be applied in cases where two views regarding determination of the age of child/accusedwas possible and the so-called child could not be held to be a juvenile on the basis of evidence adduced?

(iii) whether medical evidence and other attending circumstances would be of any value and assistance while determining the age of a juvenile, if the academic record certificates do not conclusively prove the age of the accused ?

(iv) whether reliance should be placed on medical evidence if the certificates relating to academic records is deliberately with held in order to conceal the age of the accused and authenticity of the medical evidence regarding the age is under challenge?

3. Juvenile Justice Act was enacted with a laudable object of providing a separate forum or a special court for holding trial of children/juvenile by the juvenile court as it was felt that children become delinquent by force of circumstance and not by choice and hence they need to be treated with care and sensitivity while dealing and trying cases involving criminal offence. But when an accused is alleged to have committed a heinous offence like rape and murder or any other grave offence when he ceased to be a child on attaining the age of 18 years, but seeks protection of the Juvenile Justice Act under the ostensible plea ofbeing a minor, should such an accused be allowed to be tried by a juvenile court or should he be referred to a competent court of criminal jurisdiction where the trial of other adult persons are held.

4. The questions referred to hereinbefore arise in this appeal under the facts and circumstances emerging from the materials on record which disclose that the appellant/complainant lodged a written report on 23.5.2007 at about 1.00 p.m. that his daughter Sandhya aged about 13 1/2 years a student of class IX at Secondary School Ghewada was called from the school by the accused Bhanwaru @ Vijay Kumar, son of Joga Ram through her friend named Neetu on 23.2.2007 at about 1.00 p.m. in the afternoon. Neetu told Sandhya that Bhanwroo was in the Bolero vehicle near the bus stand. Sandhya left the school after taking permission from the school authorities and when she reached near the bus stand she did not find the Bolero vehicle. She therefore, made a telephonic call to Bhanwru who told her that he was standing at Tiwri Road ahead of bus stand. She then noticed the Bolero vehicle on Tiwri Road, but she did not find Neetu and when she enquired about Neetu, the accused Bhanwroo @ Vijay Kumar son of Joga Ram misguided her and told her that Neetu had got down to go to the toilet after which she was made to sit in the vehicle which was forcibly driven towards Tiwri and after a distance of 3-4 Km., a person named Subhash Bishnoi was also made to sit in the vehicle. The vehicle was then taken to a lonely place off the road where heinous physical assault of rape was committed on her by Bhanwroo @ Vijay Kumar and Subhash Bishnoi. Since the victim girl/the petitioner's daughter resisted and opposed, she was beaten as a result of which she sustained injuries on her thigh, hand and back. She was then taken towards the village Chandaliya and she was again subjected to rape. Bhanwru then received a phone call after which Bhanwru and Subhash dropped her near the village Ghewada but threatened her that in case she disclosed about this event to anyone, she will be killed. Sandhya, therefore, did not mention about this incident to anyone in the school but on reaching home, she disclosed it to her mother i.e. the appellant's/complainant's wife who in turn narrated it to the appellant when he came back to village from Jodhpur on 24.2.2007. The appellant could not take an immediate decision keeping in view the consequences of the incident and called his brother Piyush from Jodhpur and then lodged a report with the P.S. Osian on the basis of which a case was registered under Section 365, 323 and 376 IPC bearing C.R.No. 40/2007 dated 25.2.2007. In course of the investigation, the accused Bhanwru @ Vijay Kumar was arrested and in the arrest memo his name was mentioned as Vijay Kumar @ Bhanwar Lal son of Joga Ram and his age has been mentioned as 19 years. After completion of the investigation, it was found that the offences under Sections 363, 366, 323 and 376 (2) (g) IPC were made out against the accused Vijay Kumar @ Bhanwar Lal, son of Joga Ram Jat aged 19 years, Subhash son of Bagaram Bishnoi aged 20 years and against Smt. Mukesh Kanwar @ Mugli @ Neetu aged 27 years and hence charge sheet was submitted before the Judicial Magistrate, Osian. Vijay Kumar @ Bhanwar Lal and Subhash were taken in judicial custody.

5. An application thereafter was moved on behalf of the accused Vijay Kumar @ Bhanwar Lal before the Judicial Magistrate, Osian stating that he was a juvenile offender and, therefore, he may be sent to the Juvenile Court for trial.

6. Arguments were heard on the aforesaid application by the concerned learned magistrate on 29.3.2007 and the learned magistrate allowed the application by his order dated 29.3.2007, although the Public Prosecutor contested this application relying upon the police investigation and the medical report wherein the age of the accused was recorded as 19 years. In the application, the stand taken on behalf of Vijay Kumar was

that in the school records, his date of birth was 30.6.1990.

7. However, contents of this application clearly reveal that no dispute was raised in the application on behalf of Vijay Kumar that the name of the accused Vijay Kumar was only Vijay Kumar and not @ Bhanwar Lal. It was also not urged that the name of accused Vijay Kumar has been wrongly mentioned in the police papers as Vijay Kumar @ Bhanwar Lal nor in course of investigation it was evaer stated that the case was wrongly registered in the name of accused Vijay Kumar @ Bhanwar Lal. Without even raising this dispute, the academic record of Vijay Kumar @ Bhanwar Lal was produced whereas according to the complainant the factual position is that the name of the accused was Bhanwar Lal which was recorded in the Government Secondary School Jeloo Gagadi (Osian) when he entered the school on 18.12.1993 and again on 22.4.1996 his name was entered in the school register wherein his date of birth was recorded as 12.12.1988

8. The complainant contested the age of the accused Vijay Kumar and it was submitted that the accused Vijay Kumar had been admitted in the 2nd Standard in some private school known as Hari Om Shiksham Sansthan in Jeloo Gagadi (Osian) with a changed name as Vijay Kumar and there the date of birth was mentioned as 30.6.1990 which was reflected in the subsequent academic records and on that basis the admission card in the name of Vijay Kumar with date of birth as 30.6.1990 was mentioned in the application for treating him as a juvenile.

9. The case then came up before the Additional Sessions Judge (Fast Tract No.I) Jodhpur as Sessions Case No. 151/2007 on 3.10.2007. Shri Joga Ram, the father of the accused moved an application under Section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000 stating that the date of birth of his son was 30.6.1990 in his school administration record and, therefore, on the date of incident i.e. 23.02.2007, he was less than 18 years. In this application form dated 3.10.2007, Joga Ram, father of the accused Vijay Kumar had himself stated at three places i.e. title, para in the beginning and in the first part describing the name of his son (accused) as Vijay Kumar @ Bhanwar Lal stating that his son was born on 30.6.1990 at his house and he was first admitted in the school named Hari Om Shikshan Sansthan, Jeloo Gagadi, Osian on 1.9.1997 in 2nd standard and his son studied in this school from 1.9.1997 to 15.7.2007 from 2nd standard and the transfer certificate dated 4.7.2007 was enclosed. The said application form had been signed by Joga Ram as father of the accused Vijay Kumar on which the signature of the headmaster along with the seal was also there. In transfer certificate the date of birth of the accused was also stated along with some other facts in order to assert that Vijay Kumar was less than 18 years of age on the date of the incident. But he had nowhere stated that he had another son named Bhanwru who had died in 1995 and whose date of birth was 12.12.1988. He attempted to establish that the accused Vijay Kumar is the younger son of Joga Ram and the elder son Bhanwru had died in the year 1995 andit was he whose date of birth was 1988. He thus asserted that Vijay Kumar in fact was born in the year 1990 and his name was not Bhanwru but only Vijay Kumar. This part of the story was set up by the father of the accused Joga Ram at a later stage when the evidence was adduced.

10. The application filed on behalf of the accused Vijay Kumar was contested by the complainant and both the parties led evidence in support of their respective plea. The

specific case of the complainant was that Bhanwru Lal and Vijay Kumar in fact are one and the same person and Joga Ram has cooked up a story that he had another son named Bhanwar Lal whose date of birth was 12.12.1988 and who later expired in 1995. The complainant stated that as per the version of the father of the accused if the deceased's son Bhanwar Lal continued in the school up to 24.2.1996, the same was impossible as he is stated to have expired in 1995 itself. According to the complainant Vijay Kumar and Bhanwar Lal are the names of the same person who committed the offence of rape in the year 2007 and the defence taken by the accused was a concocted story merely to take undue advantage of the Juvenile Justice Act.

11. After taking into consideration the oral and documentary evidence, the Sessions Court categorically concluded that in this case no definite clear and conclusive view is possible keeping in view the evidence which has come on record with regard to the age of the accused and both the views are clearly established and, therefore, the view which is in favour of the accused is taken and the accused is held to be a juvenile. The accused Vijay Kumar was accordingly declared to be a juvenile and was directed to be sent to the Juvenile Justice Board for trial. This order was passed by the Additional Sessions Judge (Fast Tract No.1) Jodhpur on 16.5.2009 in Sessions Case No. 151/2007.

12. The complainant-appellant thereafter assailed the order of the Additional Sessions Judge holding the respondent Vijay Kumar as a juvenile by filing a revision petition before the High Court. The learned Judge hearing the revision observed that a lot of contradictory evidence with regard to the age and identity of Vijay Kumar @ Bhanwru has emerged and a lot of confusion has been created with regard to the date of birth of accused Vijay Kumar @ Bhanwroo. But the learned single Judge was pleased to hold that the Additional Sessions Judge had appreciated the evidence in the right perspective and he is not found to have erred in declaring respondent No.2 Vijay Kumar @ Bhanwru to be a juvenile offender. He has, therefore, rightly been referred to the Juvenile Justice Board for trial which warrants no interference. The learned single Judge consequently dismissed the revision petition against which the complainant filed this special leave petition (Crl.) No. 2411/2011 which after grant of leave has given rise to this appeal.

13. Assailing the orders of the courts below, learned counsel for the appellant has essentially advanced twofold submissions in course of the hearing. He had initially submitted that Vijay Kumar alias Bhanwar Lal, son of Joga Ram is the same person and Vijay Kumar is the changed name of Bhanwar Lal whose correct date of birth is 12.12.1988 and not 30.6.1990 as stated by Joga Ram, father of the accused. Hence, Vijay Kumar @ Bhanwar Lal was not a juvenile on the date of commission of the offence.

14. In order to substantiate this plea, learned counsel for the appellant submitted that in the application which was moved by Joga Ram, father of the accused, before the Additional Sessions Judge under Section 49 of the Juvenile Justice Act, he has nowhere mentioned that he had two sons named Vijay Kumar and Bhanwar Lal and that Bhanwar Lal had died in 1995 whose date of birth was 12.12.1988 and his other son Vijay Kumar's date of birth was 30.6.1990. In fact, he himself had mentioned his son's name as Vijay Kumar @ Bhanwru at more than one place in the application and later has planted a story that he had two sonce viz., Bhanwar Lal and Vijay Kumar, and BhanwarLal whose date of birth was 12.12.1988 had already died in the year 1995.

15. Learned counsel for the appellant further contended that the benefit of the principle of benevolent legislation conferred on the Juvenile Justice Act, cannot be applied in the present case as the courts below -specially the court of fact which is the Additional Sessions Judge (Fast Track No.1) Jodhpur did not record a categorical finding with regard to the date of birth of the respondentaccused and the aforesaid principle can be applied only to a case where the accused is clearly held to be a juvenile so as to be sent for trial by the juvenile court or to claim any other benefit by the alleged juvenile accused. Counsel for the Appellant has relied upon the evidence of NAW-3 -Medical Jurist, who conducted ossification test of the accused and opined before the court that the accused was 19 years of age and statement of NAW-1 Assistant Professor in Radiology who opined before the court on 23.11.2007 that on the basis of the x-ray films, age of the accused is above 18 years and below 20 years.

16. Learned counsel for the accused-respondent on his part contended that medical opinion could be sought only when matriculation or equivalent certificate or date of birth certificate from the school was not available and since in the present case the admission certificate of the accused from the school record is available which states the date of birth to be 30.6.1990, the school certificate ought to be allowed to prevail upon the medical opinion.

17. We are unable to appreciate and accept the aforesaid contention of learned counsel for the respondent since the age of the accused could not be proved merely on the basis of the school record as the courts below in spite of its scrutiny could not record a finding of fact that the accused, in fact, was a minor on the date of the incident. Hence, in a situation when the school record itself is not free from ambiguity and conclusively prove the minority of the accused, medical opinion cannot be allowed to be overlooked or treated to be of no consequence. In this context the statement of NAW-3 Dr. Jagdish Jugtawat, the medical jurist who conducted the ossification test of the accused and opined before the court that the accused was 19 years of age is of significance since it specifically states that the accused was not a juvenile on the date of commission of the offence. The statement of NAW-1 Dr. C.R. Agarwal, Asstt. Professor in Radiology also cannot be overlooked since he opined that on the basis of x-ray films, the age of the accused is above 18 years and below 20 years. Thus, in a circumstance where the trial court itself could not arrive at a conclusive finding regarding the age of the accused, the opinion of the medical experts based on xray and ossification test will have to be given precedence over the shaky evidence based on school records and a plea of circumstantial inference based on a story set up by the father of the accused which prima facie is a cock and bull story.

18. It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled for this special protection under the Juvenile Justice Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice. Hence, while the

courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. Under such circumstance, the medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. The matter however would stand on a different footing if the academic certificates ad school records are alleged to have been with held deliberately with ulterior motive and authenticity of the medical evidence is under challenge by the prosecution.

19. In the instant matter, the accused Vijay Kumar is alleged to have committed a crime which repels against moral conscience as he chose a girl of 13 and a half years to satisfy his lust by hatching a plot with the assistance of his accomplice Subhash who already stands convicted and thereafter the accused has attempted to seek protection under the plea that he committed such an act due to his innocence without understanding its implication in which his father Joga Ram is clearly assisting by attempting to rope in a story that he was a minor on the date of the incident which is not based on conclusive evidence worthy of credence but is based on a confused story as also shaky and fragile nature of evidence which hardly inspires confidence. It is hard to ignore that when the Additional Sessions Judge in spite of meticulous scrutiny of oral and documentary evidence could not arrive at a conclusive finding that he was clearly a juvenile below the age of 18 years on the date of incident, then by what logic and reasoning he should get the benefit of the theory of benevolent legislation on the foothold of Juvenile Justice Act is difficult to comprehend as it clearly results in erroneous application of this principle and thus we find sufficient force in the contention of learned counsel for the appellant that the benefit of the principle of benevolent legislation can be made applicable in favour of only those delinquents who undoubtedly have been held to be a juvenile which leaves no scope for speculation about the age of the alleged accused.

20. We therefore cannot overlook that the trial court as well as the High Court while passing the impugned order could not arrive at any finding at all as to whether the accused was a major or minor on the date of the incident and yet gave the benefit of the principle of benevolent legislation to an accused whose plea of minority that he was below the age of 18 years itself was in doubt. In such situation, the scales of justice is required to be put on an even keel by insisting for a reliable and cogent proof in support of the plea of juvenility specially when the victim was also a minor.

21. The benefit of the principle of benevolent legislation attached to Juvenile Justice Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodege or dupe the arms of law, cannot be allowed to come to his rescue. Hence if the plea of juvenility or the fact that he had not attained the age of discretion so as to understand the consequence of his

heinous act is not free from ambiguity or doubt, the said plea cannot be allowed to be raised merely on doubtful school admission record and in the event it is doubtful, the medical evidence will have to be given due weightage while determining the age of the accused.

22. Adverting to the facts of this case we have noticed that the trial court in spite of the evidence led on behalf of the accused, was itself not satisfied that the accused was a juvenile as none of the school records relied upon by the respondent-accused could be held to be free from doubt so as to form a logical and legal basis for the purpose of deciding the correct date of birth of the accused indicating that the accused was a minor/juvenile on the date of the incident. This Court in several decisions including the case of Ramdeo Chauhan @ Raj Nath vs. State of Assam, reported in (2001) 5 SCC 714dealing with a similar circumstance had observed which adds weight and strength to what we have stated which is quoted herein as follows :-

    "it is clear that the petitioner neither was a child nor near about the age of being a child within the meaning of the Juvenile Justice Act or the Children Act. He is proved to be a major at the time of the commission of the offence. No doubt, much less a reasonable doubt is created in the mind of the court, for the accused entitling him to the benefit of a lesser punishment, it is true that the accused tried to create a smoke screen with respect to his age. But such effort appear to have been made only to hide his real age and not to create any doubt in the mind of the court. The judicial system cannot be allowed to be taken to ransom by having resort to imaginative and concocted grounds by taking advantage of loose sentences appearing in the evidence of some of the witnesses particularly at the stage of special leave petition. The law insists on finality of judgments and is more concerned with the strengthening of the judicial system. The courts are enjoined upon to perform their duties with the object of strengthening the confidence of the common man in the institution entrusted with the administration of justice. Any effort which weakens the system and shakes the faith of the common man in the justice dispensation system has to be discouraged."

    The above noted observations no doubt were recorded by the learned Judges of this Court while considering the imposition of death sentence on the accused who claimed to be a juvenile, nevertheless the views expressed therein clearly lends weight for resolving an issue where the court is not in a position to clearly draw an inference wherein an attempt is made by the accused or his guardian claiming benefit available to a juvenile which may be an effort to extract sympathy and impress upon the Court for a lenient treatment towards the so-called juvenile accused who, in fact was a major on the date of incident.

23. However, we reiterate that we may not be misunderstood so as to infer that even if an accused is clearly below the age of 18 years on the date of commission of offence, should not be granted protection or treatment available to a juvenile under the Juvenile Justice Act if a dispute regarding his age had been raised but was finally resolved on scrutiny of evidence. What is meant to be emphasized is that where the courts cannot clearly infer in spite of available evidence on record that the accused is a juvenile or the said plea appear to have been raised merely to create a mist or a smokescreen so as to hide his real age in order to shield the accused on the plea of his minority, the attempt cannot be allowed to succeed so as to subvert or dupe the cause of justice. Drawing

parallel between the plea of minority and the plea of alibi, it may be worthwhile to state that it is not uncommon to come across criminal cases wherein an accused makes an effort to take shelter under the plea of alibi which has to be raised at the first instance but has to be subjected to strict proof of evidence by the court trying the offence and cannot be allowed lightly in spite of lack of evidence merely with the aid of salutary principle that an innocent man may not have to suffer injustice by recording an order of conviction in spite of his plea of alibi. Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him. The benefit of benevolent legislation under the Juvenile Justice Act obviously will offer protection to a genuine child accused/juvenile who does not put the court into any dilemma as to whether he is a juvenile or not by adducing evidence in support of his plea of minority but in absence of the same, reliance placed merely on shaky evidence like the school admission register which is not proved or oral evidence based on conjectures leading to further ambiguity, cannot be relied upon in preference to the medical evidence for assessing the age of the accused.

24. While considering the relevance and value of the medical evidence, the doctor's estimation of age although is not a sturdy substance for proof as it is only an opinion, such opinion based on scientific medical test like ossification and radiological examination will have to be treated as a strong evidence having corroborative value while determining the age of the alleged juvenile accused. In the case of Ramdeo Chauhan Vs. State of Assam (supra), the learned judges have added an insight for determination of this issue when it recorded as follows:-

"Of course the doctor's estimate of age is not a sturdy substitute for proof as it is only his opinion. But such opinion of an expert cannot be sidelined in the realm where the Court gropes in the dark to find out what would possibly have been the age of a citizen for the purpose of affording him a constitutional protection. In the absence o f al l other acceptable material , if such opinion points to a reasonable possibility regarding the range o f his age , it has certainly to be considered."

The situation, however, would be different if the academic records are alleged to have been with held deliberately to hide the age of the alleged juvenile and the authenticity of the medical evidence is under challenge at the instance of the prosecution. In that event, whether the medical evidence should be relied upon or not will obviously depend on the value of the evidence led by the contesting parties.

25. In view of the aforesaid discussion and analysis based on the prevailing facts and circumstances of the case, we are of the view that the Respondent No.2 Vijay Kumar and his father have failed to prove that Respondent No.2 was a minor at the time of commission of offence and hence could not have been granted the benefit of the

Juvenile Justice Act which undoubtedly is a benevolent legislation but cannot be allowed to be availed of by an accused who has taken the plea of juvenility merely as an effort to hide his real age so as to create a doubt in the mind of the courts below who thought it appropriate to grant him the benefit of a juvenile merely by adopting the principle of benevolent legislation but missing its vital implication that although the Juvenile Justice Act by itself is a piece of benevolent legislation, the protection under the same cannot be made available to an accused who in fact is not a juvenile but seeks shelter merely by using it as a protective umbrella or statutory shield. We are under constraint to observe that this will have to be discouraged if the evidence and other materials on record fail to prove that the accused was a juvenile at the time of commission of the offence. Juvenile Justice Act which is certainly meant to treat a child accused with care and sensitivity offering him a chance to reform and settle into the mainstream of society, the same cannot be allowed to be used as a ploy to dupe the course of justice while conducting trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and hence cannot be encouraged.

26. We therefore deem it just and appropriate to set aside the judgment and order passed by the High Court as also the courts below and thus allow this appeal. Consequently, the accused Vijay Kumar, S/o Joga Ram shall be sent for trial before the court of competent jurisdiction wherein the trial is pending and not to the Juvenile Court as pleaded by him. We order accordingly.

…..…………………….J

(G.S. Singhvi)

………………………….J

(Gyan Sudha Misra)

New Delhi,

April 13, 2012

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SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 473 of 2005

Sampurna Behrua ...Petitioner(s)
Versus
Union of India & Ors. ...Respondent(s)

(With appln(s) for interim directions, exemption from filing O.T. permission to file additional documents and office report)

Date : 19/08/2011 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V, RAVEENDRAN

HON'BLE MR. JUSTICE A.K. PATNAIK

UPON hearing counsel the Court made the following

ORDER

We have heard Ms. Indu Malhotra, learned Senior Counsel for NALSA. One of the suggestions made by the National Legal Services Authority is that the Juvenile Justice Boards (JJB) should ensure that the juveniles in conflict with law are provided effective legal aid. It is stated that on account of non-availability of adequate trained and committed legal aid counsel, the Juvenile Justice Boards are not in a position to ensure immediate and effective legal ajid to the juveniles. The National Legal Services Authority (NALSA) has stated that through the State Legal Services Authorities and District Legal Services Authorities, efforts will be made to make available the legal and counsel for providing legal aid to the juveniles in conflict with law. In view of the above, we direct that all Juvenile Justice Boards should ensure that juveniles in conflict with law, who are brought before them, are provided immediate legal aid and if there is any difficulty to direct or instruct, the respective District Legal Services Authority to provide such legal aid. Another suggestion is that Juvenile Justice Boards should call for a social investigation report to be conducted by the Probation Officer as provided by Section 15 (2) of the Juvenile Justice (Care & Protection of Children) Act, 2000 read with Section 11 (1) (c) of the Rules. It is submitted that though calling for such a report is mandatory, many of the Juvenile Justice Boards are not calling for such reports. We direct that the Juvenile Justice Boards should follow Section 15(2) by calling for social investigation report. For this purpose wherever, the Probation Officers are not already appointed and attached to the Juvenile Justice Boards, the State Government should take steps to ensure that the Probation Officers are appointed.

There is considerable confusion and uncertainty the statistics relating to number of juveniles in conflict with law in each District, the nature of offences they are accused ofr the period which they have spent in detention and the other particulars. In the absence of such particulars, it has not been possible to effectively plan and put in place a scheme for providing legal aid or providing Special Homes, Observation Homes, Places of Safety and Shelter Homes etc. It would be appropriate if the State Legal Services Authorities could collect the necessary information in the necessary format, through the District Legal Services Authorities so that the State Legal Services Authorities can also take necessary steps for implementation of the provisions of the Act. NALSA may make available to this Court,

the above particulars for issuing further directions. We request the National Legal Services Authority to obtain the necessary information in the suggested format.

Various reports have been submitted by the State Government stating that Juvenile Justice Boards and Child Welfare Committees have been established in every district. But there are compliants that in many districts, the Child Welfare Committees are not operational or functional and even the Juvenile Justice Boards are not constituted in the manner provided for under the Act. Therefore, we request the State Legal Services Authorities to co-ordinate with the respective Child Welfare Department of the respective states to ensure that the Juvenile Justice Boards and Child Welfare Committees are established and function with the facilities.

Mr. Colin Gohsalves, learned senior counsel stated that in many palaces juveniles in conflict with law who are produced before the Juvenile Justice Boards do not get adequate or appropriate timely legal aid and assistance. In these circumstances the NALSA may examine and try to put in place a Legal Aid Centre attached to the Juvenile Justice Board in the State capitals where there is a high pendency.

As considerable co-ordination is required, the Executive Chairmen and Member Secretaries of the State Legal Services Authorities may arrange for periodic supervision and visits to ascertain the functioning of the Children Homes, Observation Homes etc.

List after three weeks.

(O.P. Sharma)	**(M.S. Negi)**
Court Master	**Court Master**

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IN THE HIGH COURT OF JHARKHAND AT RANCHI.

W.P. (PIL) No. 139 of 2011

Bachpan Bachao Andolan ...Petitioner
-V e r s u s-
The State of Jharkhand & others ...Respondents.

CORAM: - HON'BLE MR. JUSTICE D. N. PATEL.
HON'BLE MR. JUSTICE P.P. BHATT.

For the Petitioner :- M/s Jagjit Singh Chhabra & A.K. Tiwari, Advocates.

For the Respondents:- Mr. Jai Prakash, A.A.G.

22/Dated: 17th December, 2013

Per D.N. Patel, J.

1. Counsel appearing for the petitioner has argued out the case at length, provided brief synopsis of this petition and pointed out various suggestions about every prayer. Certain case-laws have also been referred and the reports given by the United Nations' Office on drugs and crimes have also been tendered and particular chapter about the Jharkhand State has also been pointed out to this Court, giving details about human trafficking. It is submitted by the counsel for the petitioner that in the State of Jharkhand, not a single shelter home is functioning and only two children homes are operational- one at Jamshedpur for boys and another at Deoghar for girls. Several children, who are victim of the human trafficking, are brought to the State of Jharkhand and where to keep these children, is a problem for the whole State and therefore, though the State is getting sizable amount of grant from the Central Government agencies, the homes are not being properly constructed in adequate numbers. There are various types of homes to be constructed by the State under the Juvenile Justice Act, 2000. Under various sections of this Act, the duties have been pointed out and many more things are also required to be pointed out in the synopsis given by the counsel appearing for the petitioner.
2. Counsel for the State-AAG is seeking time to file affidavit of the Secretary of the relevant Department. It is submitted by the learned AAG that it is true that some amount has been received from the Central Government for construction of the homes and the future action plan for the construction of different types of homes will be presented before this Court.
3. We, therefore, direct the State respondents to point out at least following facts on or before the next date of hearing on oath by the affidavit to be filed by the Secretary of the relevant Department :-
   (a) How much amount has been received by the State from the Central Government or such other agencies and for the purposes to execute functions under the Juvenile Justice Act, 2000 ?
   (b) What is the future action plan of the State for construction of various types of homes in the districts of the State of Jharkhand because already the State CID has declared ten districts of the State of Jharkhand as a "trafficking prone districts" and they are Gumla, Simdega, Khunti, East Singhbhum, West Singhbhum,

Pakur, Sahebganj, Giridih, Hazaribagh and Dhanbad. Though this State has been constituted on November, 2000 and this Juvenile Justice Act is also of the year 2000, only two children homes are functional-one for boys and another for girls. Every year, several girls and boys are rescued from different States and they are brought to the State of Jharkhand and there are no adequate homes for their care and protection and for their further development.

(c) Whether Child Welfare Committees (CWC) are getting their remuneration or not, because they are working under Section 29 of the Juvenile Justice Act, 2000? The State should have pointed out to the CWC where the meeting should be convened or at least some places may be allotted in every district for holding meeting; otherwise, this Court has seen for the district of Khunti. CWC members have filed a petition for getting their remuneration and the State is objecting for payment of remuneration.

(d) In the affidavit to be filed by the Secretary of the concerned Department, it shall be pointed out that how many Anti-human Trafficking Units are working in the State of Jharkhand set up by the State.There are two types of Anti-human Trafficking Units-one is set up by the Ministry of Home Affairs of the Central Government and another by the State of Jharkhand. Figure of Anti-human Trafficking Units will be pointed out to this Court and the constitution thereof because none of the counsel is knowing, who is working as Anti-human Trafficking Units.

(e) If any amount has been received by the State of Jharkhand under the Integrated Child Protection Scheme, same shall also be pointed out to this Court for setting up of Child Protection Units at various district levels.

(f) What is the constitution of the State Commission for protection of child rights? Whether this Commission has convened any meeting and has done so far any work or not? Said Commission is constituted under Section 17 of the Commission for Protection of Child Rights Act, 2005 and functions of the Commission have been referred under Section 13 to be read with Section 24 of the said Act, 2005.

(g) It shall also be pointed out by the State that how many children are staying in different types of homes within the State of Jharkhand, owned managed and operated by the State of Jharkhand from January, 2013 to December, 2013. These figures will be pointed out on oath.

(h) Whether these homes are having adequate facilities of male and female Doctors and whether sanitary and drinking water facilities are available or not?

(i) How much remuneration is being given to the CWC members by the State? Whether they have been paid from January, 2013 to December, 2013 or not and how much amount is paid to homes?

4. This affidavit shall be filed by the concerned Secretary/ Secretaries of the concerned Department on or before 20thth January, 2014.

5. This matter is adjourned to be listed on 20thth January, 2014.

(D.N. Patel, J)
(P.P. Bhatt, J.)

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (PIL) No. 139 of 2011

Bachpan Bachao Andolan ...Petitioner
Versus
The State of Jharkhand & ors. ...Respondents

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AMITAV K. GUPTA

For the Petitioner : Mr. Jagjit Singh Chhabra, Advocate

Mr. Amit Kumar Tiwari, Advocate

For the State : J.C. to A.G.

19/Dated: 25th September, 2013

Per D.N. Patel, A.C.J.:

1. Learned counsel for the petitioner submitted that in pursuance of the direction given by this Court dated 18th September, 2012, the State was directed to submit the Action Plan with respect to the protection and rehabilitation of children. Delhi Action Plan is at Page no. 55 to 127 (Annexure3). This Action Plan is in detail and, therefore, direction was given by this Court for preparation of the Action Plan by the State for the protection and rehabilitation of children.

2. Learned counsel appearing for the State submitted that some time may kindly be granted so that it will be pointed out to this Court whether the State has formulated any Action Plan or not or if they want to adopt the Action Plan of Delhi with some modification, it can also be redrafted or modified version can be placed before this Court.

3. It is a misfortune of the State that the persons, who have to take policy decision on the vital subject of the protection and rehabilitation of children, have not taken any decision about the Action Plan for the protection and rehabilitation of children. The draft is also ready, which is from page nos. 55 onwards. It appears that the Secretary, Social Welfare, Women and Child Development Department has to go through carefully the Action Plan of Delhi and if the State wants to adopt the same with some modification, it can be done with the help of the experts on this subject. It is a prime duty of the State to protect children. Time and again, children of the State are found from other State of the country. They were working even in their childhood or their youth is exploited in other State. When they are brought to the State, it is difficult for the children to keep them in the Shelter Home, because, there is not a single Shelter Home, so far constructed by the State. We, therefore, direct the Secretary, Social Welfare, Women and Child Development Department to file an affidavit on or before the next date of hearing about the Action Plan of the State for the protection of children. There is also

a statutory duty under the Juvenile Justice Act to construct various types of Homes within the State of Jharkhand.

4. The matter is adjourned to be listed on 22nd October, 2013.

(D.N. Patel, A.C.J.)

(Amitav K. Gupta, J.)

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 48 of 2013

Sanjay Kumar Mandal @ Sanjay Mandal ... Petitioner
Versus
The State of Jharkhand ... ... Opposite Party

CORAM : HON'BLE MR. JUSTICE H. C. MISHRA

For the Petitioner: M/s. Rajeeva Sharma, Sr. Advocate Miss Rita Kumari, Advocate

Mr. Manoj Kumar, Advocate

For the State: Mr. Hemant Kumar Shikarwar, A.P.P. --------

C.A.V. on 10.05.2013 Pronounced on 16.05.2013

H.C.Mishra,J. : Heard learned counsel for the petitioner as also learned counsel for the State.

2. The petitioner is aggrieved by the Judgment dated 29.11.2012 passed by the learned Sessions Judge, Sahibganj, in Criminal Appeal No. 78 of 2012, whereby the appeal filed against the order dated 27.8.2012, passed by the Juvenile Justice Board, Sahibganj, in G.R. No. 115 of 2004, E. No. 11 of 2012, has been dismissed by the Appellate Court below.

3. It may be stated that upon an application filed by the prosecution, the Juvenile Justice Board, which had earlier declared the petitioner to be a juvenile, held that the petitioner was not a juvenile and had returned the record back to the Court of the Sessions Judge, Sahibganj, for trial in accordance with law. The appeal filed against the said order was also dismissed by the Appellate Court below.

4. It appears from the impugned Judgment that the petitioner has been made accused in Borio (J) Police Station Case No. 43 of 2004, corresponding to G.R. No. 115 of 2004, for the offence under sections 302, 328/34 of the Indian Penal Code, in which the petitioner was facing the trial in Sessions Case No. 204 A of 2005. In the course of trial the petitioner raised the plea of juvenility and had produced a matriculation certificate in support of his claim. The matter was sent for enquiry before the Juvenile Justice Board, Sahibganj, where the petitioner produced his matriculation certificate issued by the Jharkhand Academic Council, Ranchi, for the annual examination of 2006, showing his date of birth to be 8.6.1990. The date of occurrence being 22.3.2004, the petitioner claimed to be a juvenile on the date of occurrence. Since the said certificate was issued after the date of occurrence, the Juvenile Justice Board did not place any reliance on the same and ordered for constituting a Medical Board for assessing the age of the petitioner.

   On the basis of the report of the Medical Board, the petitioner was declared to be a juvenile vide order dated 13.6.2008.

5. Subsequently, it was found by the prosecution that the petitioner had appeared in the matriculation examination in the year 2002 itself, and he had passed the same in 3rd Division. In his matriculation certificate issued by the Jharkhand Academic Council, Ranchi, for the annual examination of 2002, the date of birth of the petitioner was

mentioned as 25.9.1984, and he had already attained majority on the date of occurrence i.e., 22.3.2004. Accordingly, the enquiry was conducted by the Juvenile Justice Board in which the Juvenile Justice Board examined the Principal of the Eastern Railway High School, Sahibganj, from where the petitioner had appeared in the matriculation examination in the year 2002, as also the Principal of Adivashi High School, Mangrotiker, Borio, Sahibganj, from where he had appeared in the matriculation examination for the year 2006. The admission registers and the school leaving certificates issued by both these schools and the tabulation charts prepared by the Jharkhand Academic Council, Ranchi, in the years 2002 and 2006 were also proved and it was found by the Juvenile Justice Board that the petitioner had actually appeared in the matriculation examination in the year 2002 itself and had passed the same in 3 rd division and the matriculation certificate issued by the Jharkhand Academic Council in the year 2002 clearly showed his date of birth to be 25.9.1984.

6. The Juvenile Justice Board also took into consideration Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, which prescribes that the opinion of the Medical Board was to be sought only in case there was no matriculation or equivalent certificate available. The Juvenile Justice Board found that Rule 12 of the said Rules clearly gave priority to the matriculation certificate and the opinion of the Medical Board was to be sought for only in absence of any such certificate. The Juvenile Justice Board accordingly, taking into consideration the matriculation certificate issued by the Jharkhand Academic Council in the year 2002 held that the petitioner was not a juvenile on the date of occurrence. The appeal filed against the said order was also dismissed by the learned Appellate Court by the impugned Judgment dated 29.11.2012, in which the Appellate Court below also directed to take appropriate action and to lodge F.I.R. against the wrong doer.

7. Learned counsel for the petitioner has submitted that the impugned orders passed by the Courts below are absolutely illegal, in as much as, after the due enquiry the petitioner was held to be a juvenile by the Juvenile Justice Board. It is submitted by the learned counsel that the certificate issued by the Jharkhand Academic Council in the year 2006 fully corroborated the findings of the Medical Board, which also had opined that on the date of occurrence the petitioner was a juvenile and accordingly, the petitioner was held to be a juvenile. It is submitted that once the petitioner was held to be a juvenile on the basis of his assessment of the age by the Medical Board, there was no occasion for any further enquiry about the juvenility of the petitioner and accordingly, the impugned orders passed by the Courts below are absolutely illegal and the same cannot be sustained in the eyes of law.

8. It is further submitted by the learned counsel for the petitioner that the direction given by the Appellate Court below for lodging the F.I.R. against the wrongdoer is absolutely uncalled for and unwarranted. Learned counsel also submitted that such roving enquiry has been decried by the Supreme Court of India, in Ashwani Kumar Saxena vs. State of M.P., reported in 2013 (1) PLJR 156 (S.C.), wherein where, the certificate issued by the Board of Secondary Education, Madhya Pradesh, Bhopal and other documents and the witnesses examined on behalf of the juvenile, proved that the petitioner was a juvenile, but the Court made roving enquiry and also constituted a Medical Board for assessing the age of the petitioner, on the basis whereof it was held that the petitioner was not a

juvenile, the Supreme Court of India had decried the procedure adopted by the Courts below. Learned counsel has placed reliance on the following paragraphs of the said decision :- "34. "Age determination inquiry" contemplated under Section 7A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

35. Once the court, following the abovementioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-section (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the juvenility on its determination

36. Age determination inquiry contemplated under the J.J. Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination." (Emphasis supplied).

Placing reliance on this decision learned counsel has submitted that any further enquiry opposing the claim of juvenility is barred under Rule 12 (5) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, as also no roving enquiry into the juvenility of the petitioner was required to be done once the petitioner was held to be a juvenile after due enquiry by the Juvenile Justice Board. Learned counsel accordingly, submitted that the impugned judgment and order passed by the Appellate Court and the Juvenile Justice Board, respectively, cannot be sustained in the eyes of law.

9. Learned counsel for the State on the other hand had submitted that the petitioner had appeared in the matriculation examination in the year 2002 itself and the certificate issued by the Jharkhand Academic Council clearly showed the date of birth of the petitioner to be 25.9.1984 and as such the petitioner was not a juvenile on the date of occurrence, i.e., 22.3.2004. This certificate was clandestinely concealed by the petitioner

and not produced before the Court and actually he committed a fraud upon the Court by producing another certificate, which he had obtained after the occurrence, in order to claim juvenility, again appearing in the same examination in the year 2006 which he had already passed in the year 2002, deliberately showing his date of birth to be 8.6.1990 in order to claim juvenility. It is submitted that in view of the earlier matriculation certificate of the petitioner which was issued in the year 2002 itself, the opinion of the Medical Board was not at all required to be obtained in terms of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Learned counsel accordingly, submitted that in the backdrop of these facts the further enquiry was rightly conducted, which was not at all barred under the Juvenile Justice (Care and Protection of Children) Act, 2000 or the Rules of 2007 framed there under. Learned counsel for the State accordingly, submitted that there is no illegality in the impugned orders passed by the Courts below.

10. After having heard learned counsels for both the sides and upon going through the record, I find that the petitioner had appeared in the matriculation examination conducted by the Jharkhand Academic Council in the year 2002 itself in which the date of birth of the petitioner was mentioned as 25.9.1984. The date of occurrence being 22.3.2004, the petitioner was clearly not a juvenile on the said date. The petitioner clandestinely concealed the said certificate from the Court and in order to claim juvenility he again appeared in the matriculation examination in the year 2006 showing him to be minor on the date of occurrence.

11. The procedure to be followed for determining the age of the juvenile is laid down in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Rule 12(3) of the said Rules reads as follows:- "12 (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining- (a)

    (i) the matriculation or equivalent certificates, if available, and in the absence whereof;

    (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

    (iii) the birth certificate given by a corporation or a municipal authority or a Panchayat;

    (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by, considering his / her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

12. Thus a plain reading of Rule 12(3) clearly shows that the opinion of the Medical Board is to be sought only in absence of any matriculation or other such certificates detailed in the Rule. As such, in view of the fact that there was already a matriculation certificate showing the date of birth of the petitioner issued in the year 2002 itself, there was no requirement at all for constituting a Medical Board for getting the age of the petitioner determined. That action was taken by the Juvenile Justice Board only because the matriculation certificate issued in the year 2002 was clandestinely concealed by the petitioner and the petitioner had produced a matriculation certificate of the year 2006, which was issued after the date of occurrence, upon which no reliance was placed by the Juvenile Justice Board, and rightly so, and ordered for constituting a Medical Board for determining the age of the petitioner. Had the matriculation certificate of the year 2002 been produced before the Juvenile Justice Board, the said step would not have been taken by the Juvenile Justice Board. In that view of the matter the opinion of the Medical Board with respect to the age of the petitioner cannot be taken into consideration, as the same is absolutely non est in the eyes of law.

13. Now coming to the next question, whether the second enquiry was barred in the case, as claimed by the petitioner. Rule 12(5) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 reads as follows:- "12(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule."

    Thus, a plain reading of this Rule clearly shows that where a further enquiry or otherwise is required, the same can be done. Any such enquiry is barred only when it is not required in the eyes of law. The expression "enquiry in terms of section 7(A), section 64 of the Act and the Rules" is qualified by the words "inter alia", which clearly shows that the enquiry under section 7(A) and Section 64 of the Act, and the Rules are not exclusive, rather they are inclusive in nature, and if the Court feels that the further enquiry is required in a given case the said further enquiry can certainly be done and the same is not barred under sub-rule 5 of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. In the given situation of the present case where it was brought to the notice of the Juvenile Justice Board that the petitioner had committed fraud by withholding the earlier matriculation certificate issued in his favour in the year 2002 itself, the further enquiry was certainly required to be done and it was rightly conducted by the Juvenile Justice Board.

14. In Ashwani Kumar Saxena's case (supra), relied upon by the learned counsel for the petitioner, the Supreme Court has held that the Court has to obtain the matriculation certificate or other such certificates detailed in the Rules, if available, and only in absence of any matriculation or such certificates, the question of obtaining the medical opinion from a duly constituted Medical Board arises. In the said case the Court, in spite of the availability of these documents had not placed reliance on the same and had obtained the opinion of the Medical Board, which was decried by the Apex Court. That is not the situation in the present case. Rather, to the contrary, in the present case the matriculation certificate was available and that was clandestinely withheld by the

petitioner.

15. Learned counsel for the petitioner has also submitted that the father of the petitioner had died in childhood and the age of the petitioner might have been wrongly given by someone who had got the petitioner admitted in the school in his childhood. This submission of the learned counsel for the petitioner cannot be accepted and has been taken care of even in Ashwani Kumar Saxena's case (supra), as relied upon by the learned counsel for the petitioner, wherein it has been held as follows:-

"36. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, --------- .

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45. We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility."

16. In the backdrop of the aforementioned discussions, I find that in view the fact that the matriculation certificate of the petitioner was available showing his date of birth, there was no occasion for constituting the Medical Board for determining the age of the petitioner and this was done only because the matriculation certificate was clandestinely withheld and concealed by the petitioner. In that view of the matter the findings of the Medical Board are absolutely non est and cannot be taken into consideration. I also find that in the given case when there was a clear cut fraud played by the petitioner upon the Court, and the further enquiry was not at all barred under sub-rule 5 of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. In the given facts and circumstance, the Juvenile Justice Board has rightly entered into the fresh enquiry and has found the petitioner to be a major on the date of occurrence, on the basis of the matriculation certificate issued by the Jharkhand Academic Council in the year 2002 itself. I do not find any fault even in the order of the Appellate Court below, directing action against the wrong doers.

17. Accordingly, I do not find any illegality and / or irregularity in the impugned order passed by the Juvenile Justice Board, Sahibganj, or in the impugned Judgement passed by the Appellate Court below, worth interference in the revisional jurisdiction. There is no merit in this application, and the same is accordingly, dismissed.

(H.C.Mishra, J.)
Jharkhand High Court, Ranchi.
Dated the 16th of May, 2013.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No.254 of 2011

Bajrang Sahu @ Bajrang Kumar Sahu ..... Petitioner
Versus
The State of Jharkhand .... Opposite Party

CORAM : HON'BLE MR. JUSTICE H.C. MISHRA

For the Petitioner : Mr. Bibhash Sinha

For the State : A.P.P.

2/11.4.2013 Petitioner is aggrieved by the order dated 2.2.2013 passed by the learned Addl. Judicial Commissioner-VI, Ranchi, in S.T. No.3685 of 2012, whereby the application filed by the petitioner for declaring him to be juvenile, has been rejected by the Court below.

2. Petitioner has been made accused for the offence under Sections 302/201/34 of the Indian Penal Code in connection with Namkum P.S. Case No.100 of 2012, corresponding to G.R. No.2742 of 2012. The case relates to murder of the father of the petitioner, whose dead body was recovered from well and the petitioner, his mother, his brother and other co-accused were made accused in this case. It also appears from the impugned order that the bail applications of the petitioner were rejected by the Court of Session, as also by the High Court on merits. Thereafter the petitioner made application for declaring him to be a juvenile annexing therewith the transfer certificate issued by a school. The Court below appears to have disbelieved the said certificate, and dismissed the application of the petitioner taking into consideration the facts that the application was made at a belated stage and that in his confessional statement the petitioner had disclosed his age to be 19 years.

3. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal. It has been submitted that once the application was filed in the Court below for declaring the petitioner to be juvenile, the Court ought to have entered into an enquiry for determining the age of the petitioner and ought to have dispose of the application on its merits in terms of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Learned counsel accordingly, submitted that the impugned order cannot be sustained in the eyes of law.

4. Learned counsel for the State on the other hand has opposed the prayer, but has admitted that that the enquiry has not been conducted in terms of the said Rules.

5. In the aforementioned facts, I am of the considered view that the impugned order cannot be sustained in the eyes of law. Once the application was filed by the petitioner for declaring him to be juvenile, the Court below was required to enter into an enquiry for determining his age in accordance with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. This procedure has not been followed in this case.

6. In view of the aforementioned discussions, the impugned order dated 2.2.2013 passed by the learned Addl. Judicial Commissioner-VI, Ranchi, in S.T. No.3685 of 2012, is hereby, set-aside and the Court below is directed to enter into the enquiry whether the petitioner was a juvenile or not on the date of occurrence, in terms of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

7. This application is accordingly, allowed, with the directions as above.

(H. C. Mishra, J)

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[2013] 2 EastCrC 522/ [2013] 1JLJR 231

HIGH COURT OF JHARKHAND

H.C. MISHRA, J.

Sohan Bedia - Petitioner
Versus
State of Jharkhand - Opposite Party

Criminal Revision No. 799 of 2012

Decided On: 2.11.2012

Juvenile Justice (Care and Protection of Children) Rules, 2007-Rule 12-Determination of age---Benefit can be given to the child by considering his/her age in the lower side within the margin of one year-Order rejecting the application of petitioner to declare him juvenile set aside. (Paras 7 and 8)

ORDER

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner is aggrieved by the order dated 18.8.2012 passed by the learned Sessions Judge, Hazaribagh, in Criminal Appeal No. 99 of 2012, whereby the appeal filed by the petitioner against the order dated. 24.7.2012 passed by the learned Chief Judicial Magistrate, Hazaribagh, in G.R. No. 1663 of 2012 arising out of Ramgarh P.S. Case No. 138 of 2012, rejecting the application filed by the accused petitioner to declare him a juvenile, was dismissed by the learned Appellate Court below.

3. The petitioner has been made accused in Ramgarh P.S. Case No. 138 of 2012 corresponding to G.R. No. 1663 of 2012 for the offence under Section 395 of I.P.C. The petitioner filed his application before the Court below stating that he was a juvenile and accordingly, the Court of C.J.M. made an inquiry into the claim of the petitioner. It appears from the order dated 24.7.2012 passed by the learned C.J.M. that during inquiry the petitioner had produced his School Leaving Certificate wherein his date of birth was mentioned as 4.1.1995 and some witnesses were examined. The impugned order shows that for the reasons recorded in the order, the Court below did not place reliance upon the School Leaving Certificate is sued in favour of the petitioner. The reasons recorded by the learned C.J.M. for not placing reliance on the School Leaving Certificate are valid and cogent reasons.

4. It appears from the impugned order that thereafter Medical Board was constituted for ascertaining the age of the petitioner and the Medical Board submitted its report in the Court below on 21.7.2012, wherein the Medical Board had opined that the age of the petitioner was about 18 years as on 20.7.2012. The court below however stated that at the time of the remand, the age of the petitioner was assessed to be 20 years and accordingly, has rejected the application of the petitioner for declaring him a juvenile. The appeal filed against the said order was also dismissed by the Appellate Court below.

5. Learned counsel for the petitioner submitted that the impugned orders passed by the Courts below are absolutely illegal, inasmuch as, the procedure is prescribed for

ascertaining the age of a juvenile or a child in conflict with law in juvenile justice (Care and Protection of Children) Rules, 2007 {hereinafter referred to as the 'Rules'). Rule 12 of the said Rules clearly provides that in absence of any birth certificate from the school etc., the age of the juvenile in conflict with law has to be determined on the basis of the medical opinion of the duly constituted Medical Board which shall declare the age of the juvenile or the child and the same shall be the conclusive proof of the age as regards the juvenile in conflict with law. This rule also provides that if considered necessary, the benefit is to be given to the child by considering his/her age in the lower side, within the margin of one year. Learned counsel accordingly, submitted that the impugned order is absolutely illegal as the petitioner's age was found to be about 18 years by the duly constituted Medical Board as on 20.7.2012. The date of occurrence being 22.5.2012, the petitioner was certainly below the age of 18 years and as such, he had to be declared a juvenile.

6. The learned counsel for the State on the other .hand opposed the prayer and submitted that there is no illegality/irregularity in the impugned order.

7. After having heard learned counsel for both the sides and upon going through the record, I find force in the submission of learned counsel for the petitioner. The record clearly shows that the School Leaving Certificate produced by the petitioner was not relied upon by the Court below, and in my considered opinion, rightly so, in view of the discussions made in the impugned order. Accordingly, the Court sought the opinion of the Medical Board for ascertaining the age of the petitioner and according to the report of the Medical Board the petitioner was aged about 18 years as on 20.7.2012. Rule 12 of the Rules clearly provides that in the absence of any school certificate etc., the report of the Medical Board shall be the conclusive proof of the age of the juvenile. If the age of the petitioner is taken to be about 18 years as on 20.7.2012, he was certainly below the age of 18 years on 22.5.2012 and as such he had to be declared juvenile on the date of occurrence, i.e., on 22.5.2012. Indeed there is also the provision for giving the benefit to the child by considering his/her age in the lower side within the margin of one year. In my considered view the Courts below have erred in ignoring the finding of the Medical Board in view of the age of the petitioner assessed at the time of his remand. As such, the orders passed by the Courts below suffer from legal infirmity and the same cannot be sustained in the eyes of law.

8. In view of the discussions made above, the impugned order dated 24.7.2012 passed by the learned C.j.M., Hazaribagh, in G.R. No. 1663 of 2012 arising out of Ramgarh P.S. Case No. 138 of 2012, as also the order dated 18.8.2012 passed by the learned Sessions Judge, Hazaribagh, in Criminal Appeal No. 99 of 2012 are hereby, set aside. The Court below is directed to pass the order afresh in accordance with law as discussed above.

   This application is accordingly allowed.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (P.I.L.) No. 139 of 2011

Bachpan Bachao Andolan ...Petitioner
Versus
The State of Jharkhand & Ors. ...Respondents

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE JAYA ROY

For the Petitioner : M/s Jagjit Singh Chabra,

Amit Kumar Tiwari, Advocates

For the Respondents : J.C. to A.G.

Order No. 12 **Dated 18th September, 2012**

Learned counsel for the petitioner submitted that as per the counter filed by the respondents, it is apparent that though there are 24 districts but Welfare Committee has been constituted in 17 districts and only 7 committees are having their Chairman and therefore, as per the statement of the State Government there are 10 committees without there being any Chairman. It is also submitted that Children Home are available only in two districts whereas it should have been in more districts for which State should do its exercise to find out the need of Children Home. It is also submitted that State has stated that they are contemplating to have two Shelter Homes in the Sate of Jharkhand which is also not adequate.

It appears that the said information was given by the State Government in the month of August, 2011 and one order has been passed to that information.

Learned counsel for the State has submitted that State Government has constituted State Commission for protection of child rights as has been constituted vide notification dated 18th July, 2012 and Chairman and four Members have been appointed. It is submitted that there are six Members but four have been appointed. Learned counsel for the State has submitted that the Commission is fully functional and if there will be more need of more members then the State Government will take a decision to appoint more members in the Commission.

Be that as it may, at present the Commission is functioning.

In view of the facts referred above, the State is directed to submit latest status report with respect to all above issues and particularly with respect to the Children Home and the Shelter Home which may be too less looking to the problem of the children in the State of Jharkhand. The State Government may also not wait for the order of this Court for taking action in such a serious matter and during this period also take decision for establishment of the Shelter Home and the matter of increase of Children Home.

The Status Report and progress may be submitted by the State by 6th November, 2012.

The State may also submit their action plan with respect to the protection and rehabilitation of children.

Put up this case on 6th November, 2012.

Copy of the order may be given to the learned counsel for the parties.

(Prakash Tatia, C. J.)

(Jaya Roy , J.)

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[2012] 3 EastCrC 602

IN THE HIGH COURT OF JHARKHAND AT RANCHI

H.C. MISHRA, J.

Rajeev Gope - Petitioner
Versus
The State of Jharkhand - Opposite Party

Cr. Revision No.810 of 2011
Decided on : 18.5.2012

Judgment

Heard learned counsel for the petitioner and learned counsel for the State.

2. Petitioner is aggrieved by the Judgment dated 18.2.2012 passed by the learned Sessions Judge, West Singhbhum at Chaibasa, in Cr. Appeal No.48 of 2010, whereby the appeal filed against the order dated 30.11.2010 passed by learned Chief Judicial Magistrate, Chaibasa, in G.R. Case No.443 of 2010, rejecting the claim of the petitioner to be juvenile, was dismissed by the learned Appellate Court below.

3. The facts of the case lie in short compass. Petitioner has been made accused in Gua (Barajamda) P.S. Case No.49 of 2010, corresponding to G.R. No.443 of 2010 for the offence under Section 302/201/379/34 of the IPC. The date of occurrence is 11.8.2010. It appears that the petitioner was apprehended in connection with this case and in the Court below the petitioner claimed to be a juvenile. The Court below itself entered into an enquiry for determining the age of the petitioner and in course of enquiry, the School Leaving Certificate of the petitioner was produced. Two witnesses were examined in support of the claim of the petitioner in the Court below, in which PW - 2 Dasrath Gope, who is uncle of the petitioner, had produced the School Leaving Certificate of the petitioner and in his cross-examination, this witness had disclosed that the petitioner was eight years younger than him (PW - 2). The Court below found that the uncle of the petitioner was about 30 years of age and deducting 8 years from his age, petitioner appeared to be more than 21 years of age on the date of occurrence. The Court below also taken into consideration the physical built of the petitioner and held that the petitioner was not a juvenile. The appeal filed against the said order was also rejected by the Appellate Court below by Judgment dated 18.2.2011.

4. Learned counsel for the petitioner has submitted that the impugned order passed by the Courts below are absolutely illegal, in as much as, the petitioner had proved the School Leaving Certificate, which has also been brought on record in this case as Annexure - 2. It has also been submitted that a teacher of the said school was also examined in the Court below, who has proved the entries in admission register, wherein the date of birth of the petitioner was recorded as 22.2.1993, according to which, the petitioner was a juvenile on the date of occurrence. Learned counsel accordingly submitted that the impugned order cannot be sustained in the eyes of law.

5. Learned counsel for the State opposed the prayer of the petitioner.

6. After having heard learned counsel for the parties and upon going through the record, I find that the certificate which was produced in the Court below, was issued on 27.8.2010, i.e., soon after the date of occurrence, i.e., 11.8.2010. As such, it clearly gives an impression that the certificate has been obtained for the purpose of this case only. It also appears that the uncle of the petitioner had given the age difference between himself and the petitioner, according to which, the petitioner was not a juvenile on the date of occurrence. The Court below has also taken into consideration the physical built up of the petitioner also and has found that the petitioner was not a juvenile.

7. The procedure to be adopted in determination of the age of the child or juvenile in conflict with law is prescribed in Rule 12 of the juvenile Justice (Care and Protection of Children) Rules 2007, which reads as follows:

"12. Procedure to be followed in determination of Age.-

(1) *** *** ***

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

(a) (i) the matriculation or equivalent certificate, if available; and in the absence whereof:

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i),(ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

And, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4). *** *** *** (6) *** *** ***."

8. Rule12(3)(b) of the aforesaid Rules provide that in absence of Matriculation or the other documents concerning the age, the medical opinion shall be sought from the duly constituted Medical Board which will declare the age of the juvenile/ child. The School Leaving Certificate produced in the Court below was discarded by the Courts below, and rightly so, because the same did not inspire confidence, as the uncle of the petitioner who proved the said certificate, disclosed the difference of age between himself and the petitioner, according to which the petitioner is not a juvenile. This apart, the said certificate is issued soon after the date of occurrence, thus giving an impression that the same might have been manufactured for the purpose of this case. As the said certificate was discarded by the Court below, in my considered view, the case of the petitioner is clearly governed by Clause (b) of Rule 12(3) as aforementioned, which provides that in absence of any certificate as mentioned in sub clauses (i),(ii) or (iii) of clause (a) of Rule 12(3), the opinion of the Medical Board shall be sought, which shall declare the age of the juvenile or child. That having not been done in this case, in my considered view, the orders passed by both the Courts below cannot be sustained in the eyes of law and as such, it is a fit case for remand to the Court below for reconsidering the age of the petitioner in accordance with law.

9. In view of the aforementioned discussions, the order dated 30.11.2010 passed by the learned Chief Judicial Magistrate, Chaibasa, in G.R. Case No.443 of 2010, as also the Judgment dated 18.2.2011 passed by learned Sessions Judge, West Singhbhum at Chaibasa, in Cr. Appeal No.48 of 2010, are hereby, set-aside and the learned Chief Judicial Magistrate, Chaibasa, is directed to pass fresh order in accordance with law after getting the opinion of the Medical Board and in accordance with Rule 12 of the Juvenile justice (Care and Protection of Children) Rules, 2007. This application is accordingly, allowed with the directions as above.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W. P. (PIL) No. 139 of 2011

Bachpan Bachao Andolan ... Petitioner
Versus
The State of Jharkhand & others ... Respondents

CORAM: HON'BLE MR. JUSTICE D.N. PATEL
HON'BLE MR. JUSTICE APARESH KUMAR SINGH

For the Petitioner : M/s. Jagjit Singh Chhabra, Amit Kumar Tiwari, Advocates

For the Respondents :J. C. to G.A.

08/Dated: 13th of February, 2012

1. Counsel for the petitioner submitted that despite the enactment viz.-'The Commission for Protection of Child Rights Act, 2005' by the Parliament of India and despite Section 17 of the Act thereof, the State has not taken any steps for constitution of the State Commission for Protection of Child Rights.
2. Counsel for the petitioner further submitted that day in and day out the children of the State of Jharkhand, are misused in trafficking and when the concerned premises are raided in other State the children of State of Jharkhand are to be sent back to the State, there is no proper machinery available in the State of Jharkhand like children home etc. The State Commission is to be constituted for Protection of Child Rights. Children are the assets of the State as well as future of the State. All care must be taken by the State authority to protect the rights of the children of the State of Jharkhand.
3. Counsel for the petitioner has also pointed out that as per the object and reason for enactment of the Act, 2005 it is the duty of the State to constitute the Commission for Protection of Child Rights.
4. Counsel for the State submitted that they have constituted a Committee having three members, one of whom is the Hon'ble Minister of Social Welfare Women & Child Development Department, another member is Secretary, Social Welfare and third member is Secretary, Health & Family Welfare. This Court asked the question as to whether any meeting has been convened by these three member committee, counsel for the State is unable to give any answer.
5. We, therefore, direct the State of Jharkhand to convene a meeting and take necessary steps as per Section 17 of the Act, 2005 in the direction of appointment of the members of State Commission for Protection of Child Rights, for execution of the function of the Commission as enumerated in Section 13 thereof.
6. Post this matter on 12th March, 2012.

(D.N. Patel, J)
(Aparesh Kumar Singh, J)

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (PIL) No. 139 of 2011

Bachpan Bachao Andolan ...Petitioner
Versus
The State of Jharkhand & others ...Respondents

CORAM : HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MRS. JUSTICE JAYA ROY

For the Petitioner : M/s. Jagjit Singh Chhabra & Amit Kumar Tiwari, Advocate

For the Respondents :Mr. Anil Kumar Sinha, Advocate General

Order No. 05 **Dated: 16th of August, 2011**

1. This Public Interest Litigation has been filed by the writ petitioner seeking directions for the respondent-State to adopt the scheme/ action plan framed by the National Commission for Protection of Child Rights with necessary and appropriate modifications as applicable to the State of Jharkhand and to constitute a State Commission for Protection of Child Rights as per the provisions contained in 'The Commission for Protection of Child Rights Act 2005' and to constitute Child welfare Committees, children's homes, shelter homes and to implement the provisions contained in the Juvenile Justice (Care and Protection of Children) Act, 2000. The petitioner's endeavor is for rehabilitation of all children and other victims of trafficking who have been rescued from other States and repatriated back to the State of Jharkhand.

2. Learned counsel for the petitioner drew our attention to the order dated 14th July 2009 passed by the Delhi High Court in W.P (C) No. 9767 of 2009 (Court on its Own Motion -versus- Government of NCT of Delhi), wherein, the Delhi High Court noticed the earlier decision of the Hon'ble Supreme Court delivered in case of M.C.Mehta vs.State of Tamil Nadu reported in AIR 1997 SC 699 wherein several directions were issued by the Hon'ble Supreme Court and one of the important directions was to direct an employer to pay a compensation of Rs. 20,000/- for having employed a child below the age of 14 years in hazardous work in contravention of Child Labour (Prohibition & Regulation) Act, 1986 and the appropriate Government was also directed to contribute a grant/deposit of Rs.5,000/- for each such child employed in hazardous jobs. The said sum of Rs. 25,000/- was to be deposited in a fund to be known as Child Labour Rehabilitation -cum-Welfare Fund and the income from such corpus was to be used for rehabilitation of the rescued child.

3. Learned counsel for the petitioner also submitted that for taking care of the child/ children is not only a statutory duty under any Act but is a Constitutional mandate and therefore, several laws have been enacted to safeguard the life of children.

4. We have also noticed that the National Legal Services Authority (NALSA) also declared this year as 'the year of Rights of the Child'.

5. We need not to go in details of all the enactments for protection of the rights of children because of plain and simple reason that without help of any statutory provision, we are of the considered opinion that the children are the future of not only any country but of the entire world in this era of globlization. World's (Children's) future is not safe

because of the illegal and unknown activities of the vested interest of the persons and the rights of children are required to be not only protected but also are required to be made available to the children by all means including all the citizens as well as by the State at all level including at the level of the Central as well as by the State and down to the level of even Panchayat.

6. Though it is known to everybody but we may again observe that the laws themselves do not act, unless they are followed and observed by all and more so, it is the State's duty to implement the laws. Therefore, the law, the Commission for Protection of Child Rights Act 2005, was created in the year 2005, ipso facto, cannot give the benefit to a single child unless there is will of persons to implement the said law. The said Act of 2005 was enacted by Government of India after participating in the United Nation General Assembly Meet held in 1990 which adopted a declaration on survival, protection and development of children and India who by it's own treated the children as good, also acceded to the Convention on the Right of the Child (CRC) on 11th December 1992 and as per the Act of 2005, itself, the CRC is an international treaty that makes it incumbent upon signatory States to take all necessary steps to protect children's rights enumerated in the Convention and it appears from the Act of 2005 itself that, to ensure the protection of rights of children, one of the initiatives taken by the Government was for adoption of National Charter for Children 2003. Even the United Nation General Assembly Special Session on children was held in the month of May 2002 adopted an Outcome Document titled "A World Fit for Children" containing the goals, objectives, strategies and activities to be undertaken by the members of the countries for the current decade. It appears that by taking note of all these events, the Act of 2005 was enacted. The United Nation General Assembly for children was held in the month of 2002 and the words "A World Fit for Children" was the object and for creation of the World Fit for Children time prescribed was current decade and that decade will end in the month of May 2012. In the month of August 2011 the petitioner is seeking direction for the State of Jharkhand to constitute the Commission for protection of Child Rights as provided under Section 17 of the Act of 2005, for which, it is submitted by the learned Advocate General for the State that the State is making its own efforts by taking into account the problems with respect to the Rights of Children in the light of the State's own peculiarity.

7. Learned Advocate General submitted that the State is conscious of the problem and also sensitive and in full agreement with the opinion expressed in all the Conferences referred to above and in furtherance to that, the State has constituted Child Welfare Committees in 24 districts in Jharkhand. However, presently out of 24, 17 Committees are functional. It is also submitted that two children homes are operational in the State of Jharkhand, one in the East Singhbhum at Jamshedpur (for boys) and second in the district of Deoghar (for girls). Under Integrated Child Contribution Scheme, the Government of India has approved to run Children Home in the district of Bokaro also and two more children homes and two shelter homes have been approved by the Government of India to be started in the financial year 2012-13. The provisions contained in Juvenile Justice Act 2005 has already been incorporated in ICPS itself for implementation. It is also pointed out that the State is also conscious of the fact that there may be cases of women and girls of remote and rural areas of Jharkhand who are being trafficked to metro and big cities under the garb of providing good employment,

opportunity, marriage etc., and most of them ultimately back to prostitution and subjected to sexual abuse and other activities and, therefore, the Government of Jharkhand has initiated many programmes to prevent, restore and rehabilitate the trafficking affected adolescent girls and women, for whom, two homes have been established in Delhi and Ranchi for rehabilitation of rescued girls. In these homes, temporarily the rescued girls and womens can be allowed to stay before sending them to their parental home and Toll Free Helpline has been established in Ranchi and Delhi.

8. The contention of the State clearly indicates that the need of protection of child rights is not disputed by the State and rightly has not been disputed.

9. However, we are only concerned that the State, particularly, the welfare Department of the State should not only agree for protection of rights of child but must act in protecting the rights of child. Therefore, we would like to know from the State as to what steps have been taken by the State to find out whether it is right time for the State to establish and constitute the State Commission for protection of child rights so as to not to log behind to all others who are working in the field of protecting the child rights. The State for taking a positive stand may need sometime, therefore, we grant the State sufficient time upto 10th October 2011, so that the State may come to the conclusion whether it is the right time to constitute the Commission as required under Section 17 of the Act 2005. We make it clear that we are giving sufficient long time which may not be treated to be a time given only for passing the time but we want sincere efforts, therefore, we are giving longer time without unnecessarily calling the State to give interim reply and show it's action.

Put up this case on 10th October 2011.

(Prakash Tatia, A.C.J.)

(Jaya Roy, J.)

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